

MINUTES OF THE
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS
May 28, 2009
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Kenny Maples, Chairman
Jim Johnson
Fred McMahan
Joe Waggoner

MEMBERS ABSENT

Jack Miller, Jr.

OTHERS PRESENT

Ron Hensley
Tina Hensley
Mike Suttles
Donna Cantrell
Carol Muszik

Staff Representatives: Bart Hose, LPAO
 Diane Townsend, Executive Secretary

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes, of the March 26, 2009, meeting, were unanimously approved following a motion by Mr. Joe Waggoner and a second by Mr. Fred McMahan.

Petitions and Communications from the public

Staff Report

Old Business

New Business

a) Review and consideration for a proposed front yard setback variance for “The Space Needle,” located at 115 Historic Nature Trail, C-1 zone, requested by Ron Hensley.

Mr. Bart Hose presented the request for a front yard setback variance of 3’-10” from the 10’ front yard setback, leaving a 6’-2” front yard area for a proposed 216 square feet expansion to an existing commercial building. City staff was unable to attend this meeting and provided copies of the following information and comments to Board members in their agenda packets: The structure will have a negative impact on open space in the proposed location. No physical hardship has been presented at this time.

MEETING NOTES: Mr. Ron Hensley was present and stated that the existing building overhang extends to the setback line and that he wants to enclose the existing recessed space by adding a column and glass doors. Mr. Waggoner asked if there would be a glass wall across the front of the area. Mr. Hensley stated that he wants to move the glass doors up from there existing location. Mr. Bart Hose stated this is an enclosure of the existing open area. Chairman Maples asked where the proposed bubble structure was located in relation to the building plan. Mr. Hensley stated that the wants to move the door to connect the bubble. Mr. Hose stated that the plan involved expanding the building by 216 square feet into an existing open space area and

noted the city staff's comments regarding the loss of open space. Mr. Hensley stated that one corner post already existed and that the doors will be kept open to give an open-air feeling. He also noted that it violates only 3-feet of the setback. Chairman Maples stated that the bubble would encroach and asked if the wall toward Dairy Queen would be in the setback. Mr. Hensley showed the board where 10-feet off the property line would be on the plan and stated that it used to go to the curb. Chairman Maples stated that he was still confused about the encroachment area and the location of the setback line in relation to the back edge of the curb and the sidewalk area. Mr. Hensley presented photos to the Board to show the distance from the post. Mr. Hensley stated that if this does not get approved he will move it back 3 1/2 feet and it will look odd compared to the rest of that section of street. Mr. Waggoner asked where the sliding doors are located. Mr. Hensley showed the Board on the site plan and stated that the automatic door will be recessed behind the sliding door, and the only time they will be closed is when the business is closed. Mr. Hose stated that it is the staff's position that there is no hardship to justify an additional encroachment into the setback. Chairman Maples asked how a brand new building got built all the way out to where it is just down the street. Mr. Hose stated that he did not know the history of construction in the area and that the Board could defer this request until the city staff was present to address it and address any questions regarding the setback measurements. Mr. Hose also stated that the actual variance request was shown as 3 feet 10 inches. Mr. Johnson stated that the Rebel Corner building burned down and was rebuilt. Mr. McMahan stated that no building was built back as far as this one. Chairman Maples stated that after the fire, the building was built back different from what was there before. Mr. Hensley stated that the setback was very vague to him. Chairman Maples stated that from the post to the property line would it be 9 feet 6 inches to 10 feet. Mr. Hose stated that there would be 6 feet 2 inches to the property line if the Board granted the variance. The Board asked when the work would begin. Mr. Hensley stated next week when he gets the permit.

After further discussion, Mr. Jim Johnson made the motion to approve the 3'-10" from the 10' front yard setback, leaving a 6'-2" front yard area for a proposed 216 square feet expansion to an existing commercial building. Mr. Joe Waggoner seconded the motion with all members voting aye.

b) Review and consideration for a proposed variance from Article VIII, being the Minimum Lot Area provision of the Municipal Zoning Ordinance, located at 572 Greystone Heights Road, R-1 zone, requested by Chris and Judith Mason.

