

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
January 24, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Jack Miller, Jr.  
Joe Waggoner  
Fred McMahan

MEMBERS ABSENT

Kenny Maples, Chairman  
Jim Johnson

OTHERS PRESENT

Jeff Cole  
Sandy Cole

Staff Representatives:      David Ball, City Planner  
   Ashley Miller, Assistant City Planner

The meeting was called to order at 3:00 p.m., with Joe Waggoner presiding. The minutes of the December 27, 2007, meeting were unanimously approved following a motion by Mr. Jack Miller, Jr., 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 and yard setback variance for Lot 29 of the Laurel Ridge Subdivision, Ellis Ogle Road, zoned R-1, requested by Jeff Cole.**

Staff presented the request for a 10-foot front yard setback variance and a 2-foot side yard setback variance along lines S66°13'08"E (40.96') and N02°51'35"E (34.07') from the required 25-foot front and 15-foot side setbacks, leaving a 15-foot front yard and a 13-foot side yard for a proposed 28' x 38' single-family residence. Staff stated that based on Article III, Section 335.1.1 of the Municipal Zoning Ordinance, since the right-of-way line and the edge of the street do not coincide, the front yard area shall commence at the outside paved roadway. Staff noted that due to the width of the platted right-of-way being only 20', the front yard setback area could not be automatically reduced based on the provisions within the Municipal Zoning Ordinance. Staff noted that prescriptive rights to the roadway may exist if the City has provided maintenance on the road. The Board asked how far the paved roadway encroaches onto the property. Staff stated that at the most extreme point the road encroaches approximately 40 feet onto the property. Staff also stated that the Health Department has restricted the structures location due to the lot size and topography. Staff read aloud the noted restrictions on the Health Department's permit in regard to the reserve area. The Board questioned the Health Department's restrictions. Staff explained that the reserve area is needed for the future expansion or if the installed system fails in the future. Staff further stated that the structure would have a negative impact on open space in the proposed location. Staff finally stated that the surveyor has certified that the average grade of the

property is greater than 30%, and the existing grade from the edge of the street to the rear of the proposed structure is 34%. Staff noted that the existing lot of record does not meet the minimum lot size requirement of 15,000 square feet. The Board questioned if the adjoining neighbor had been notified about the request. Staff noted that the owner had been notified via certified letter. Staff stated that the driveway would have to be evaluated for zoning compliance prior to issuance of a building permit. The Board inquired if the use would be an overnight rental. Mr. Jeff Cole was present and stated that the unit would be a rental. Mr. Miller noted the Health Department restrictions, the slope of the property, and no objections being made from the adjoining property owner as hardships and items of consideration. After further discussion, Mr. Fred McMahan made the motion to approve the 10-foot front yard setback variance and a 2-foot side yard setback variance leaving a 15-foot front yard and 13-foot side yard along the noted property lines for a proposed single family residence. Mr. Jack Miller, Jr., 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 3:15 p.m., after a motion by Mr. Fred McMahan and a second by Mr. Jack Miller, Jr.

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
February 28, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Kenny Maples, Chairman  
Jim Johnson  
Fred McMahan  
Jack Miller, Jr.  
Joe Waggoner

MEMBERS ABSENT

Staff Representatives:        David Ball, City Planner  
   Ashley Miller, Assistant City Planner

OTHERS PRESENT

William Wolfe  
James Temple

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes of the January 24, 2008, meeting were unanimously approved following a motion by Mr. Jack Miller, Jr., and a second by Mr. Fred McMahan.

Petitions and Communications from the public

Staff Report

Old Business

New Business

**a) Review and consideration for proposed side yards setback variances located at 1385 and 1389 North Baden Drive, zoned R-1, requested by Doug Yates.**

Staff presented the request for a 15-foot side yard setback variance along the interior property line of Lots 26 (1385 N. Baden Drive) and 27 (1389 N. Baden Drive) from the required 15-foot side yard setback, leaving a 0-foot setback for a proposed retaining wall structure and an elevated walkway to the house on Lot 27. Staff stated that the structure will have a negative impact on open space in the proposed location. Staff also stated that the surveyor has certified that the average grade of the properties exceeds 30%. Staff stated that the parking deck's structural supports would project over the property line and encroach into the side yard setbacks. Staff further stated that the current drawing does not reflect a controlled point of access, and added that staff and Mr. Wolfe have spoken about the issue.

Mr. William Wolfe was present and stated that the current parking deck is 24-feet by 50-feet, and the parking area is to be expanded to 27-feet by 60-feet with a 26-foot control access point. Mr. Waggoner questioned if the deck was elevated off the ground. Mr. Wolfe stated that the deck is elevated, and noted that the house meets the district setbacks. Mr. Waggoner inquired about the parking arrangement for the future property owners. Staff stated that a joint-use ingress/egress and parking easement would have to be established and recorded at the Register of Deeds Office.

