

Planning and Zoning Board

Minutes

Thursday, October 17, 2013

5:30 p.m.

The Blowing Rock Planning and Zoning Board met on Thursday, October 17, 2013 for their regular scheduled meeting. Chairman West called the meeting to order at 5:30pm. Members present were Ray Pickett, David Laughter, Lisa Stripling Alice Roess, Doug Pegram, David Harwood, Natalie Bovino, and Debbie di Santi. Staff members present were Town Manager Scott Fogleman, Planning Director Kevin Rothrock, Administrative Assistant Tammy Bentley, Intern Zach Ollis and Town Engineer Doug Chapman. Chairman West asked if there were any changes to the minutes from the April 18, 2013 meeting. There were none. Mr. Harwood said that he was disappointed that the Town Council approved changes to the Mellow Mushroom CUP that the Planning Board had not recommended.

Mr. Pickett made a motion to approve the minutes. The motion was seconded by Mr. Laughter.
All members were in favor of the motion.

Chairman West asked if there were any changes to the minutes from the July 18, 2013 meeting. There were none.

Mr. Pickett made a motion to approve the minutes. The motion was seconded by Mr. Laughter.
All members were in favor of the motion.

CUP 2013 – 003 The Ridge at Blowing Rock Subdivision

Mr. Rothrock gave the staff report. Green Life Construction and Restoration, LLC is requesting a Conditional Use Permit for a seven (7) lot single-family subdivision served by a public street with access off Morningside Drive. The 3.65 acre tract is zoned R-15 and is partially in the WS-IV-PA water supply shed.

Chairman West asked the Board if they had questions for the Staff. Mr. Harwood asked for clarification on subject property. Mr. Rothrock answered that the subject property is accurately shown on the preliminary plat. Mr. Harwood asked about the right-of-way on Morningside Drive and the loss of mature trees due to Morningside Drive being widened. Mr. Rothrock responded that the right-of-way is tight near the Marett property and that widening the road is more complex than just extending the pavement on either side. He also stated that the widening would eliminate some mature trees. Ms. Roess asked why the proposed subdivision access is not off

Highway 221. Mr. Rothrock said that it would be physically impossible to build a road to any town standards due to the steep topography on that part of the property.

Mr. Pegram asked who would own the proposed walking trails. Mr. Rothrock responded that the developer would own it until the Property Owners Association (POA) was formed and then the POA would own it. Mr. Pegram asked how the maintenance of the trails would be enforced. Mr. Rothrock said that he did not know about the maintenance of the trails.

Mr. Harwood asked what the responsibilities of the POA will be. Mr. Rothrock responded that the storm water retention and trails would be their responsibility, unless other conditions were part of the CUP. He also said that the road and lighting would be the Town's responsibility. Mr. Harwood also asked if any comments had been received from the Park Service. Mr. Rothrock said that he had spoken with Sheila Gasperson, who had received a copy of the plans, and she asked if the subdivision would be visible from Bass Lake. Mr. Rothrock responded that it would probably not be visible from Bass Lake. Ms. Gasperson indicated that she would try to attend the Town Council hearing.

Chairman West asked the applicant to speak. Mr. Patrick Warren, engineer for the project, addressed the Board. Mr. Warren said that he had spoken with the surveyor regarding the right-of-way. The surveyor told him that the PIN to the north could vary by as much as 30 feet, but that he had no concern with the location of the PIN to the south. They stated that they had studied accessing the site from 221, but the grade is too steep. He also spoke with NCDOT and said that while access from Highway 221 is not impossible, that it is not the correct way to access the property. He said that there is only one point that they do not have a full 30 feet for the road, and that point is short by less than a foot. He said that there is enough room to build the access road and install utilities. Mr. Warren said that the storm water would be channeled to Highway 221.

Mr. Warren said that they project the traffic flow to increase by 10 to 20 additional daily trips along Morningside Drive. He said that the paved road could be increased to 16 to 17 feet without taking out any trees. He agrees that the road is too narrow and is open to suggestion for improvement.

