



Minutes of the Regular Meeting of the
Zoning and Planning Board

Tuesday, October 20, 2015

Lake Lure Municipal Center

ROLL CALL

Present: Thomas M McKay, Chair
Bruce Barrett
Charlie Ellis
Jonathan Hinkle
Norman McGlohon
John Moore, Town Council Liaison

Absent: N/A

Also Present: Shannon Baldwin, Community Development Director
Clint Calhoun, Erosion Control Officer
Mike Egan, Board Attorney
Michelle Jolley, Recording Secretary
Sheila Spicer, Zoning Administrator
Stephen Webber, Board of Adjustment Chairman

The meeting started at 9:35 a.m. Commissioner Moore gave the invocation.

APPROVAL OF THE AGENDA

Mr. Baldwin proposed switching New Business and Old Business and hearing New Business Item C first.

The Board unanimously approved the agenda as amended.

APPROVAL OF THE MINUTES

Mr. Ellis made a motion to approve the minutes of the September 15, 2015 regular meeting as presented. Mr. Hinkle seconded the motion. All voted in favor.

NEW BUSINESS

C. A Request from Firefly Cove for a Conditional District Rezoning from R-1 to R-3

Mr. Hinkle requested to recuse himself as he would be presenting this for Firefly Cove. **Mr. Barrett voted to accept Mr. Hinkle's recusal. Mr. Ellis seconded and all voted in favor.**

Mr. Baldwin provided a brief overview. DRC has reviewed the application and ZPB is the next step before going to Town Council. He stated the Board would need to make a recommendation to Town Council.

Ms. Spicer pointed out the packet includes the application, existing conditions survey, general development plan, and a staff report. She stated they are requesting rezoning of two of the POA owned lakefront parcels from R-1 to R-3CD district. She mentioned that the future land use map of the Comprehensive Plan designates this property as residential; therefore, they are only requesting residential uses and are voluntarily removing from the conditional district all resort commercial uses. Ms. Spicer stated the purpose of the request is to add more boat slips, which requires marina status and is not allowed in R-1. She pointed out that a vicinity map is included in the packet and all comments from the Neighborhood Compatibility meeting and Development Review Committee meeting are included in the staff report.

Mr. Calhoun stated that Firefly Cove brought a request before the Lake Advisory Board to construct a marina. Currently they are limited to three permanent moorings per lot. Upgrading to marine status will give them the option of 15 permanent moorings as opposed to 9. In R-1 you cannot have a marina or a cluster mooring which is the primary reason for the request. Ms. Spicer stated the only two uses on the land being requested are common amenities and customary accessory buildings. She stated there won't be any commercial aspects of a marina due to the voluntary conditions.. She pointed out that they have voted to make modifications to their restrictive covenants as a POA that commercial uses are not allowed. Mr. Calhoun stated no recommendation from the Lake Advisory Board can be made yet as it is zoned as R-1. He noted they are not doing anything that would require a state or federal permit. He explained the regulations apply more to how many moorings are allowed and would not really be a change of use as far as loading, unloading, and tying up boats.

Ms. Spicer pointed out that if they later want uses not shown on the current plans, they can only get that if approved in the future by Town Council. She mentioned that Town Council can relax certain standards of the zoning regulations during the conditional district rezoning request, similar to a variance from the BOA. She stated that this entire area would be considered a common amenity as that term is defined in the Zoning Regulations, and common amenities have a 60 foot setback from Lake Lure. Therefore, she stated the request includes a reduction in the setback from the lake for a common amenity. She referred to the vicinity map included in the packet and explained that the two parcels are highlighted. Mr. Baldwin explained that what's being requested is an extension of R-3 down to the lake's edge.

Mr. Calhoun conveyed the way the mooring is currently creates safety issues with how the boats are being moored, loaded, and unloaded. It would make it easier to pull a boat straight in instead of docking it near the boardwalk. Ms. Spicer pointed out that a sewer line runs along that shoreline and hasn't been impacted yet, but parking parallel to the shore could potentially damage the sewer line or boats. Mr. Baldwin stated in his review of the Comprehensive Plan, this area is designated as residential and Figure 8 recommends this area to stay residential. He noted the resort element would be taken out and the request would be consistent with the Comprehensive Plan if rezoned.

