

**Board of Adjustment
Minutes
Thursday, January 25, 2001**

The Blowing Rock Board of Adjustment met in regular session Thursday, January 25, 2001 at 7:30 p.m. Chairperson, Virginia Stacks called the meeting to order at 7:30 p.m. Members present were Lowell Thomas, Charles Hardin, Barbara Wright and Lisle Snyder. Members absent were Jim Stines and Walter Green. Staff present was Wayne Green, Zoning Officer and Sonya Long, Administrative Assistant. Mr. Allen Moseley, Town Attorney was also present.

Mr. Thomas made a motion to approve the minutes of the September meeting, seconded by Mr. Snyder. All were in favor of the motion.

Mr. Thomas made a motion to approve the minutes from the December meeting, seconded by Ms. Wright. All were in favor of the motion.

Public Hearing

Appeal Case Number 2001-01 – First Union Nation Bank, Trustees of the CA Cannon Trust for Mary Bost Gray vs. Mr. Wayne Green, Zoning Officer for the Town of Blowing Rock

Chairman Stacks asked that Mrs. Long swear in anyone given sworn testimony. The following people were sworn in, Mr. Richard Porter and Mr. Wayne Green.

Mr. Green entered into the record Exhibits 1-12 which were included in the board's packets and displayed during the meeting. He also entered into the record his staff report.

Mr. Green stated that Mr. Nolton Boan had proposed to construct houses on Lots 88,89,90, and 91 of the Green Hill Subdivision. He was told that he would have to maintain a 40-foot setback along Green Hill Road and along the common property line with "Reserved Lot 107." At that time Mr. Green's opinion was that the "Reserved Lot 107" was a dedicated right of way marked "Reserved" for a road.

Mr. Boan felt that it would be impossible to build a reasonable size house on these lots without getting closer to the property lines adjoining Lot 107 than 40 feet. He then filed a request for a variance to reduce the setbacks from the common line with Lot 107 from 40-feet to 12-feet. Mr. Boan was of the opinion that this should be permissible, as the road had never been constructed. Shortly before the Board of Adjustment meeting on September 28, 2000, Mr. Boan submitted a letter from an attorney that stated Lot 107 was not a dedicated right of way for a road but was not a lot of record. At the time, Mr. Green did not agree with that opinion, as he did not have enough time to further research the opinion of Mr. Boan's attorney.

After Mr. Green did further research, he found the following information. The property did not have an official parcel identification number, the site plan submitted for a house recently built

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indicated that Lot 107 was an unimproved street, no other road or right of way is labeled "Reserved", and all other streets located on Green Hill Circle and Green Hill Road are specifically named.

He also stated that as Exhibit 6 stated, the area shown as being reserved and being Lot 107 was reserved for a right of way for a road; that the proposed road had not been developed; that the grantees were granted an easement within the reserved are for a road to serve their property; that the grantees were to open the road along the southern margin of Lots 84 and 85; that the road so opened could be used by the grantors; and that the grantees would join in a dedication of the reserved area as a public road if and when requested.

It was these and other facts along with the exhibits that Mr. Green determined that the "Reserved Lot 107" was a lot, reversing his decision from his original opinion that the property in question was a road. Mr. Boan did withdraw his request for a variance. All property owners adjoining the subject property were notified of Mr. Green's opinion. This would mean that the setback from the lots that adjoin the "Reserved Lot 107" would be 12 feet from the common property line.

First Union National Bank and Trustees of the CA Cannon Trust for Mary Bost Gray then filed an appeal to Mr. Green's decision. The above applicant stated that it was in there opinion that the "Reserved Lot 107" was a right of way for a road.

The Board discussed adjoining lots and where existing structures were relative to the lot in question.

Mr. Porter stated that he owned Lot 97 that adjoins "Reserved Lot 107". He stated that in his opinion, the intention for this lot is a road and it did not look like a typical lot due to its shape. He also explained that when he purchased his lot that the real estate agent told him that Lot 107 was a road. Mr. Porter submitted into the record a copy of an advertisement from Blowing Rock Realty showing where they were advertising Lot 107 as a road that was plated but not yet built.

Mr. Charlie Clement, attorney representing the applicant, stated that the applicants were the owners of Lot 99 A. He stated that the original applicant, Mr. Boan, had withdrawn his variance request and if his clients were to withdraw there request there would not be a case before the Board of Adjustments, therefore Mr. Greens decision would stand as previously stated.

Mr. Green explained that if the applicant were to withdraw there appeal request, his final decision regarding Reserved Lot 107 would not change. He stated that decision would affect all adjoining property owners and how they could build and unless someone else appeals his

decision within thirty days from the time that he made his decision, no one would be able to appeal that decision later.