Mr. Bart Hose presented the request for a variance from Article VIII, being the Minimum Lot Area provision and specifically the area of a lot as it relates to the slope of the property. City staff was unable to attend this meeting and provided copies of the following information and comments to Board members in their agenda packets: Currently, Lot 4R is 0.89 acres (38,781 square feet) and is developed with a single-family dwelling. Prior to making a formal request to Planning Commission, the applicant is requesting a variance from the minimum lot area provisions of the recently amended Article VIII to create two lots from the 0.89 acre parcel, with

Lot 4R-1 being 0.42 acres (18,328 square feet) and Lot 4R-2 being 0.36 acres (15,618 square feet). The surveyor has certified that the proposed Lot 4R-1 has an average slope of 24% and Lot 4R-2 has an average slope of 30%. Further the applicant is proposing to dedicate 4,851 square feet of Lot 4R to the Greystone Heights Road Right-of-Way. Based on the recent amendment to Article VIII which correlates minimum lot sizes to the slope of a proposed property, Lot 4R-1 will need to be 0.75 acres (32,671 square feet) and Lot 4R-2 will need to be 1 acre (43,560 square feet). Therefore the request is for a 0.33 acres (14,343 square feet) variance for Lot 4R-1 and a 0.64 acres (27,942 square feet) variance for Lot 4R-2.

Proposed Lot:	Slope:	Proposed Area:	Required Area:	Variance Request:
Lot 4R-1	24%	0.42 acres (18,328 sq.ft.)	0.75 acres (32,671 sq.ft.)	0.33 acres (14,343 sq.ft.)
Lot 4R-2	30%	0.36 acres (15,618 sq.ft.)	1 acre (43,560 sq.ft.)	0.64 acres (27,942 sq.ft.)

Over the last several years, the Planning Commission has concluded that there is a need to correlate lot size with property slope to attempt to address various issues such as steep slopes, property access, adequate building sites, and site drainage. Recently, the Planning Commission and the City Commission approved the amendments to Article VIII that accomplishes the correlation between minimum lot size and property slope. The Article VIII amendment includes increasing the minimum lot size requirements as property slope increases. The logic of correlating lot size and slope is that the property owner(s) will be afforded a better site condition to design and locate a structure that is in keeping with the requirements of the Zoning Ordinance, thus resulting in a reduced number of variance requests.

The existing Lot 4R is a conforming lot of record that is currently developed with a single-family dwelling. Further, at the time of construction the dwelling was placed in a suitable location on the property meeting all applicable setback requirements. If the Board chooses to grant the variances for the proposed lot sizes, then the Board will be enabling the future creation of substandard lots. By granting a variance for the proposed lot sizes, the Board will also be violating Article V, Section 504 being the Reduction of Lot Size section, which states:

504. REDUCTION OF LOT SIZE. No lot shall be reduced in area so that yards, lot area per family lot width, building area, or other provisions of this ordinance shall not be maintained.

By granting a variance, the Board will enable the two substandard lots to be created through a future re-platting process. The Board is cautioned to avoid taking such action because the Board has not been established to function in a legislative role. In this case, lot size standards have been established prior to the creation of the proposed substandard lots and therefore, no physical

hardship could possibly exist to constitute or justify such a variance. Should the Board grant a lot size variance, the Board will effectively be substituting its opinion above a standard that has been clearly established by the elected officials of the City. Further, due to the fact that the current Lot 4R is compliant with minimum standards and the use of said Lot 4R has not been denied as evidenced by the existing structure, there appears to be no hardship proven that warrants a variance for the reduction in lot area of the proposed lots.