Mr. Egan mentioned there is a unique opportunity to make a district that suits the applicant's need as well as the Towns. Ms. Spicer pointed out the proposed amendment to their covenants were included in the packet as well. It was not required, but the POA requested it. Mr. Hinkle pointed out it was voted on at their last meeting. He mentioned the POA is adamant with things they do not want to happen with their property and chose to add that double layer of protection. Mr. Calhoun stated that a marina is being proposed instead of cluster mooring because cluster mooring designation would not have gained them any additional moorings; a marina would allow for additional slips.

Mr. Barrett reminded the Board that this property has a history of contentiousness surrounding it. He stated that a developer of Firefly Cove years ago wanted to construct a restaurant and slips which caused a lot of angry folks. This particular piece of property is a hot spot in terms of people's views on what people want there. Ms. Spicer noted that the property owners in Firefly Cove are happy with the use of the property as it is now. They are not allowing hotels and retail sales and they have taken all of that out of their request and added protection to their restricted covenants. They want this to stay as an open space to use for community gatherings.

Mr. Hinkle, Board of Director at Firefly Cove, explained the intent of the rezoning is to gain more slips at the boat dock and to maintain the residential characteristics of the shoreline so it does not look appear as a resort. They want to maintain the neighborhood compatibility with the residential appearance. He brought a copy of his notes from the Neighborhood Compatibility meeting as well as notes of what the shoreline looked like in the past. He felt this would be a great benefit to their community and would not impact the lake. He mentioned that a POA meeting was held this past Saturday and the covenants was changed by a unanimous vote of 47-0 in favor of the resolution to the covenants. He stated the changes were that no retail sales would be allowed, no additional boat slips other than what is requested, all amenities will stay as they are, and no more boat ramps or storage. He noted that there are 57 property owners in Firefly Cove.

Patricia Maringer asked if the POA wanted R-3 and all uses in it in the future, if it could be changed. Mr. Baldwin responded Town Council would have to approve it and their POA would have to vote for that change as well. Ms. Spicer added that staff cannot approve a change in uses in a conditional district. Joe Pritchett pointed out the amendment to the POA restrictive covenants has been signed and ready to be executed. Stephen Webber mentioned he understood that they were asking for 13 slips. Mr.

Calhoun stated yes, they are asking for 13 permanent moorings and not 15. Patricia Cummings had a concern with precedent setting and felt it could become very commercialized in the future. She expressed concerns with maintaining the natural beauty of the area and felt this could set a precedent for requests to rezone properties in the future. Mr. Baldwin mentioned that everything can possibly change when circumstances change and everyone has the same rights. Mr. Egan added that from a legal perspective, setting a precedence is not a legal concern. He confirmed what Mr. Baldwin stated, that there is no guarantee to what can happen in the future. Mr. Baldwin pointed out the future land use map shows that this area can be residential. Mr. Egan added that before these tools became available for conditional district rezoning, these folks would be seeking rezoning from the Town without all the restrictions. So really, he stated, this can be done consistent with the Town's goals.

Mr. Ellis stated he felt comfortable with the request; however, he did not like that it had to be called a marina. Unrelated to this matter, he felt that Lake Advisory should take a look at rewording the marina use which can cause a lot of confusion. Mayor Keith felt comfortable with the rezoning and felt that it looks good aesthetically. He did have a concern that rezoning to R-3 may not have enough boundaries and restrictions and may be a benefit only to the Firefly Cove community. Mr. Baldwin stated Firefly Cove is requesting this to enhance the community and for some change for folks to enjoy Lake Lure year-round. He felt this would be positive for the community at large.

Mr. Barrett moved that the Board approve the request for rezoning. Mr. Ellis seconded the motion and requested that Mr. Barrett amend the motion to state that the proposal is consistent with the Comprehensive Plan and will be sent to Town Council for consideration. Mr. Barrett agreed to the proposed motion as amended. All voted in favor.

OLD BUSINESS

A. Discussion on Non-Conforming Structures Amendment

Mr. Ellis made a motion to bring Mr. Hinkle back to his regular seated position. All members voted in favor.

Mr. Baldwin conveyed that Town Council asked this Board to look over the non-conforming structures amendment and send a recommendation to Town Council for consideration.

Mr. Webber stated there is a memo he provided which was included in the packet. One paragraph that needs to be in there regarding discontinuance under 92.101 D is proposed and highlighted in his memos regarding non-conforming structures. He noted that Mr. Egan also provided a good deal of input for this amendment.

