

REGULAR MEETING  
TOWN OF WAYNESVILLE  
BOARD OF ADJUSTMENT  
FEBRUARY 6, 2007  
TUESDAY - 5:30 P. M.  
TOWN HALL

The Board of Adjustment held its regular meeting Tuesday, February 6, 2007. Members present were Gail Cross, Mack Noland, Mike Erwin, John Richardson and Garnell Day. Also present at the meeting were Land Development Administrator Byron Hickox, Planning Director Paul Benson and Deputy Town Clerk Freida Rhinehart. Chairperson Mike Erwin called the meeting to order at 5:31 p.m.

Approval of Minutes of November 7, 2006

Chairman Mike Erwin pointed out that on Page 9 of the minutes, Mack Noland presided at the November 7, 2006 meeting since he was not present. Gail Cross moved, seconded by John Richardson to approve the minutes of November 7, 2006 as amended. The motion carried unanimously.

Appeal of Zoning Officer's Decision and Interpretation of Zoning Ordinance - Town Branch Developers

Byron.Hickox entered as evidence a letter from Paul Benson to Daniel Hyatt as Exhibit 1, a statement by the applicant as Exhibit 2 and a copy of Section 154.403(A)(2).

Mr. Hickox stated that the applicants came to Paul Benson inquiring about development of property on which approximately half the tract exceeds an elevation of 2900'.

The applicant's statement reads as follows:

“Section 154.403(A)(2) of the Land Development Standards defines a hillside area as ‘any lot, parcel or tract that has an elevation (at any point) of 2900 feet above mean sea level’.

It is the applicant's interpretation that this definition/provision equally refers to the 2900' elevation in its natural or graded state. The applicant believes that if a property owner can shape a property through which the 2900' contour traverses and stay within the parameters of the grading and density graphs [(Section 154.403 (A)(3)] to create lots, parcels or tracts that are below the 2900' contour then such efforts should be considered a reasonable and acceptable application of the ordinance.”

Mr. Benson responded by letter to the developers on January 19, 2007. His interpretation of the Hillside Protection standards of Section 154.403 is as follows:

“Please be advised that the town of Waynesville staff has interpreted the applicability of the Hillside Protection standards of Section 154.403 of the Land Development Standards to include any land with a pre-development (natural) elevation of 2900' or higher, (Section 154.303 (2). It is our position that grading to reduce the elevation of property below 2900' does not thereafter exclude that property from the provisions of the Hillside Protection standards.

We feel this interpretation is supported by many of the points included in the Purpose section of the Hillside Protection standards, 154.403(A)(1) including:

- To minimize grading and cut and fill operations inconsistent with the retention of the natural character of the hillside.
- To encourage minimal grading which relates to the natural contour of the land ...
- To encourage the retention of trees and other vegetation throughout the site instead of just the periphery of the development.”

Attorney Steve Martin spoke on behalf of the applicants. Mr. Martin stated that this ordinance is subject to interpretation and can be changed. He had the following questions about the ordinance:

- What does the term “pre-development elevation” mean?
- Why was the 2900' elevation chosen?
- Why do we need a Hillside Protection Ordinance? Is this not covered by the Grading Ordinance?
- Is vegetation not protected below 2900'?
- If a ravine is filled to above 2900', would this property be subject to Hillside Protection Ordinance?
- What is being protected by the ordinance?

Mr. Martin said the ordinance should be reviewed and rewritten so that it does not have to be interpreted on a case by case basis.

John Richardson pointed out to Mr. Martin that the Board of Adjustment did not develop the current ordinances. Mr. Martin must take any changes he feels are necessary to the Planning Board for recommendation to the Board of Aldermen.

Paul Benson stated the Hillside Protection Ordinance has been amended to cover only the portions of properties over 2900'. The ordinance formerly stated that if any portion of a property were above the 2900' elevation, restrictions would apply to the entire tract. We do have a grading ordinance but that applies only to maximum cut and fill slopes, maximum vertical cuts and engineering certifications. The grading ordinance does not cover tree preservation. The Hillside Preservation Ordinance is based on topo maps. At 2900' is generally where grading changes from the valley floor to steeper slopes and only applies to steep slopes. If property is level above 2900' grading requirements for lower elevations apply. The ordinance is designed to protect clear cutting the mountains, health and safety factors and watershed protection.

