

Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

Members Present: Chairman Bill Banks, Marion Hamel, Jared Lee, Josh Hoogerwerf, Tinker Moody, Charlotte Ruiz

Staff Present: Planner Kaitland Finkle and Town Clerk Vickie Best

Others Present: Chris Chagnon and Adam Hambleton

Call to Order

Chairman Banks called the meeting to order at 5:33 pm on Thursday February 17, 2022, in the Town Hall Boardroom.

Since Eve Barrett is not in attendance, Ms. Ruiz will be a voting member.

Chairman Banks explained how a quasi-judicial board operates like a court of law with sworn testimony.

Approval of Minutes: January 20, 2022

MS. HAMEL MADE A MOTION TO APPROVE THE MINUTES. MS. MOODY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Application request to Section 151.76 Right of Way Width: Minimum 30-feet by Adam Hambleton 429 & 433 Soco Road: 7696-98-6616 & 7696-98-4555

151-76 Street and Roads.

All streets both public and private shall meet the minimum design and construction standards of the Town of Maggie Valley Subdivision Road Standards.

A Right-of-Way width: minimum 30-feet -exceptions to be approve by the Board on individual basis.

Variance request to Section 151.76 Right-of-way width: Minimum 30 feet by Adam Hambleton, 429 & 433 Soco Road (7696-98-6616 & 7696-98-4555). Mr. Hambleton purchased the property in 2020.

Both newly renovated homes currently on the property have a 10-foot deeded right-of-way. The front home is not 30-feet from the property line. The proposed roadway will have a 20-foot right-of-way for utilities and 18-feet of pavement.

Located on the adjacent property, The Swag's Laundry Facility is almost on the property line.

2
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

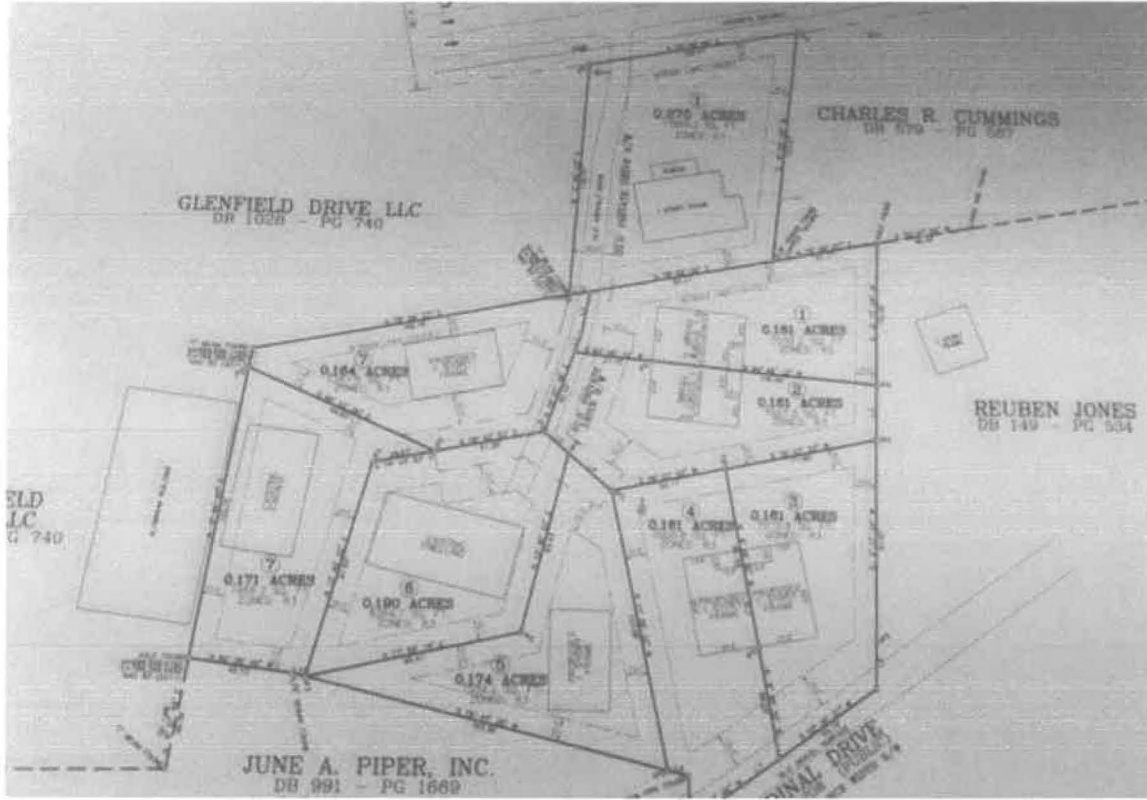
Item 3a



The two lots currently use a deeded 10-foot Right of Way. The following is a sketch plan showing the potential layout of lots and has not been submitted for preliminary plat approval. As seen below, the property owner plans to keep existing dwellings and infill around them. The existing home at 429 Soco Road sits approximately 25 feet from the property line. Directly adjacent to the property line is the newly permitted and completed Swag Laundry facility.

