

REGULAR MEETING
TOWN OF WAYNESVILLE
PLANNING BOARD
APRIL 20, 2009
MONDAY - 5:30 P.M.
TOWN HALL

The Planning Board held a regular meeting on Monday, April 21, 2008. Members present were Don Stephenson, Dan Wright, Rex Feichter, Lee Bouknight, Gary Sorrells, Brooks Hale and Patrick McDowell.. Also present were Planning Director Paul Benson and Deputy Town Clerk Freida Rhinehart. Chairman Rex Feichter called the meeting to order at 5:30 p.m.

Approval of Minutes of March 16, 2009

Dan Wright moved, seconded by Gary Sorrells, to approve the minutes of March 16, 2009 as presented. The motion carried unanimously.

Shell Isenberg - 224 Love Lane - Text Amendment - Section 154.209 - Increase number of rooms for B&B's from four to five

Staff Report:

Background:

The Waynesville zoning ordinance, like most others, distinguishes between bed and breakfast operations based on size. Larger operations are called "inns" and are subject to greater restrictions, including a conditional use permit issued by the Board of Adjustment when located in residential districts for the purpose of minimizing the potential for adverse impacts to adjacent residential properties.

Smaller operations, 4 rooms or less, are called "bed and breakfast homes" and are permitted with minimal restrictions in all residential districts.

The applicant wishes to change the definition of bed and breakfast homes, and the associated standards, to permit an increase of guest rooms from 4 to 5.

Staff Recommendation:

The staff does not recommend changing the standard and definition for bed and breakfast homes to increase the number of guest rooms from 4 to 5. The limitation of a bed and breakfast home to 4 or fewer rooms is consistent with the State law definitions of both bed and breakfast homes and bed and breakfast inns, specifically:

NCGS 130-247 - this defines "bed and breakfast inn" to accommodate a minimum of 9 guests, (5 rooms, double occupancy)

NCGS 130A-250 - this exempts lodging establishment with four or fewer lodging units from some of the sanitation standards for food and lodging establishments established under NCGS 130A (Public Health).

15A NCAC 18A.2201 - this defines "bed and breakfast home" as a private home offering accommodation to eight or fewer persons, (4 rooms, double occupancy).

This agenda item was tabled last month to allow town staff to gather more information regarding this matter. Attorney Ann Davis represented Mr. and Mrs. Isenberg since Mr. Kersten was out of town.
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Ms. Davis said the matter was tabled to determine how the definition of a bed and breakfast home moved from 6 bedrooms down to 4 bedrooms. Ms. Davis and Mr. Kersten have done some research. In January, 1997 there was a public hearing. At that time it was requested that a bed and breakfast home have six bedrooms with no more than 8 guests. That was passed on January 14, 1997. In May of 2000, the Planning Board minutes indicate that John Swift proposed that bed and breakfast homes be changed from 6 or less bedrooms to 4 or less bedrooms. The proposal was approved. They spoke with Donna Brown at the Health Department. Ms. Brown did remember speaking with Mr. Swift and she told him the only difference in having 5 bedrooms rather than 4 was the fact that you must comply with certain environmental health regulations. Most of these regulations apply to sanitary requirements and having a commercial refrigerator. There doesn't really appear to be any rationale for the change. Most bed and breakfast organizations recommend at least 5 bedrooms in order to be profitable. Changing of the ordinance should not mean anything to the Planning Board or the Town. By going from 4 to 5 bedrooms, their client would have to conform to state regulations.

Rex Feichter asked how much the property is out of compliance with the setback requirements. Ms. Davis responded about 25 ft. if that would be the Board's pleasure.

Ms. Davis noted that the North Carolina Statutes define a bed and breakfast inn as 12 or less rooms. A bed and breakfast does not even have a room requirement. It was an arbitrary choice of 4 versus 5. This property could become an inn because it is on the National Historic Register and would only require that the 50 ft. setback be reduced.

Mr. Feichter inquired if the setback change were granted would all districts be affected. Mr. Benson responded conditional use standards are required where inns are located in residential neighborhoods. A 5 acre lot size is required unless it is a historic structure, not more than 20 rooms are allowed on a less than 5 acre site. There is some special language about the number of special events, 50% open space and a 50 ft setback from all other structures is required. This applies in all residential districts for someone wanting to open an inn. If any of these standards are changed, it would apply to all new inn development in residential districts.

