

MINUTES OF THE
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS
MARCH 24, 2022, Meeting,
THURSDAY, 3:00 PM, CITY HALL

MEMBERS PRESENT

Matt Zoder
Cyndi Bowling
Joe Waggoner
Jay Horner

MEMBERS ABSENT

Ron Smith

OTHER PRESENT

Barry Phillips
Chris Ogle
Jeffrey R. Murrell
Chuck Laney
Luke Laney
Jeff Butler
Ownby Hills Residents

Staff Representative: David Ball, Building & Planning Director
Gary Brackins, Assistant City Planner
Jodi Bible, Executive Secretary

Chairman Mr. Matt Zoder called the meeting to order at 3:00 P.M. Mr. Joe Waggoner made a motion to approve the minutes of the February 24, 2022, meeting, and Mr. Jay Horner provided a second.

Staff Report

Staff introduced new Assistant City Planner, Gary Brackins, to the Board.

Petitions and Communications from the Public

Old Business

New Business

Review and consideration for a proposed variance from Article VIII, being the “Area, Yard, and Height Requirements,” of the Municipal Zoning Ordinance, for a proposed single-family dwelling to be constructed at Lot 33 A on Crescent Drive, Tax Map 117E, Group F, Parcel 22, R-1A Zone, requested by Barry Phillips.

Staff presented the request for a variance from Article VIII, being the Area, Yard, and Height Requirements for front and rear yard setback variances. Staff noted that the request consists of a 5’ front yard setback variance from the required 25’ setback, leaving a 20’ front yard area; and a 10’ rear yard setback from the required 20’ setback, leaving a 10’ rear yard area for a single-family dwelling to be constructed on Lot 33 A located on Crescent Drive.

Staff explained that the property is currently an undeveloped parcel located in the “Ownby Hills Subdivision – Third Addition.” Staff explained that the proposed building location will be approximately 130’ away from any other existing structure located on the neighboring properties. The building location does not appear to create any obvious impact to any adjoining property or the use of the public right-of-way. Staff added that the property is long and very narrow, consisting of

approximately 16,152 square feet and limited areas on the property to locate a septic tank and field line sewer system that will be required due to the lack of public sewer service.

Mr. Barry Phillips provided an updated site plan of the dwelling that showed 21' on the front yard and 11' on the rear, which improved the setback conditions from the initial proposal. The revised request results in a 6' on the front yard and 9' on the back yard setback. The Staff reiterated that this area is zoned R1-A, and that overnight rentals are prohibited. Mr. Barry Phillips also answered questions about the size of the dwelling and noted that the home will be a single level home with a two-story garage. There were also comments from neighboring property owners about failing individual septic tank and field line systems in the neighborhood and asked about the impact of the septic tank and field line for the residence to surrounding properties. Staff explained that the Sevier County Health Department is the agency who regulates the individual systems and that the applicants would be required to follow Health Department permit requirements. Staff further noted that those issues were matters for Sevier County Health Department and that the Board was not qualified or authorized to address those concerns.

Following the discussion, Mr. Jay Horner made a motion to approve the request, and Mrs. Cyndi Bowling provided a second, which passed unanimously with all members voting, "aye."

Review and consideration for a variance from Article VIII being the "Area, Yard, and Height Requirements," of the Municipal Zoning Ordinance, for a proposed single-family dwelling to be constructed on Lot 3 on Old Cartertown Road, Tax Map 117, Parcel 30, R-2 Zone, requested by Chris Ogle.

Staff presented the request for a variance from Article VIII, being the Area, Yard, and Height Requirements for a side and rear yard setback variance. Specifically, the request consists of a 6' side yard setback variance from the required 15' setback, leaving a 9' front yard area; and a 5' rear yard setback from the required 20' setback, leaving a 15' rear yard area for a proposed single-family dwelling.

Staff explained that the lot is a vacant lot consisting of 6,395 square feet. The proposed building location appears to be located below the adjoining properties and approximately 50' to 60' away from the nearest structure. Staff noted that the applicant is proposing a 2-story dwelling consisting of 1,728 square feet. The proposed location of the structure does not appear to create any impacts to the adjoining properties or right-of-way area. Staff added that the property is a small, odd-shaped lot with slopes of 30% and greater. Due to the limited building area, the applicant is proposed to create a parking area on the adjacent lot in an effort to place the structure on the site.

After a brief discussion, Mr. Joe Waggoner made a motion to approve the request, and Mr. Jay Horner provided a second, which passed unanimously with all members voting, "aye"

Review and consideration for a variance from Article VIII, being the "Area, Yard, and Height Requirements," of the Municipal Zoning Ordinance, for a proposed development at 305 Historic Nature Trail, Tax Map 126N, Parcel 8, C-1 Zone, requested by Long, Ragsdale, & Waters, PC. Staff presented the request for a variance from Article VIII, being the Area, Yard, and Height Requirements for a site density variance. Staff explained that the applicant has decided to formally withdraw this request for consideration by the Board.