The Town of Maggie Valley recognizes that there may exist certain conditions that make the literal enforcement of its Zoning Ordinance result in a practical difficulty or unnecessary hardship. To that end, the Town has created a process whereby interested parties may request a variance from the Zoning Board of Adjustment from specific requirements of the ordinance.

Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES



Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

Facts for Variance Application #211209002

1. Adam and Samantha Paige Hambleton own 1.65 acres at 429 & 433 Soco Road, PIN 7696-98-6616 & 7696-98-4555.
2. Annexation of the rear portion of parcel 7696-98-6616 and the entirety of parcel 7696-98-4555 occurred on December 14, 2021.
3. C-2 Neighborhood Business Zoning was set for the entirety of both parcels.
4. The existing deeded Right of Way is 10 feet.
5. The proposed Right of Way is 20 feet.
6. The existing dwelling is approximately 25 feet from the property line, with the newly permitted and finalised Swag Laundry facility directly adjacent to the property line.
7. All requirements of the Town's Zoning Ordinance for Variances shall be met.
8. 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.

Planner Finkle received one call questioning if the property would be accessed off Cardinal Drive. The property is steep in the back, bordering Cardinal Drive.

Before granting a variance, the Board must answer the following questions pertaining to the case.

Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

Variance request to Section 151.76 Right-of-way width: Minimum 30 feet by Adam Hambleton, 429 & 433 Soco Road (7696-98-6616 & 7696-98-4555)

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that all of the following conditions exist.
 - (a) If the applicant complies with the provisions of this chapter, the applicant can secure no reasonable return from nor make reasonable use of the property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of the property.
 - (b) The hardship results from the application of this chapter to the property rather than from other factors such as deed restrictions or other hardship.
 - (c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
 - (d) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates this chapter, or who purchases the property after the effective date of this chapter and then comes to the Board for relief.
 - (e) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.
- (2) The variance is in harmony with the general purpose and intent of this chapter and preserves its spirit. That is, the applicant is not seeking to establish, to expand, or to extend in area a nonconforming use. Moreover, the existence of a nonconforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance.
- (3) In granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would alter the essential character of the neighborhood, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or general welfare.

After reviewing the above questions, the Board agreed that a variance would be acceptable.

Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

MS. HAMEL MADE A MOTION TO APPROVE THE VARIANCE AS REQUESTED. MS. MOODY SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Application for a Special Exception Request in C-1 for Residential Use, Chris Chagnon, 955 Soco Road (7696-68-8258).

Special Exception in C-1 for Residential Use, Chris Chagnon, 955 Soco Road (7696-68-8258)

Facts for Special Exception Application #220128001

1. Chris Chagnon owns 0.121 acre at 955 Soco Road, PIN 7696-68-8258.
2. The property is zoned C-1, General Business.
3. On January 28, 2022, the property owner applied for a Special Exception for a Residential Use, as required in the C-1 district.
4. The use is proposed inside the existing structure which is approximately 800 square feet.
5. There is no space to add parking spaces.

All other requirements of the Town's Zoning Ordinance for Special Exceptions shall be met.

7
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

Special Exception in C-1 for Residential Use, Chris Chagnon, 955 Soco Road (7696-68-8258)

Item 3b

Chris Chagnon owns 0.121 acre at 955 Soco Road, PIN 7696-68-8258. The property is zoned C-1, General Business. A Special Exception for a Residential Use in C-1. The use is proposed inside the existing structure which is approximately 800 square feet.



**§ 154.039 COMMERCIAL 1 DISTRICT;
GENERAL BUSINESS (GB).**

- (B) Permitted uses. Due to potential conflicts, such as noise, traffic, and the like, residential uses in the C-1 District is discouraged, however, it may be allowed as a special exception if approved by the Zoning Board of Adjustment based on elements listed in § 154.172. One dwelling unit either located within the commercial building or in a separate dwelling structure located on the same lot. Dwelling structures shall be a single-family dwelling or Class A manufactured home. No single-wide mobile homes are permitted.