MEETING NOTES: Mr. Hose explained that the applicant was requesting permission to create two substandard lots by subdividing a conforming lot and that the variance was related to the City's new minimum lot area provisions. He noted that the new standards were based on property slope and provided copies of the standards to the Board. He also noted that the average slope of the proposed lots was 24% and 30%. Mr. Suttles stated that Mr. Mason's property was located on a dead end street and that he owns property on both sides of the road. Mr. Suttles added that the City also owns property on the dead end, which has a water tank and a cell tower located on it. Mr. Suttles noted that Mr. Mason wants to widen the road and put in a turnaround. Mrs. Cantrell added that he would incur all costs for the project. Mr. Johnson asked if the proposed road was part of the lot. Mr. Suttles stated that Mr. Mason has a 20-foot easement and that the City does not have an easement of record. Mr. Suttles added that Mrs. Musziks driveway is often used as a turnaround and he showed the frontage of property to the Board. Mrs. Cantrell added that this request would have met the old guidelines. Chairman Maples asked if adjoining property owners had been contacted about this request. Mr. Hose stated that he was unsure. He then stated that he agreed the city staff's concerns about the request, noting that there was no apparent hardship or justification for it. Mr. Hose explained that the current lot, 4R, conforms with the regulations and had been developed with a single family home. He also noted that the lot's topography and slope was not a unique condition and that the City had specifically adopted the regulations to address steep lots and the problems they present. He then noted that the Board could be seen as substituting its judgment for the legislative body's regarding lot size standards if it granted the variance. He explained that it would be inappropriate for the Board to grant an unjustified variance that could be seen as amending an ordinance that the city and planning commission just passed. Chairman Maples stated that he supports certain variances but that this one seemed excessive. He noted that it was for 0.33 acres less than the standard. Mr. Waggoner stated that the road has nothing to do with it, he lives on a road with the same problem and that the lot is not meeting the standards. Mrs. Cantrell stated that they could not do a final plat because of the infrastructure issue. Mr. Hose again pointed out the existing lot conforms with the regulations and that the issue involved whether it should be divided into two substandard lots. Mrs. Muszik stated that her residence is the last one on the road and that the road is only wide enough for one car. Mrs. Muszik added that she has to honk her car horn every time she goes around the curve below her property. Mr. Suttles pointed out that his client will give some of his property to widen the road and asked about gates. Chairman Maples asked for a determination. Mr. Suttles explained that they started the platting process in January on this project and talked with phone company about an easement. Mr. Suttles added that Mr. Ball had also asked for a

topographic map. Mr. Suttles added that he wished that staff would be more informative, give better guidelines, and that he assumed that this would be grandfathered in since they were not told about the upcoming changes. Mr. Suttles stated that he spoke with Mr. Dale Phelps and found out that the laws had changed in the last couple of weeks and that the lot size requirements would also change. Mr. Suttles added that he feels sorry for his client. Mr. Hose noted that it is unfortunate that the owner got caught-up in the adoption process but, the regulations are in effect and the city has to enforce them. Mr. Suttles replied, we were just doing what we were told to do by Mr. Ball. Chairman Maples asked if there was any more discussion. Mr. Joe Waggoner stated that he would not approve at this point and the only way he would reconsider is if Mr. Ball felt responsible and pleaded their case. Mr. Hose noted that Mr. Ball is very conscientious and that the City passed these regulations for a purpose. Chairman Maples stated that we have to follow the rules. Mr. Hose stated that he was sure Mr. Ball understood the issues but, the regulations have been adopted and he must enforce them. Chairman Maples called for a motion. Mrs. Cantrell asked if the client has any other recourse, and that Mr. Ball should have told them about the new rules coming into effect. She also noted that both of the proposed lots had potential building sites but could not meet the average slope standards. Mr. Hose noted that if this became a reoccurring issue the city should address it by amending the regulations. He then noted that in this case the existing lot conformed with the regulations and there was no apparent hardship to justify a variance. Mr. Suttles stated that Vision is the first to come before this Board with a request because of the new Hillside Ridges Laws. Mrs. Cantrell stated that the applicant was not planning to build on the lot in the near future. She asked if it would be better to withdraw at this time or ask for a NO vote. Chairman Maples stated that if they come back before the Board it will need to be for something different or new if it is voted on tonight. Mr. Hose stated that given the situation it would not hurt to pull the item and resubmit if and when conditions changed. The item was removed at the request of Mr. Mike Suttles. Mr. Jim Johnson made a motion to remove the item from the agenda. Mr. Fred McMahan seconded the motion with all members voting aye.

Unscheduled Items

Adjournment

There being no further business to come before the Board, the meeting was unanimously adjourned at 3:55 p.m., after a motion by Mr. Jim Johnson and a second by Mr. Joe Waggoner.

Approved by:

MBZA CHAIRMAN

DATE