Administrative review and discussion of Article IV, Section 406.4, being the “PUD Plan Preparation and Review Process,” of the Municipal Zoning Ordinance, for “Cottage Gardens,” a Planned Unit Development located on Campbell Lead Road, Tax Map 126J, Group C, Parcel 22, R-2 Zone, requested by Elevation Development Group, LLC. Staff presented the request for an administrative review and discussion of Article IV, Section 406.4, being the Planned Unit Development “Plan Review and Preparation Process” of the Municipal Zoning Ordinance. Specifically, the applicant is requesting that the original site plan approval of a 32-unit PUD be permitted to be executed under the standards established in 1995 when the development was approved by the Municipal Planning Commission. Staff gave an overview of the property status as it pertained to the previous approvals granted by the Municipal Planning Commission. Staff explained that the development started with 37 units but had been reduced to 32 due to a sale of a tract of land across Campbell Lead Road which contained 5 units. Mr. John Butler, President of Cottage Garden’s HOA, interjected that thirteen (13) homes were built of the original 32 homes and the other remaining units were not developed and that over 20 years has passed without any further development. Staff explained that the development was begun in the late 90’s and continued into the 2000’s with the construction of thirteen (13) units along with the supporting infrastructure including the road, the water, and sewer utilities. In addition, the infrastructure was extended in anticipation of the continuation of the development but not completed in its entirety. Staff explained that the administrative review before the Board was to affirm whether the original approvals were valid to permit the continued development of the property as originally approved with not changes or additions. The Board inquired about whether the restrictions that were valid at the time of the approval were still applicable. Staff confirmed that the restrictions would still be applicable such as setbacks, etc.

Mr. Jeff Murrell was present to represent the applicants, Elevation Development Group and stated that Elevation Development Group is the successor in interest to the original developers. Mr. Murrell stated that Mr. Laney and his sons acquired the development rights and have been involved in the development since the beginning. Mr. Murrell stated that the original development was approved in 1995 and that 13 units were built and that all 13 units were destroyed in the wildfires of 2016. Mr. Murrell stated that only 5 of the units have been built back since that time so the 2-year grace period has expired. Mr. Murrell stated that what they believe that the law says is that the developer acquired vested development rights that are not subject to amendments to the zoning ordinances or state law. Mr. Murrell stated that that there were a couple of changes that would affect the future development had it not been previously approved being minimum lot size and density. Mr. Murrell also stated that in 2015, the State passed a Developer Vesting Rights Statue, but it does not have retroactive effect. Mr. Murrell referenced a memorandum that he had prepared regarding the fact and the law and that the City Attorney has reviewed the information and agrees with information related to the law. Staff confirmed that the City Attorney has concurred that the post State Law revisions are not retroactive and provided no changes in the development such as added units or changes to something different than originally approved that he would agree that the original approvals are still valid for development purposes. Staff further stated that the City Attorney also noted that if the development were less units that would be acceptable, just could not increase the development beyond the original units.

Mr. Murrell stated that the request is not to developers do not wish to exceed the original number but to continue the construction of the remaining 19 units. Mr. Murrell further noted that the Laney’s have previously installed all the infrastructure improvements to 8 units and have installed roads and extended sewer for the remaining 19 units. Mr. Murrell mentioned that all of the property outside of the identified

sites units has been taxed for the last 20 plus years to Elevation Development Group who have paid the taxes on the property. The Board inquired about the ownership of the houses. Mr. Murrell confirmed that there are individual owners of the 13 sites. Mr. John Butler, President of Cottage Garden's HOA, then commented that agreements had transpired over the last twenty years. Mr. Butler explained that the thirteen homeowners, during construction, was deeded the land that the footprint of the existing structure sits on. Mr. Butler also stated that the developer's rights expired in 2005, and at that time close to 2.5 acres of land was annexed into the HOA for the "enjoyment of the owners," for the thirteen homesites. Mr. Murrell contested saying that his clients have paid all property taxes for this development the past twenty years. Mr. John Butler stated that the members of the Cottage Garden's HOA do not approve of further development. Mr. Jeff Murrell did state that expiration of developers' rights does not convey property to a HOA or effect Laney's ownership interest in the property.

After the discussion amongst the Board, Staff, Mr. Jeff Murrell, and Jeff Butler, Mr. Jay Horner made a motion to affirm that the original development approval is still valid, and Mr. Joe Waggoner provided a second, which passed unanimously with all members voting, "aye."

Unscheduled Items

Adjournment

The meeting was unanimously adjourned at 3:30 p.m. after a motion made by Mrs. Cyndi Bowling and a second by Mr. Jay Horner.

Approved:



MBZA Chairman



Date