SPECIAL EXCEPTION. A use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. The uses may be permitted in a zoning district as special exceptions, if specific provision for the special exceptions is made in this chapter.

The Planning Board recommended approval of a residential unit within the Commercial 1 District. There is no additional parking at the structure. Mr. Chagnon will be working with Haywood County to meet minimum housing standards.

Mr. Otis Sizemore, the original owner, built the unit for his window dressing company's storage. Mr. Chagnon explained that he would put railing around the porch with flowerboxes and rocking chairs to make the unit look homelike. This will be a one-bedroom rental. Mr. Chagnon informed the board that he was not going to fool with trying to have it as an Airbnb.

Mr. Chagnon went on to explain that he sold the unit January 3rd, and the purchaser was going to use the place as a home. "The purchaser did not obtain any building permits and got scared and then asked me (Mr. Chagnon) to buy back the unit."

8
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

Haywood County will not issue any permits because the area is zoned C1.

SPECIAL EXCEPTION. A use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. The uses may be permitted in a zoning district as special exceptions, if specific provision for the special exceptions is made in this chapter.

§ 154.172 POWERS AND DUTIES.

(2) Special exceptions.

- (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;
 2. Refuse and service areas, with particular reference to the items in division (b)1. above;

Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

3. Off-street parking and loading areas where required with particular attention to the items in division (b)1. above and to the economic, noise, glare, or odor effects of the special exception on adjoining properties and generally in the district;
4. Utilities, with reference to location, availability, and compatibility;
5. Screening and buffering, with reference to type, dimensions, and character;
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
7. Required yards and other open spaces;
8. General compatibility with adjacent property and other property in the district.

§ 154.091 OFF-STREET AUTOMOBILE PARKING AND STORAGE.

Each automobile parking space shall be not less than 9 feet by 18 feet totaling 162 square feet.

(B) Use classification parking space requirement.

(13) Residential dwellings - 2 spaces for each dwelling unit;

Staff recommends granting the Special Exception for a Residential Use at 955 Soco Road.

Based upon

- Zoning is C-1.
- Using existing structure.
- Surrounding Residential Land Uses.
- Constraint of lot size and inability to add parking for commercial uses.

At their Board meeting regarding this issue on February 10, the Planning Board created a consistency statement and findings statement which reviewed and made unanimous recommendation to approve the special exception relative to the following considerations:

1. Relation of the special exception to applicable elements of the planning program; and
2. Appearance of the special exception relative to location, structure, and design.

After reviewing the statements above, the following motion was made.

MS. MOODY MADE A MOTION TO APPROVE THE SPECIAL EXCEPTION. MR. LEE SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

Other business

Planner Finkle asked that the Board review the Rules of Procedure that was adopted in 2004.

The Board along with Planner Finkle began reviewing the rules.

a. Rules of Procedure

RULES OF PROCEDURE ZONING BOARD OF ADJUSTMENT

TOWN OF MAGGIE VALLEY

I. GENERAL RULES

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160A, Part 3 of the General Statutes of North Carolina and by the Zoning Ordinance of Town of Maggie Valley.

10
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

All members of the Board shall thoroughly familiarize themselves with these laws.

II. OFFICERS AND DUTIES

A. Chairman.

A chairman shall be elected by the full membership of the Board of Adjustment from among its regular members. The chairman will preside over the Board for a term of one year and until his successor is elected, beginning on July 1, and he shall be eligible for re-election. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The chairman shall appoint any committees found necessary to investigate any matters before the Board. *Bill Banks has been elected Chairman since becoming a member of the Board as well as Ms. Hamel serving as Vice-Chairman.*

B. Vice Chairman

A vice chairman shall be elected by the Board from among its regular members in the same manner and for the same term as the chairman. He/she shall serve as acting chairman in the chairman's absence, and at such times he/she shall have the same powers and duties as the chairman.

C. Secretary (Not to be filled at this time.)

A secretary shall be appointed by the chairman of the Board, either from within its membership or from outside, to hold office during the term of the chairman and/or until a successor secretary has been appointed. The secretary shall be eligible for reappointment. The secretary, subject to the direction of the chairman and the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The secretary shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted on by the Board, and all votes of members of the Board on any resolution or on the final determination of any question, indicating the names of members who are absent or fail to vote. If the secretary is chosen from outside the Boards membership, he/she shall not be eligible to vote on any matter.