The Town Board recently approved an amendment to the ordinance to allow a conservation type development wherein the developer agrees to assure restrictive covenants on appearance of the buildings and performing environmental analyses in exchange for higher density as a conditional use. The Town is sympathetic toward development. There is a great deal of pressure on this ordinance.

Byron Hickox referred to the copy of the ordinance he distributed. The last bullet states, "No grading shall begin for a project to which this section applies until full development approval has been received."

In order for the applicant to bring the property below 2900', they are going to have to do grading before the project can be approved. That sentence puts the issue to rest.

Mike Erwin asked about a property that might have been lower than 2900' and is built up to 2900'. Paul Benson responded if this were the case, which is highly unlikely, the Hillside Protection Ordinance would not apply.

Mr. Erwin also asked about the definition of "pre-development". Mr. Benson replied that pre-development would be determined by the topo maps which date back to the 1980's.

Mack Noland inquired how much of the property is above 2900'.

Daniel Hyatt stated this tract consists of approximately 4 acres. The average slope is 40%. About half of the property is above 2900' and about half is below. Grading down a little would allow a planned unit development of 21 townhomes. Mr. Hyatt said he is aware that road and stormwater requirements would have to be met.

Byron Hickox reminded the Board members they should not focus too much on a specific project due to the danger of setting a precedent of allowing grading down to below 2900' in order to develop properties.

Mr. Martin said the Board could make a favorable interpretation for the applicants without setting a precedent.

Mr. Hyatt stated that the intent of the applicants is not to eliminate the Hillside Protection Ordinance but an interpretation of the 2900' provision as it relates to density. The applicants fully intend to comply with the grading aspect. The Grading Ordinance allows the applicants to grade only 20% above 2900'. They do intend to meet that requirement.

Mr. Don Hariston stated he bought the property in order to develop nice homes for people to enjoy this area. The reason he chose to develop the property across the center (at which point the property goes above 2900') is to preserve as many trees as possible. If the street can come in from the rear of the property, this will allow for a nice view for the homes. The majority of the grading will be for the street. Any grading will be kept to a minimum. Anywhere grading is extensive, walls and ample landscaping will be done to leave the property in the best shape possible. Mr. Hariston said he just wants to develop some nice patio homes that will be an asset to the Town.

Mike Erwin reiterated this Board does not have the authority to change the ordinance.

Paul Benson stated the Board of Adjustment has three functions:

- Review conditional use permits
- Review variances
- Interpretation of the Zoning Administrator's decision

Steve Martin summarized the Town has made an interpretation that the 2900' elevation is based on a pre-development or natural elevation. The ordinance only says an elevation of 2900'. The applicant's argument is that after necessary grading, the bench area on which the homes would sit would be less than 2900' and would comply with the ordinance thus allowing the density requested. The Grading Ordinance protects the slope of the land and the land that is disturbed.

Mack Noland moved, seconded by John Richardson, to affirm Town Staff's interpretation of the applicability of the Hillside Protection Standards of Section 154.403(A)(2) of the Town of Waynesville Land Development Standards with regard to property with a pre-development elevation of 2900'. Grading to reduce the elevation of property to less than 2900' does not exclude that property from the Hillside Protection Standards. The motion carried unanimously.

Paul Benson said if the applicants wish to pursue changing the language of the Hillside Protection Standards, they will have to request changes to the Town Planning Board who would make recommendation to the Board of Aldermen for approval. An application form and fee must be received 14 days prior to the Planning Board meeting.

#### Adjournment

With no further business, Gail Cross moved, seconded by Mack Noland to adjourn the meeting at 6:30 p.m.

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Mike Erwin  
Chairperson

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Freida F. Rhinehart  
Secretary