Mr. Pickett asked what the difference in cost would be to access the site from Highway 221. Mr. Warren responded that the cost would be 3 times more costly and would eliminate 2 lots. Mr. Harwood confirmed that Morningside Drive would be widened from the top of the "T" to the subdivision entrance because most of the traffic would use that route. Mr. Warren responded that this was a suggestion from Staff. Mr. Harwood asked if the portion of Morningside off Green Street to the "T" would be widened. Mr. Warren answered no.

Ms. Roess asked how many homeowners would be affected by the widening and increased traffic. Mr. Warren said 7 homeowners are directly affected.

Chairman West asked if Lucius Gage still had an ownership interest. Mr. Warren said that he is not sure.

Chairman West asked where the manholes were and commented that some developers bend sewer lines at manholes. Mr. Warren said that they could look at zig-zagging the sewer line, but that they were trying to run the line as straight as possible due to the 100 foot right-of-way.

Mr. Mitch Raymond, Developer and Applicant, distributed sample building plans to the Board and addressed the Board. He said that the proposed homes were 2500 to 3500 square feet timber framed homes. These homes are similar to homes he has built in the High Country. Ms. Roess asked what the price range of the homes would be. Mr. Raymond responded from \$550,000 to \$650,000. Ms. Roess also asked if there will be a POA and if so, why. Mr. Raymond responded that there will be a POA, primarily to protect the homeowners. Ms. Roess asked how much the POA fees will be. Mr. Raymond responded that it is too early to know.

Chairman West asked if there was any link to Stringfellow and Gage. Ms. Roess asked where else Mr. Raymond had built homes. He responded that he's built a few homes in Reynolds Blue Ridge Mountain Club.

Mr. Harwood asked if the development would be viable with an entrance off Highway 221. Mr. Raymond said no, and that the project works well due to the elevation from Morningside Drive.

Mr. Harwood asked Mr. Rothrock what the Town's standards for roads grades are. Mr. Rothrock said that the maximum is 15%. Mr. Harwood asked the basis for the traffic accessing the site from Morningside Drive off Green Street. Mr. Raymond said the Town Engineer and Staff. Ms. Roess asked if Mr. Raymond could work with people to get what both sides want. Chairman West noted that the contour lines show a pretty good grade and that Mr. Howard had built a substantial retaining wall behind his house.

Chairman West opened the meeting to public comment.

Ms. Susie Greene of Green Street asked what road could be steeper than Morningside. Ms. Greene also stated that to only correct the road from the top of Morningside to the development entrance is ludicrous; that her property gets water runoff from Green Street and Highway 221. She also said that the Board must look at ingress and egress for people who travel and live in the neighborhood. Ms. Green said that on the west side of Morningside is a deep trench and in the winter the steep section is a sheet of ice. She encouraged the Planning Board to take a hard look at this because access off Morningside just won't work.

Ms Linda Lasseter of 559 Morningside Drive said that her house was built in 1975 and she inherited it in 2002. She distributed a map to the Board showing the various travel routes to Morningside Drive. She noted that Mr. Harwood and Commissioner Albert Yount are previous residents of Morningside Drive. Ms. Lasseter said that there are 7 vacant lots on Morningside that could be developed and that these lots and the proposed subdivision would increase traffic. She said that there are 18 dogs that live on Morningside Drive and that many people walk their dogs there. Ms. Lasseter said that Morningside Drive is already too steep and will not conform to state standards. She said that entry off Highway 221 would give the applicant more opportunities for signage and that access to a proposed subdivision should not be granted through an existing

subdivision. She also asked that the Board stipulate that the applicant clear each lot individually and not until the lot and house to be built on the lot are under contract.