All bed and breakfast operations in Waynesville would be defined as inns under the Town and State definition. Right now our definition matches the state's to reflect state law in defining an inn and home. Only one establishment in Waynesville has more than 5 acres. All except Brookside Mountain Mist are in historic structures. The setbacks have not been measured but Mr. Benson suspects that some like the Herren House do not meet the 50 ft. standard. Mr. Benson does not feel it would have a significant impact to reduce the setback to 25 ft. and would recommend this as a way of solving the problem.

Mr. Benson recommended calling Oak Hill an inn and allowing its operation on that site. It seems the side setback is the only issue so he would advise the Board to use this approach (which he had recommended to Mr. Kersten). The applicants must go through the conditional use process and add buffering. They will have to go before Community Appearance Commission followed by Planning Board review and recommendation to the Board of Adjustment.

Ms. Davis said that Mr. Benson is right about the State exempting 4 rooms or less on the health regulations and this is considered a bed and breakfast home. It would just be a travesty if these people could not operate the building in the same manner as before it was sold and became a private residence for a period of time.

Gary Sorrells asked if 5 rooms were rented on a double occupancy basis would the owners be in violation of Section 15A NCAC 18A.2201. Mr. Benson responded they would. The assumption is double occupancy.

Ms. Davis responded there are some bed and breakfast homes in North Carolina between the 12 and 4 rooms that are required to obtain permits to comply with health and sanitation ordinances.

Brooks Hale asked just what is the request. He asked if they want to be an inn? Ms. Davis replied they are satisfied with the requirements for a bed and breakfast home. They only want to be able to use 5 bedrooms rather than 4 bedrooms.

Another bed and breakfast inn owner said that in North Carolina, you cannot use 5 bedrooms. If you use 5 bedrooms you must be a bed and breakfast inn, have 2 annual inspections, have a commercial refrigerator, commercial dishwasher and meet other requirements. It has nothing to do with Town regulations. Ms. Davis said she did not argue with that. Inns that have 12 or more rooms have much stricter requirements. There are two sets of code regulations -- one for bed and breakfast homes and one for bed and breakfast inns.

Mr. Benson added it doesn't matter what the Town calls these establishments, the State will always call an operation with more than 4 bedrooms an inn and 4 or fewer a home. The intent of the ordinance when it was adopted was to follow state rules. It gives us a rational basis for distinguishing between the two. The Town's primary concern is not how clean they are but the impact on the surrounding properties. So we have used the same break that State uses for sanitation purposes for neighborhood impact purposes. The Town's definition will not change State regulations.

Ms. Davis pointed out Section .2200 talks about sanitation of a bed and breakfast home. There is a totally separate Section .3000 that is for bed and breakfast inns. Those are 12 bedrooms or more. Mr. Benson said bed and breakfast inns pick up at 9 people and ends at 23. Ms. Davis replied they are not arguing 8 people but are asking for 5 bedrooms.

Patrick McDowell asked about changing setbacks. Will this affect all districts? If another inn decided to expand they might be able to encroach within 25 ft. of neighboring residential areas. This impact needs to be considered.

Mr. Benson stated this is an excellent point. However, this exemption for under 5 acres only applies to historic structures. Any new addition would not enjoy that same exemption. Mr. McDowell replied this alleviates his concern. Mr. Benson pointed out the exemption is to preserve historic homes. It might however apply to other older homes. Such homes would be required to put in a buffer of at least 10 ft. The area market probably would not tolerate very many more bed and breakfast homes.

Lee Bouknight moved, seconded by Dan Wright, recommend against the applicant's request. The motion carried unanimously.

Lee Bouknight moved, seconded by Brooks Hale, that an application by the Planning Board be initiated to reduce the setbacks from 50 ft. to 25 ft. for bed and breakfast inns designated as historic properties with buffers of at least 10 ft. to be required. The motion carried unanimously.

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Adjournment

With no further business, Lee Bouknight moved, seconded by Dan Wright, that the meeting be adjourned at 5:55 p.m. The motion carried unanimously.

Rex Feichter
Chairperson

Freida F. Rhinehart
Secretary