Mr. Clement stated that the Reserved Lot 107 was configured like a road not a lot. It is number and has current dimensions but has not been dedicated and the road has never been named. Mr. Green explained that if Lot 107 were dedicated or was made into a private street, at that point the setbacks would change from 40 feet to 12 feet off of the Reserved Lot 107 for adjoining property

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owners. Also, if there were an existing house that abuts the Reserved Lot 107, that house would become an existing non-conforming use.

Mr. Worth Mangum, attorney for Dr. Glassglow, owner of Lots 88-91 (the original lots in question), was present to speak for Dr. Glassglow. He stated that in his opinion the dilemma was that three individuals own the title for Reserved Lot 107 and those individuals have granted a right of way for a private driveway that goes to Dr. Glassglow's house. Mr. Boan was in the process of purchasing lots 88-91 from Dr. Glassglow. The only way the two houses that Mr. Boan was proposing to build could be constructed, would be for one of the driveways to come off of Green Hill Road and the other off of Lot 107. That is the reason that Mr. Boan filed the original variance request with the Board of Adjustments. The issue then became whether or not Mr. Boan or any one else could construct a driveway through Lot 107 for access. It was in his opinion that they did not have the right, due to their not being a right of way or easement through Lot 107 for access. He approached the owners of Lot 107 for the right of way and the owners refused to sign the right of way agreement and were not interested in selling. Mr. Mangum asked that the Board of Adjustments look hard at the legal title of the property and see how Reserved Lot 107 had been treated as a lot and had been deeded as a lot since 1955. Further more regarding the ad from Blowing Rock Realty advertising Lot 107 as a road, the ad does not change the legal status of the lot.

Mr. Clement questioned the ability to build on Lot 107. Mr. Green explained that if the lot existed before the Town Code, then it would be grandfathered in. As the lot exists today, it is 40 feet wide and could be built upon.

Mr. Moseley read the definition of a lot from the town code. He explained that this case was really about the setbacks that would be required.

Mr. Clement stated that all lots are subject to restrictions within the subdivision and that those restrictions limit the property to single family and requires the houses to be at least 1500 square

feet in size. If the final decision were that Reserved Lot 107 is a lot, it would have to comply with the restrictions of the subdivision and Lot 107 would not comply.

Mr. Thomas stated that in Exhibit 8 identifies the lots in the Green Hill Subdivision and lots 88-91 are excluded from that deed. Mr. Mangum stated that those lots were already conveyed.

Mr. Green entered Exhibit 12, aerial photos into the record, which included Watauga County Tax Map property lines.

Mr. Porter pointed out that for about 40 years the Town of Blowing Rock and Watauga County had not assessed property taxes on Reserved Lot 107 and that no tax identification number had ever been assigned to the lot. Chairman Stacks pointed out that both the Town of Blowing Rock and Watauga County had since issued a tax identification number and could go back three years and collect property taxes.

Mr. Green entered into the record Exhibit 6, a copy of the easement that the owners of Lot 107 gave to Dr. Glassglow for the right of way of his driveway. He pointed out that on the first page, it stated that the lot was reserved for a right of way for a road but it was never developed and it is

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not a dedicated easement nor is it a private road. If developed as a road, it would have to be built to town standards.

Mr. Thomas stated that in his opinion Lot 107 was intended to be a road but by circumstantial evidence, it implies that it is a lot.

Mr. Clement stated that in Exhibit 6 the agreement and deed was executed from the same people who developed Green Hill Subdivision and the agreement clearly stated that the lot in question was reserved for the right of way for a road. Mr. Green agreed but stated that it had never been dedicated as a road so therefore it remains a lot.

Mr. Snyder asked that Mr. Moseley clarify the ruling from the Board. Mr. Moseley explained that if the Board chose to reverse Mr. Green's decision, it would require a 4/5 vote. It would take at least three of the Board members to vote in Mr. Green's favor to uphold his decision. Chairman Stacks stated that the Board did not have to make their decision at the meeting. The Board would have up to thirty days to hold a public hearing and announce their decision.

Chairman Stacks stated that the record should show that Exhibit 11, Blowing Rock Realty advertisement, and Exhibit 12, aerial photo of the area in question was added during the meeting. Also a letter that was read during the December meeting be added into the record.

Mr. Snyder made a motion that the public hearing be closed, seconded by Mr. Hardin. All were in favor of the motion.

Chairman Stacks stated that the Board needed time to review the materials that were submitted and then would schedule a public hearing. Mr. Clement asked that it be entered into the record that the Board could not discuss this case outside of a public meeting between each other or anyone else. He also asked that the Board go ahead and schedule the public hearing so that he could notify his clients.

The Board agreed to schedule the public hearing for February 8th at 7:30 p.m.

With no further business, Mr. Thomas made a motion to adjourn at 9:06 p.m., seconded by Mr. Snyder. All were in favor of the motion.

Ms. Virginia Stacks, Chairperson

Minutes Recorded by:

Sonya Long, Administrative Assistant