Mr. Jesse Belcher, a South Carolina attorney, spoke on behalf of his mother-in-law who owns property contiguous to the subject property. He said that they oppose granting the CUP, since the road specifications cannot comply with Town code and that the project can't proceed unless the 35 foot requirement is waived. Mr. Belcher contends that this is a variance request and as such, the applicant must prove hardship and the applicant can realize more profit by accessing the site from Morningside Drive. He further stated that Town code does not consider profit is a hardship in granting variance requests. Mr. Belcher also stated that the subject property drops precipitously towards his mother-in-law's property which has contributed to erosion on the property and Moses Cone land. Mr. Belcher also stated that the applicant wants the easiest, cheapest access and if the applicant's Engineer thinks that access from Highway 221 is possible, then why not postpone the decision and study this further.

Mr. Jerry Traudt, Linda Lasseter's husband, said that Lot #2 needs to be a minimum ½ acre size as part of it is in the watershed. Mr. Lasseter said that the Town does not have any right-of-way on Morningside Drive and that the existing road is not designed to withstand heavy construction traffic. Mr. Traudt also asked for a 15' vegetation buffer around the perimeter of the entire subdivision. He asked how access of this subdivision could be granted through the access for an existing subdivision. Mr. Traudt read a letter from the Chinchars until his time allotment expired.

Mr. Tom Brinkley, who lives adjacent to Mr. Belcher's mother-in-law, said that he has no issue with the applicant making money, but he thinks the density is too high and that the lots are too small for such large houses. Mr. Brinkley also said that there are erosion problems now and did not know how this development would impact water flow. He stated that he did not think access from Highway 221 is possible and suggested a lower density development with 2 to 3 houses.

Mr. Johnny Lentz, retired Blowing Rock Public Works Director said that in the early 1990's, when Chris May was Town Manager, that the Morningside Drive right-of-way issue was researched. Mr. Lentz said that this research showed that the Town only had deeded right-of-way on 2 lots on Morningside Drive. The Town did install water and sewer service, but did not pursue getting right-of-way due to the impact on Morningside Drive.

Mr. David Kline of 642 Morningside Drive asked how the incursion on the privately owned land would impact only Ms. Lasseter and how would it be possible to widen the pavement and also keep the land along the side of Morningside Drive.

Chairman West asked Mr. Rothrock how to not have incursion on the residents. Mr. Rothrock said it would not be possible to have 18' wide pavement, a 6' shoulder and ditch line with the existing road. He said that the plat for the original subdivision shows a 40' right-of-way; that there is no deeded right-of-way, but the original subdivision was created with the right-of-way. He thinks it would be better to upgrade the road as much as possible and if a width of 18' is not possible, maybe 16' would be better.

Ms. Loye McGill of 516 Morningside Drive said this proposal upgrades Morningside to a sub-standard road that would harm 7 residents to accommodate the applicant. She also asked since there is no right-of-way if this is an eminent domain issue. Mr. Rothrock said he is not recommending taking any additional right-of-way. Ms. Loye said that the plat is simply a survey of land and not a legal document. She asked again if the Town does not purchase the right-of-way, is this an issue of eminent domain. Mr. Rothrock said that this is not at all the Towns plan.

Chairman West said that it is fair to say that there is a difference in the plat and deeds and the actual recorded right-of-way. He asked what of this information is usable. Mr. Rothrock said that there is a difference in the dedicated right-of-way and the maintained right-of-way (for snow plowing, etc). He also said that he did not know if a plat is a legal document.

Chairman West said that the Planning Board decides based on the pros and cons and that the Town Council makes the final decision.

Ms. Helen Kline of 642 Morningside Drive asked why the access road would be allowed when one part could not meet the current width requirement. She said she knows that access off Highway 221 would be expensive and that 2 homes could be developed on the property with no impact to the neighborhood. She also suggested that the property be accessed through the Stringfellow property due to the steepness of Morningside Drive off Green Street.

Mr. Paul McGill of 516 Morningside Drive asked why the Town would allow so many residents on Morningside Drive to be affected for 7 home sites.