Ms. Spicer stated the amendment addresses non-conforming structures that have been removed under involuntary removal. If the structure goes away, it cannot be put back in

the same footprint in the future, which is what the revision states. Mr. Webber stated his original recommendation was to address involuntary destruction and voluntary removal. He added that based on the scenarios it was determined further study was needed. He pointed out that a discontinuance clause was needed to be consistent with the regulations. Ms. Spicer explained that the longer the timeframe of when a structure is removed, the more burden it puts on staff to definitively establish what was originally there. She stated the one year timeframe is just a suggestion.

Mr. Webber pointed out there is currently a lot on the lake where the house burned down years ago. Right now there is no limitation on how long the property owner has to rebuild in the same footprint. He added that there is no restriction on building back with non-conformities. He felt that a timeline should be added into the regulations. Mr. Egan stated this is a principal of zoning law that non-conformities are not favored. He thought this community has gone a long way in trying to make the regulations more acceptable to adapt to the topography in Lake Lure. He thought the provision proposed would be typical with regulations throughout the state and there needs to be something that puts an end to those vested rights. This would not allow someone to never rebuild, but they would have to build in conformity or with a variance. He stated if this was passed, it would apply to all structures. Mr. Ellis felt that 24-36 months would be a more realistic timeframe.

Mr. Hinkle asked how much of the house would have to be burned down to be considered not existing. He asked if the foundation still exists, would it be considered as an existing structure or one that has ceased. Mr. Webber explained that right now there is no rule stating it has ceased. If this is passed, Mr. Webber stated the structure has ceased to exist. Mr. Egan mentioned that this is a grey area in the regulations and stated the amendment may need some revising.

Mr. Baldwin proposed the Board set a goal in what they would like to achieve and then work on the language of the revision. Mr. Egan stated he felt the 12 month timeframe may not be enough, and added that 24 months may be better suited. Ms. Spicer pointed out the timeframe just mirrored some previous language in the regulations. Mr. Egan mentioned that there are some other verbiage in the regulations which may need to be looked over and revised as well.

Chairman McKay suggested tabling this item for future discussion and for a revised drafted amendment. The Board suggested the verbiage to be made clearer and the timeframe be revised in the draft. The Board agreed to table this discussion for a future date.

B. Discussion on Recommended Changes Regarding Non-Conforming Lots of Record

Mr. Webber explained there were some proposed recommendations to 92.101(b)(1) and 92.101(b)(2). Ms. Spicer stated that an attorney's Certificate of Title would be required if a variance is requested for additional lot size. She mentioned that a document would still

be required to show that a lot is still a conforming lot of record. Mr. Egan mentioned he felt this is a good amendment.

Mr. Webber pointed out there were some general changes due to a few inconsistencies in the regulations, which were pointed out in the memo included in the packet. Ms. Spicer stated there are dimensional requirements and the chart was recently amended but all of the original language was not noticed. This may be proposed as well.

OLD BUSINESS

A. Discussion on AR (Agriculture) Districts

Mr. Baldwin provided an overview. He stated there was an assessment meeting for public input, and from that meeting some recommendations came up. One of the recommendations was to create an agricultural residential district and consider what the goals of that district are. The memo in the packet includes a series of questions which sets the stage to hit the target the Board sets. Mr. Baldwin pointed out that if you have chickens, they are required to be registered. Mr. McGlohon added this would be done on the state level.

Mr. McGlohon mentioned that the AR districts would include livestock in all cases and would not impact the environments as much; however, topography and environment plays a big role with horses, sheep, and livestock. He stated that criteria needs to be developed and mentioned that overlaying districts may compensate on how it would affect the neighbors. Mr. Egan added that it may make sense to overlay districts. He stated an AR district could be created and overlay into existing districts. Mr. McGlohon expressed concerns in that the current regulations allow for horses and livestock without specific criteria in place. Chairman McKay conveyed that currently there is a right with two acres to have horses and livestock; however, there needs to be some scrutiny. Discussion ensued.

Chairman McKay conveyed that he did not want to hinder the citizens with more permitting. Mr. Baldwin mentioned this may be something the Board only wants to act upon once an issue arises. Mr. McGlohon stated his only short-term concern is with someone who has livestock or horses on a property that has a stream. Ms. Spicer pointed out that this Board has no authority over the animal ordinance and it is not a requirement that the Board make a recommendation. Ms. Spicer explained that the police department enforces the animal ordinance. She stated the zoning regulations are silent on this issue. Chairman McKay suggested revising the animal ordinance to allow staff to handle any issues that may arise. Mr. Baldwin did not feel an emergency on this issue at this time.

