

## BOARD OF ADJUSTMENT

### MINUTES

Thursday August 6, 2009

The Blowing Rock Board of Adjustment met on Thursday, August 6, 2009 at 7:00 p.m. Members present were Chairman Ron Oberle, David Harwood, Jerry Starnes, Annie Whatley and Dr. Charles Davant. Staff present was Planning Director Kevin Rothrock, Town Manager Scott Hildebran, Town Attorney James Deal and Administrative Assistant Sherrie Pitts.

Chairman Ron Oberle called the meeting to order at 7:00 p.m.

#### **APPROVE MINUTES:**

*Mr. Starnes made a motion to approve the minutes from June 23, 2009. Ms. Whatley seconded the motion.* Chairman Oberle asked to add on page two fourth line from the bottom after 16-124(E)"as amended applies to the replacement of a structure not to enlargement as defined" **All were in favor of the motion.**

Kevin Rothrock and Ann Rhyne were sworn in for testimony to the Board.

Mr. Rothrock gave the staff report to the board in reference to Variance #2009-02:

The Town of Blowing Rock is requesting a setback variance relating to the construction of a parking facility by the town. The Town will be pledging as collateral for a loan the portion of the Town's 1.22 acre parcel upon which the parking facility is to be constructed. The parking facility is being constructed in conjunction with the construction of the Blowing Rock Art & History Museum on an adjoining portion of the 1.22 acre parcel. Although the underlying ownership of the 1.22 acre parcel will remain with the Town, the granting of a security interest in the parking facility to First Citizens Bank technically constitutes a "subdivision" of the 1.22 acre parcel as defined in the Blowing Rock Land use Ordinance because it is "the division of a tract of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future)...". By granting a security interest to First Citizens Bank in the parking facility parcel, there will be a dividing line created between the parking facility parcel and the museum parcel, and the proposed location of the museum building and the parking facility will violate the minimum setback requirements off of the dividing line as required by our Land Use Ordinance. The Town is requesting a variance from the minimum setback requirements off of the dividing line created by the mortgage instrument in order that the parking facility and the museum building may be constructed at their proposed locations. Upon satisfaction of the mortgage or deed of trust

granted by the Town to First Citizens, the variance would terminate, as there would no longer be a “subdivision” of the 1.22 acre parcel.

Mr. Rothrock explained the Findings of Fact to the board.

Dr. Davant questioned if the Town had sufficient money that a variance would not be required. Mr. Rothrock stated yes that was true.

Dr. Davant, referring to Finding of Fact number 3, asked what topographically creates the hardship. Mr. Rothrock stated that a two level parking facility is proposed. The design of the museum would not be functional without the parking structure. Dr. Davant asked if the hardship was not then personal circumstances. Mr. Rothrock said he believed it was the lay of the land with slopes and grade.

Dr. Davant asked, referring to Finding of Fact number 5, if the hardship was not created by the Town but by financing conditions. Mr. Deal discussed the issue and commented that the bank lawyers created the subdivision in their interpretation therefore it is not the Town that created the hardship.

Ms. Whatley stated that she had the same concerns as Dr. Davant. She expressed concern that creating a variance based on financial requirements would set precedence for future issues.

Mr. Rothrock commented that the Town was unaware of this issue and the bank added it at the end of the process. He advised the property would remain Town property and at the end of eight years with a note paid off the variance would be voided.

Mr. Deal explained about the process and the bank lawyer’s requirements and how this requirement was added late in the process.

There was discussion on the monies, issues and requirements.

Mr. Hildebran advised that the loan had been set out to bid with several banks and had 3-4 responses.

Chairman Oberle asked when staff became aware of the security interest requirements. Mr. Hildebran stated that it was just before closing, at the end of July.

There was discussion on the requirements that were added to the loan documents. Mr. Deal explained how the property would remain one property under one ownership but for banking purposes there is a division into two lots. He explained if the Town was to default on the loan and it went into foreclosure then the property would be divided.

Mr. Harwood questioned if the request was for a variance on an imaginary line for bank loan purposes. Mr. Deal explained that a line will be in the deed of trust.

Ms. Anne Rhyne spoke and wanted to be sure the exterior setbacks would not be changed.

Chairman Oberle stated that the setbacks were already in place and would not be changed.

Dr. Davant asked what will happen if the board denies the variance?

Mr. Deal advised the Town would have a problem with First Citizens attorney's. He believes they would take the position they would not have an adequate secure interest in this property based on the opinion that they have given. Mr. Deal commented that it is a different lending environment.

Mr. Malcom Rhyne was sworn to the board.

Mr. Malcom Rhyne commented that he appreciates the board being prudent in reference to setting any precedence.

Mr. Starnes said the government owns the property and he can't see property owners coming forth with these problems.

Mr. Starnes made a motion to approve as presented.

Chairman Oberle opened vote on Section 16-92 Finding of Fact of the Land Use Ordinance.

1. If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property. **Members Mr. Harwood, Mr. Starnes, Chairman Oberle and Dr. Davant voted "True". Ms. Whatley voted "False".**
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public; **Members Mr. Harwood, Mr. Starnes, Chairman Oberle and Dr. Davant voted "True". Ms. Whatley voted "False".**
3. The hardship relates to the applicant's land, rather than personal circumstances; **Members Mr. Harwood, Mr. Starnes and Chairman Oberle, voted "True". Dr. Davant and Ms. Whatley voted "False".**
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties; **Members Mr. Harwood, Mr. Starnes, Chairman Oberle and Dr. Davant voted "True". Ms. Whatley voted "False".**
5. The hardship was not created by the Town but was rather created by the financing condition; and **Members Mr. Harwood, Mr. Starnes and Chairman Oberle, voted "True". Dr. Davant and Ms. Whatley voted "False".**
6. The requested variance does not result in the extension of a nonconforming situation nor authorize the initiation of a nonconforming use of land. **All Members voted "True".**

Chairman Oberle stated the variance was denied based on not receiving a 4/5 majority vote on Findings numbers 3 and 5.

Mr. Deal advised the above findings are required for variance approval. He commented that that the board may make additional findings of fact such as finding that the Town owns the entire property and finding that the variance is temporary for the loan purpose.

Mr. Deal spoke to the board and stated that a variance request and denial do not create precedence. Each variance should be weighed on their own merits. Every variance is an independent action.

There was other discussion and comments from the board after the decision.

*Dr. Davant made a motion to adjourn. Ms. Whatley seconded the motion. All members were in favor of the motion.*

**Adjourn**

With no further business, the Board adjourned at 8:00 p.m.

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Ron Oberle, Chairman

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Sherrie Pitts, Administrative Assistant