Mr. Jim Jackson of 602 Morningside Drive distributed an environmental study to the Board. In referring to the preliminary plat he said that the method proposed to divert water outside the watershed is not a storm water detention system, but simply a culvert, that the aggregate ½ acre lot size within the watershed is not being met and that the plat does not address the 24% build-upon area. Mr. Jackson said that he thinks the walking trails are a great idea, but that the plan does not indicate that they are for public use. He checked with NCDOT and confirmed that their right-of-way has not been conveyed by deed and also stated that it is appropriate to notify NCDOT of advance purchase. Mr. Jackson asked the Board to postpone their decision due to insufficient notice and allow time to address safety and watershed development.

Ms. Judy Veorse of 632 Morningside Drive invited all Board members to watch traffic at the “T” intersection at the top of Morningside Drive, which she calls malfunction junction, because the road is too tight there. She added that her porch is so close to the road that the snow plows have pushed snow onto her porch. She urged the Board to please consider all aspects of this proposal.

Ms. Susie Green asked the Board how they can consider this request with no clear information on the right-of-way on Morningside Drive. She added that the only way to gain right-of-way is by the taking of property.

Mr. Belcher said that the contract to purchase the property is contingent upon this CUP request being granted. He said that this is not an issue of hardship.

Ms. Barbara Harmon, who grew up on Morningside Drive asked who would be responsible if someone were hurt on the trail.

Mr. Mark (Bush) Lindenmuth of 526 Morningside Drive presented an email to the Board from former Town Manager Chris Mays stating that the Town could find no record of right-of-way when they researched the issue. Mr. Lindenmuth asked Mr. Rothrock where the Town gets the right to the rest of the right-of-way. He added that the subdivision was platted in 1933 and the 40 right-of-way in the plat is for the benefit of the subdivision, not the Town. He said that Chris May told him that the Town would pave the road as it is and not extend the road width. He stated that the Town only has a right-of-way for the paved road and ditch and any further right-of-way would have to be acquired from the property owners. He asked Mr. Rothrock why the Town thinks they have right-of-way. Mr. Rothrock responded that he does not think the Town has right-of-way.

Mr. Marty Cheftel has lived on Morningside for 8 or 9 years with his wife and grandchild that they are raising. He said that he walks on Morningside Drive and that the access off Green Street is extremely steep. He said that most traffic in the winter uses the access beside the old Cheeseburgers restaurant as the other access gets very icy. He added that construction traffic would destroy the road and that he hates to see the neighborhood destroyed for a developer.

Mr. Paul McGill asked Mr. Rothrock how many feet of frontage the subject property has along Highway 221 and added that Mr. Gage always accessed the property from highway 221. He contends that Mr. Stringfellow divided the property (in August, 2012) to protect himself. Mr. Rothrock answered that the property had about 400 feet of frontage on 221.

Mr. Veorse challenged the premise that most traffic would use Morningside Drive off Green Street and feels that this will establish primary use of this access. He added that this proposed use would increase traffic by his house considerably.

Ms. Debbie Lindenmuth of 526 Morningside Drive said that she is a “tree hugger” and that she has looked at the subject property since 1977. She said that if access to the property could be achieved another way to save the neighborhood, that would be great. She also stated how difficult the “T” intersection is to navigate.

Ms. Rebecca Davis of 643 Morningside Drive said that she can see construction vehicles come up Morningside Drive and that it is almost impossible for these vehicles to navigate the road and that the road must be addressed before construction traffic begins. She also stated that she gets run-off from the adjacent property and has twice built a “catch basin” to catch run-off and that more asphalt will generate more run-off. She said that the run-off must also be addressed.

Ms. Linda Lasseter said that the widening of Morningside Drive will impact her immensely. She would like the development to include a 15’ vegetation buffer, except on Highway 221 and she doesn’t think the walking trails are a good idea.

Mr. Richard Malloy said he can't imagine how Morningside Drive could be widened. He said that the solution is to access the site another way; that it is crazy to try to access through Morningside Drive.