D. Clerk

The Clerk shall be appointed to the Board of Adjustment by the Board of Alderman. The clerk shall perform such tasks as the chairman may assign and shall perform all the duties of the secretary until such time as the chairman appoints a secretary to the Board. The clerk will not be eligible to vote on any matter.

III. ALTERNATE MEMBERS

Alternate members of the Board shall be called on to attend only those meetings and hearings at which one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest. Regular members, on receiving notice of a regular meeting or special meeting that they cannot attend or on learning that they will be unable to participate in a particular

11
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

case, shall give prompt notice to the Board Clerk that they are unable to attend or to participate. On receiving such notice, the clerk shall, by the most expeditious means, notify an alternate member to attend. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members.

At no time shall more than five members participate officially in any meeting or hearing. *Ms. Hamel had great concerns about what appeared to her, alternate members voting when a full board was present. The ETJ member cannot vote but may participate in all discussions the same as alternate members.*

As noted in this meeting, Ms. Ruiz will be a voting member, because alternate #1 Eve Barrett is not present to fill Mr. Alsbrooks' seat.

IV. RULES OF CONDUCT FOR MEMBERS

Members of the Board may be removed for cause, including violation of the rules stated below.

A. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board. Any member who misses 3 consecutive meetings automatically forfeit membership. A member terminated for lack of attendance may appear before the Board of Alderman and request reinstatement.

B. No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. *The State talks about a familiar relationship. Wording to that effect could be added to the rules.*

C. No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.

D. No Board member shall discuss any case with any parties' thereto before the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from any other member of the Board, its secretary, or clerk before the hearing.

E. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties' thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

Ms. Hamel reminded the Board that the applicant or his agent must attend the meeting for the Board to question. That ruling should be added to the procedures.

V. MEETINGS

A. Regular Meetings.

Regular meetings of the Board shall be held on **the second Tuesday of each month at 5:00 p.m.** in the Board room of the City Hall; provided that meetings may be held at any other convenient place in the Town if the chairman so directs before the meeting. *Planner Finkle informed the Board that she had sent a postcard to all residents within the Extra Territorial Jurisdiction (ETJ) soliciting applications for both the Planning Board and the Zoning Board of Adjustments.*

12
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

B. Special Meetings.

The chairman may call special meetings of the Board at any time. At least forty-eight (48) hours written notice of the time and place of special meetings shall be given, by either the Secretary or the Chairman, to each member of the Board. Public notice of five (5) days shall be given as required by the General Statutes. *Chairman Banks reminded the Board that they do not have to decide at the same meeting as a request for a variance or special exception comes before them. Decisions can be carried over until the next meeting or by calling a Special Called Meeting.*

C. Cancellation of Meetings.

If there are no appeals, applications for special use permits or variances, or other business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend that a quorum will not be available, the chairman may dispense with a regular meeting by giving written or oral notice to all members not less than twenty-four (24) hours before the time set for the meeting.

D. Quorum.

A quorum for routine administrative decisions shall consist of three members of the Board. However, a quorum needed for the Board to pass on any question relating to an appeal from a decision, order, requirement, or determination of the Building/Zoning Code Enforcement Officer or an application for a variance or special use permit will require no less than 4 members to be present in order to have a 4/5's vote of the Board. It would be most fair to the applicant to only have a full Board hear these matters, using alternates to replace any absent regular members.

E. Voting.

All regular members may vote on any issue unless they have disqualified themselves for one or more reasons listed in Section IV. The required vote to decide appeals and applications shall be as provided in Section VI, D, 4 and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.

Ms. Hamel stressed the need to make a decision. There are three ways to make a ruling as a Zoning Board of Adjustment member 1) approve 2) deny 3) table the issue until the next meeting.

At the last meeting, the Board dismissed the request for a Variance request to Section 154.113 for Recreational Vehicle to exceed 1 month in C-1 by Gordon Graham, 2468 Dellwood Road (8607-71-9896).

The applicant should not come to this Board if the case can be dismissed.

F. Conduct of Meetings.

All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of the previous meeting; (c) reports of committees; (d) unfinished business; (e) new business; (f) hearing of cases; (g) consideration and determination of cases heard.

