



Town of Lake Lure

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Minutes of the Regular Meeting of the Zoning and Planning Board

Tuesday, November 16, 2010

Lake Lure Municipal Center

Chairman Washburn called the meeting to order at 9:31 a.m.

ROLL CALL

Present: Dick Washburn, Chairman
Bill Bush
Paula Jordan
Donnie Samarotto
Chris Corr
John Moore, Town Council Liaison

Also Present: Suzy Smoyer, Planner/ Subdivision Administrator, Recording Secretary
Shannon Baldwin, Community Development Director
Mike Egan, Community Development Attorney
Sheila Spicer, Zoning Administrator
Clint Calhoun, Environmental Management Officer

APPROVAL OF THE AGENDA

The agenda was approved upon a motion made by Mr. Bush and seconded by Ms. Jordan.

APPROVAL OF THE MINUTES

The minutes were approved as amended upon a motion made by Mr. Bush and seconded by Ms. Jordan.

OLD BUSINESS

- (A) Continue discussion to consider amending the Zoning Regulations to define produce stands, set standards for produce stands and allow produce stands as a conditional use in the R-4 Zoning District.

Shannon Baldwin gave an overview of the draft ordinance in the Zoning and Planning Board's packet. This draft accomplishes three things: 1. Defines "produce stand"; 2. Sets minimum standards for the kinds of merchandise sold and where the merchandise can be displayed on site; and 3. Allows produce stands as a conditional use in the R-4 Zoning District. This represents not only a simple straightforward approach to allowing produce stands in this district, but also allows the town to take special care with respect to produce stand expansions and their impact on community appearance in that same district. The Board discussed the following definition of produce stands and how the definition will be interpreted:

Produce Stands: A retail establishment that offers for sale items limited to regionally produced fruits, vegetables, preserves, relishes, jams and/or jellies, handmade crafts, and similar products, but shall not include foods canned in metal containers. Merchandise for sale shall not be displayed outside the building.

Ms. Spicer noted that she would refer to the definition of building to determine where merchandise can be displayed. The current definition of building includes any extension or extrusion of the structure such as balconies, decks, porches, roof overhangs, and foundations.

Upon a request by the new board member, Chris Corr, Ms. Spicer also gave a brief history of the issue. Mr. Corr noted that the last sentence in the definition seemed out of place. It seemed like a standard rather than part of a definition. Mr. Baldwin stated that it is easier to put this standard in the definition than to amend the various sections of the ordinance.

Bill Bush made a motion to recommend that the Town Council approve the ordinance. Mr. Egan noted a numbering issue in the ordinance that requires correction. Paula Jordan seconded the motion. All were in favor.

(B) Continue discussion regarding amendments to the tree protection provision in the Zoning Regulations to review enforcement procedures and overall effectiveness

Mr. Baldwin gave a brief introduction and background of the tree protection provisions. He explained that staff is concerned with the amount of time that the current regulations take to administer in a relation to the overall benefit. Mr. Egan discussed the memorandum in the Zoning and Planning Board's packet. He explained that the goal included cleaning up the administrative process, provide a mechanism to educate and inform and keep in place provision that give the ability to delay development approvals for properties that are clear cut. There still seemed to be some uncertainty on post development tree cutting. Mr. Egan reviewed the following memorandum with the Board:

This memorandum is intended to further the discussions concerning tree regulations which took place at the September and October meetings of the Zoning & Planning Board

and on numerous occasions between Town staff and myself. Based on the direction given by both the Board and staff, the Town may want to consider the following changes to its existing regulations.

- 1) Pursuant to N.C.G.S. 160A-174 (the general ordinance making power) and N.C.G.S. 160A-194 (regulation of occupations), create a new chapter of the Town Code addressing tree-cutting. This could contain a licensure requirement for those people who want to engage in the business of cutting trees in the Town. The licensure requirement would most likely involve the paying of a licensing fee and could, if the Town chose, include some demonstration of proficiency on the part of the licensee. One caveat is that if an occupation is licensed by the State a municipality may not also regulate it. I could find no evidence of licensing requirements for arborists or tree-surgeons. The only profession regulated by the State which has any seeming connection to the cutting of trees is forestry.

The Town should probably opt to provide an exemption for persons desiring to cut trees on their own property. It would be permissible, I believe, to require such persons to register on a one-time basis and receive information from the Town concerning proper tree care. You probably do not want to charge a fee for this registration.