Mr. Patrick Warren said that the neighbors have valid concerns. He said the 15' perimeter buffer is OK and that although the surveyor shows a 40' right-of-way, but he did not know who owns that right-of-way. He said that an access road could be built from Highway 221, but he doesn't recommend it due to the site, cost and destruction of vegetation. Mr. Traudt said that the road could curve and switchback and not go straight up the hill. Mr. Warren that the minimum radii may not work and that he did not think that DOT would allow it. Mr. Warren said that the footprint of the proposed homes is only 1200 to 1500 square feet and that the road run-off would not impact surrounding properties as that run-off will go into a ditch and across Highway 221. He said that the back run-off (towards the Cone estate) is just off the lots. He said that he understood that they would have to have a title opinion before they could proceed. He stated that the watershed information on the plat was taken from the Blowing Rock GIS information. He said that he thinks the question of liability for the walking trails is a good point as well as looking at alternate routes for the entrance and removing vegetation as each lot is sold.

Mr. Harwood asked Mr. Warren if the walkway could be dedicated for public use. Mr. Warren said sure.

Mr. Mitch Raymond said that he appreciated the input and that he and his wife plan to live there, too. He said that he looked at the existing neighborhood and tried to make this project look similar; that there is no problem with density with bigger homes and vegetation. He said the house footprint is 28' x 50' with a garage and that the footprint uses less than half the lot size. He said he plans to keep the rhododendrons, etc. He also said that they style of the homes could change, but he thinks that a timber framed home is what the area wants.

Chairman West closed the public comment period.

Mr. Laughter said he is confused with the road widening; who owns the right-of-way and that it can't just be taken.

Mr. Pegram said there are too many unanswered questions and recommends to continue so that issues with run-off, right-of-way, storm water, and the width of the road at the subdivision entrance would be resolved.

Ms. Roess asked if the water run-off would go under Highway 221. Chairman West said part of it would. Ms. Roess said that the Board needs professional opinions on the drainage and a legal opinion on the right-of-way issue. She added that Mayview Park does not want any more run-off.

Mr. Pegram made a motion to table, seconded by Mr. Pickett.

Chairman West said that even if the right-of-way and run-off issues are answered, he still wants to know who owns what property; that his preference is access off Highway 221. He added that he thinks the applicant should work with the Gages and Stringfellows for access and if access from Highway 221 is OK many issues are resolved.

Mr. Harwood said that he lived on Morningside Drive and it is a substandard road in width and at one point it is basically one lane. He said that people don't use the steep hill like the applicant thinks; that he used many different access routes when he lived there. He said that his quick calculations are 15 additional cars at 3 trips per day would mean up to 90 additional trips per day for 11 additional cars per hour, or another car every 10 minutes. He added that the real right-of-way issue needs to be examined and defined. He said that it is a mistake to accept with the substandard right-of-way; to create problems down the road, and that he would like to add the opportunity for the Park Service to comment.

*Mr. Pegram made a motion to table until the following information is available:
A legal opinion from the town attorney on the right-of-way, including width and ownership;
Impact to the Park Service;
Watershed issues;
Run-off issues at Highway 221 and Bass Lake;
Widening of Morningside Drive; and
Having the applicant pursue getting access off Highway 221 from the Stringfellow property.
Mr. Pickett seconded the motion. **All members were in favor of the motion.***

Ordinances Amendments to Land Use Codes – Board of Adjustment Procedures and Variances

Mr. Rothrock gave the staff report. Ms. Roess asked him if this is simply bringing into compliance with the state. He confirmed.

The Board discussed the ordinance amendment. Chairman West said to look at the amendment as it relates to section 16.6.1.1 of the Land Use Code and to remove "Special Use Permits".

*Mr. Pickett made a motion to accept the amendment with changes, seconded by Ms. Roess. **All members were in favor of the motion.***

Other Business

Chairman West re-clarified that the Planning Board members should not be in contact with anyone prior to pending matters. He requested an email from Staff alerting Board members of pending matters.

*Mr. Pickett made a motion to adjourn the meeting, seconded by Mr. Laughter. **All members were in favor of the motion.***

The meeting ended at 8:30 p.m.

Chairman West

Tammy Bentley, Administrative Assistant