VI. APPEALS AND APPLICATIONS

13
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

A. Types of Appeals.

The Board shall hear and decide all appeals from and review any order, requirement, decision, or determination made by the Building/Zoning Code Enforcement Officer, it shall also hear and decide all matters referred to it or on which the Zoning Ordinance of the Town of Maggie Valley requires it to pass. In deciding appeals, the Board may hear both those based on an allegedly improper or erroneous interpretation of the ordinance and those based on alleged hardship resulting from strict interpretation of the ordinance.

B. Procedure for Filing Appeals.

No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Building/Zoning Code Enforcement Officer. The applicant must file his application for a hearing with the Building/Zoning Code Enforcement Officer respectively, who shall act as clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an appeal may be considered as having been filed.

C. Hearings.

1. Time. After notice of appeal is received, the Clerk shall schedule the time for the hearing. If the application is received 9 working days prior to the next scheduled regular hearing, the applicant will be heard at that scheduled meeting. If application is received after that time, it will be heard within 38 days or sooner from the filing of such notice of appeal. At the discretion of the chairman, special hearings may be called only after giving proper public notice.

2. Notice. The Board shall give public notice of the hearing in a newspaper generally circulated in Haywood County by advertisement of "Public Notice" published at least five (5) days before the date of the hearing. The Board shall post notices of the hearing on the bulletin board of the main hallway of Town Hall. Such notices shall state the location of the building or lot if applicable, the general nature of the question involved in the appeal, and the time and place of the hearing.

3. Conduct of the Hearing. Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the evidence and arguments in support of his application; (c) persons opposed to granting the application shall present the evidence and arguments against the application; (d) both sides shall be permitted to present rebuttals to opposing evidence and arguments; (e) the chairman shall summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called, and factual evidence may be submitted, but the Board shall not be limited to considerations of such evidence as would be admissible in a court of law. The Board may view the premises before the hearing, but the facts indicated by such inspection shall be disclosed at the public hearing and made part of the record. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

When deciding, said decision is about the land, not the person. The land can be sold.

14
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

Chairman Banks reminded the Board that we look at facts, no opinion. Neighbors can get up and say a use will decrease their property values, but unless an expert testifies to that fact, it is opinion. The Board must remain impartial.

4. Rehearings. An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The Board shall deny the application for rehearing if, from the record; it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.

D. Decisions.

1. Time. Decisions by the Board shall be made not later than thirty (30) days from the time of the hearing. This is a maximum time limit, normally decisions will be made at the meeting with which the hearing was held.

2. Form. The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the secretary/clerk and the chairman on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any exceptions, difficulty, or unnecessary hardship upon which the appeal was based and which the Board finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. When an exception, special use permit, or conditional use permit is granted, the record shall state in detail any facts that support findings required to be made before such permit is issued. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance or an exception, special use permit, or conditional use permit. A separate record of the decision in each case shall be prepared, filed in the City clerk's office, and furnished to the parties as specified in Subsection 5.

3. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting an exception, special use permit, conditional use permit or a variance shall expire if the applicant does not obtain a building permit, certificate of occupancy, or comply with the terms of the variance, special use permit, or conditional use permit to a substantial completion within Six (6) months from the date of the decision.

4. Voting at Hearings. The concurring vote of four-fifths of the Board members shall be necessary to reverse any order, requirement, decision, or determination of the Building/Zoning Code Enforcement Officer, to decide in favor of the applicant any matter on which the Board is required by ordinance to pass, or to grant a variance from the ordinance provisions.

5. Notice and Public Record of Decisions. The secretary/clerk shall give written notice of the decision in the case to the appellant and /or the applicant and to every aggrieved party who has filed a written request for such a notice with the secretary/clerk or the chairman of the Board when the

15
Town of Maggie Valley
Zoning Board of Adjustment
February 17, 2022
MINUTES

hearing is held. Such notice may be physically picked up from the town clerk's office 30 days after the conclusion of the hearing. A copy of the decision shall also be filed in the City Clerk's office at Town Hall. The decision shall be a public record, available for inspection at all reasonable times.

VI. AMENDMENTS

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four (4) members of the Board, provided that such amendment be presented in writing at a regular or special meeting before the meeting at which the vote is taken.

Adopted this the 9th day of November 2004.

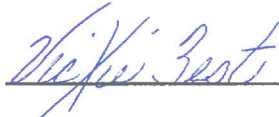
The UDO will be implemented by July 1.

Adjournment

ON MOTION OF MS. HAMEL, SECONDED BY MS. MOODY, THE MEETING ADJOURNED AT 6:31 PM.



Chairman Bill Banks



Vickie Best, CMC, Town Clerk