Mr. Ellis suggested a separate board be formed to look into items discussed at this meeting for discussion and recommendations with members more experienced on this issue. Mr. Barrett agreed and suggested Mr. McGlohon set up a board and come back with recommendations. Ms. Spicer noted that the regulations do not currently permit agricultural uses.

Mr. Ellis suggested leaving the animal ordinance with the police department and allowing the zoning department to make permitted uses of gardening. He felt there should be a definition in the regulations of what commercial cultivation is. Mr. Baldwin stated he would work with Mr. McGlohon to come up with something that makes sense to cover the basis of the input from this meeting. He stated he may have to pull input from Mr. Egan as well. Mr. Ellis pointed out that if agricultural uses were made as a conditional use, the process would take an enormous amount of time. Mr. Egan felt that more work would need to be done but felt the conditional use process would be less time consuming than creating a new district. Mr. Baldwin mentioned he would like to take the conditional district approach and work with Mr. McGlohon and go from there. Mr. Barrett volunteered to be on the board with Mr. McGlohon and Mr. Baldwin.

B. Discussion on Basement & Garage Apartments Amendment

Mr. Baldwin provided a background. He stated this amendment would possibly correct an oversight to allow garage and basement apartments, which are currently not allowed in R-3. Ms. Spicer added that this is just changing one section in the regulations. The R-3 district already allows duplexes and multi-family dwellings as a permitted use. The Board previously tabled this issue.

Donna Morrison, a property owner in Lake Lure Village Resort, approached the Board. She stated she was deeded a property with a basement and would like to use it as a basement apartment. Ms. Spicer stated the Town and the County have not given proper permits for a dwelling unit or bedrooms in the basement portion of the home. She cannot do this because the property is in the R-3 zoning district and it is currently not a permitted use or a conditional use.

Ms. Spicer pointed out that there is a draft amendment in the packet. She mentioned this may have been an oversight and is allowed in some of the more restrictive districts. Mr. Baldwin added it was inadvertently left out of the regulations for R-3 at some point. Mr. Hinkle felt it would be common sense to allow this in R-3. Mr. Baldwin explained that the Board would need to make a recommendation to Town Council. Ms. Spicer noted that R1-D is the only other residential district which currently does not allow basement and garage apartments.

Mr. Ellis moved that the draft ordinance is neither consistent nor inconsistent with the Comprehensive Plan and recommended Town Council adopt the amendment as presented. Mr. McGlohon seconded and all voted in favor.

PLANNING PROJECTS UPDATE

Mr. Baldwin provided a brief overview. He mentioned the property at the dam has been rezoned. He also pointed out that there was a community meeting yesterday regarding the Comprehensive Plan. Input was received from the community and it will need to be organized and will be published as well as the results from the survey which was sent out.

He would like to have these results ready by mid-November. He stated the input would be used to update the projects list at the end of the Comprehensive Plan.

Mr. Baldwin pointed out the Community Engagement Meeting for the Lodge is held next Monday at Town Hall. He stated the input would then be forwarded to the ZPB. He pointed out we have asked Mike Egan to facilitate the Firefly Cove community meeting.

Mr. Baldwin mentioned staff met with the state last week to discuss the NC 9 corridor. The roundabout was talked about some but not a lot of possibility or excitement for that was brought up. DOT did not recommend a traffic circle or roundabout. He stated the road configuration makes it difficult and this is going to be a challenge. Mayor Keith noted that there have been nine accidents reported at the NC 9 corridor in the last five years. Chairman McKay felt that there may need to be more wayfinding signs to reduce some confusion there.

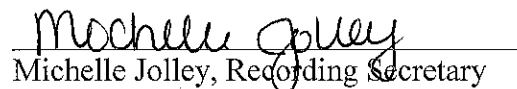
Mr. Baldwin mentioned that in order to clean up the firing range site, it will cost \$200,000 - \$300,000. The Town could transfer this to another government entity who would be eligible for cleanup. The Town cannot clean this up since they are seen as the ones who caused the problem. According to Mr. Baldwin's understanding, if the Town ceases use of property for a 12 month period of time, state requires the Town to begin the process of cleaning up the firing range.

Mr. Barrett made a motion to adjourn the meeting. Mr. Hinkle seconded and all voted in favor. The next meeting will be held November 19, 2015.

ATTEST



Thomas M McKay, Chair



Michelle Jolley, Recording Secretary