- 2) Delete §92.119 of the Zoning Regulations entitled "Land Clearing and Grading Associated with Development" and move appropriate portions thereof to the Sedimentation and Erosion Control Regulations.
- 3) §92.120 of the Zoning Regulations should remain in place in order to allow the Town the option to delay of development authorization for clear-cutting. The term "delay of development authorization" should reference specific authorizations, i.e., conditional use permits, certificates of zoning compliance. Paragraphs (A) and (B) will need to be tweaked or even deleted depending upon whether the Town desires to prohibit clear-cutting in all circumstances.
- 4) §92.121 of the Zoning Regulations should be transferred to the Soil Erosion and Sedimentation Control Regulations.
- 5) The Zoning & Planning Board needs to determine if it wants to recommend that clear-cutting be prohibited in all circumstances. If so, that prohibition should be included in the Town Code Chapter referenced in paragraph 1), above, and a standard definition of "clear-cutting" should be settled on. Currently, there are

two different definitions of clear-cutting and two standards embedded in the regulations themselves:

- ❖ *§91.06. "Clearcutting is the removal of over 70% of the existing trees on a property."*
- ❖ *§91.59.5(A). "Clearcutting is prohibited. Any cutting of trees in excess of the percentages permitted by the Forest Coverage Table...is prohibited unless such excess cutting is shown in the approved tree protection plan...and compensated for by replacing such trees...."*
- ❖ *§92.005. "The removal of any significant trees in excess of the numbers allowed by the provisions of this document, and/or in locations other than those allowed by the provisions of this chapter."*
- ❖ *§92.120(D). "When any allowed activity...results in the removal of all or substantially all of the trees protected by the Town of Lake Lure regulations on 50 percent or more of a site...."*

If the Board recommends doing away with the prohibition against clear-cutting, the definitions in §91.06 and §92.005 should be repealed. In addition, the standards may need to be modified.

Ms. Jordan is pleased with keeping Section 92.120 in place.

There was a discussion on how proposed regulations affect property owners of developed lots. Staff noted that we can't micro-manage tree cutting. We can set triggers and manage activity so that we get the most benefit with the least cost. The license process gives opportunity to educate. If a tree cutter receives a lot of complaints, we can revoke their license. Mr. Washburn mentioned that significant shrubs such as rhododendron should be protected. The Board agreed.

The discussion was summarized as follows: We need license requirements for tree cutters with administrative consequences when the tree protection manual is not followed. Cutting a significant amount of trees and shrubs will need an approved plan. Items 2, 3 and 4 were acceptable. We still need a unified definition of clear cutting which should include trees and shrubs. However, we still need to define clear cutting. The Board decided to let staff work on a definition for clear cutting. It was noted that 70% of a lot seems like a lot. The Board discussed a finite number. Bill Bush made a motion to finalize the document based on discussion. Paula Jordan seconded the motion. All were favor.

NEW BUSINESS

- (A) Discussion regarding inconsistency in the Zoning and Subdivision Regulations as they apply to setbacks in Conservation Design Subdivisions

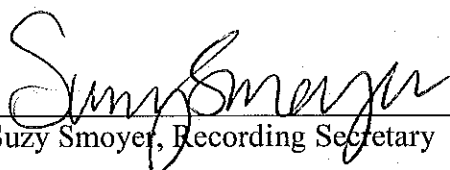
Mr. Baldwin noted that staff may have got ahead of ourselves and will need to bring this topic to the Town Council before the Zoning and Planning Board makes a formal recommendation. He noted that the concern came up when a developer of a conservation design subdivision wanted to know what the setbacks were on the lots in the subdivision. Ms. Smoyer explained that the Zoning Regulations are not consistent with the Subdivision Regulations as they pertain to setbacks in approved conservation design subdivisions. While lot area and lot width are reviewed during the subdivision process, the setbacks are not reviewed until the certificate of zoning compliance is submitted to the Zoning Administrator. The Zoning Administrator pointed out that the Zoning Regulations do not refer to the reduced setbacks allowed in the Subdivision Regulations. Staff has suggested to amend the Zoning Regulations, specifically Section 92.040, to clarify that setbacks in an approved conservation subdivision may be reduced in accordance with Section 91.44(B)(3) of the Subdivision Regulations. Staff believes that the Subdivision Regulations should also be amended to require the final plat to clearly state the approved setbacks for all lots in a conservation design subdivision. If the approved setbacks are noted on the final plat, then the Zoning Administrator can easily reference the setback requirements.

ADJOURNMENT

Mr. Bush made a motion seconded by Ms. Jordan to adjourn the meeting. The motion passed unanimously. The meeting was adjourned at 11:05 a.m. The next regular meeting is scheduled for Tuesday, December 14, 2010 at 9:30 a.m. at the Lake Lure Municipal Center. This meeting has been rescheduled to accommodate the Christmas holiday.

ATTEST


Richard Washburn, Chairman


Suzy Smoyer, Recording Secretary