Mr. Wolfe stated that there is an easement in place for the parking area, but noted that the easement will have to be revised to make the parking area larger. Chairman Maples explained that parking structures have been allowed in setback areas. Staff stated parking structures have primarily been permitted within the front yard setback area. After further discussion, Mr. Joe Waggoner made the motion to approve a 15-foot side yard setback variance along the interior property line of Lots 26 (1385 N. Baden Drive) and 27 (1389 N. Baden Drive), leaving a 0-foot setback for a proposed retaining wall structure and an elevated walkway to the house on Lot 27. Mr. Fred McMahan seconded the motion with all members voting aye.

**b) Review and consideration for a proposed side yard setback variance located at 215 King Road, zoned R-1, requested by Carl Daughtery.**

This item was removed at the request of the owner. Mr. Jim Johnson made a motion to remove the item from the agenda. Mr. Fred McMahan seconded the motion with all members voting aye.

**c) Interpretive Review of Article VIII and Appendix B of the Municipal Zoning Ordinance for ‘River Road Condos,’ located at 510 River Road, zoned C-2, requested by Christus Biblical Gardens.**

Staff presented the request for an interpretation of Article III, being the maximum height provisions, and Sketch B of the Appendix, being the level lot sketch for applying the maximum height provisions. Staff stated that specifically the applicant has requested an interpretation as to whether or not the Board considers the building site level or hillside. Staff added that the engineers rendering reflects the slope laterally across the building site to be 1.1%. Staff also stated that the elevation changes from the eastern side of the buildings to the western side of buildings are proposed as follows:

<i>Building</i>	<i>Eastern Slope</i>	<i>Western Slope</i>	<i>Fall from E to W</i>
A	3.6%	3.0%	0.6%
B	3.1%	2.6%	0.5%
C	3.1%	5.6%	2.5%

Staff noted that the applicant has requested that the Board interpret whether or not the building sites shall be deemed as level and Sketch B applied to assess the maximum building heights. Staff stated that no physical hardship has been presented since the request is for an interpretation of the ordinance. Staff passed out copies of the proposed building elevations. Staff noted that there is an existing rock retaining wall along the river which is to be utilized by the condominium buildings. Chairman Maples inquired if the wall is a part of the support structure. Staff stated that the wall was apart of the support structure for the parking area and proposed buildings. Staff asked the Board to consider the wall, and if the wall had any bearing on whether or not the lot is viewed as a level or hillside. Mr. James Temple was present and stated that the development plan already reflects excavation into the mountain and by pushing the condominium buildings further back onto the property would create more cutting into the hillside.

Staff explained that Sketch B in the Appendix only reflects the maximum building height, where Sketch A factors both the average and maximum heights. Mr. Temple stated that there is 5-feet of fill on the property to remove the buildings from the 100 and 500 year floodways. Staff noted that an interpretation has been difficult due to the fact that unequal fill exists on the existing wall that adjoins the West Prong Little Pigeon River. Mr. Joe Waggoner asked for clarification as to whether or not the applicant was requesting one portion of the property to be considered level and the other as hillside. Staff explained that the applicant is actually asking that the Board interpret whether or not the building sites would qualify as a level or hillside. After further discussion and explanation by Mr. Temple, Mr. Jim Johnson made the interpretation the lot and/or building site should be considered level for administering building heights under Sketch B in the appendices of the zoning ordinance. Mr. Jack Miller, Jr. seconded the motion with four members voting aye, and Mr. Joe Waggoner abstaining from the vote.

**d) Election of Officers**

Mr. Joe Waggoner made a motion to re-elect Mr. Kenny Maples as Chairman. Mr. Jack Miller, Jr. seconded the motion with all members voting aye. Mr. Jim Johnson made a motion to elect Jack Miller, Jr. as Vice-Chairman. Mr. Joe Waggoner seconded the motion with all members voting aye.

Unscheduled Items

Mr. Waggoner inquired about signage that would be posted on properties requesting a variance. Staff stated that there is a problem currently with applicants not properly marking the areas in which they are requesting a variance.

Adjournment

There being no further business to come before the Board, the meeting was unanimously adjourned at 3:35 p.m., after a motion by Mr. Mr. Jim Johnson and a second by Mr. Fred McMahan.

**Approved:**

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**Municipal Board of Zoning Appeals  
Chairman**

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**Date**

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
April 24, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Kenny Maples, Chairman  
Jim Johnson  
Joe Waggoner

MEMBERS ABSENT

Fred McMahan  
Jack Miller, Jr.

OTHERS PRESENT

Thomas Bvyton  
James Tomiczek  
Don Kloke

Staff Representatives:        David Ball, City Planner

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes of the February 28, 2008, meeting were unanimously approved following a motion by Mr. Jim Johnson and a second by Mr. Joe Waggoner.

Petitions and Communications from the public

Staff Report

Old Business

New Business

a) **Interpretive review of Article VIII, Footnote 7 of the Gatlinburg Municipal Zoning Ordinance, requested by Venture Real Estate Group.**

Staff presented the request for an interpretation of Article VIII, Footnote 7 being an exemption from the maximum height provisions. Please note that footnote 7 states:

*On lots (in the R-1 & R-1A districts) where the average original grade of the proposed building site is more than 30 percent and located on the down side of the street, the height may be two (2) stories above street grade, but may not exceed 30 feet above street grade at the highest point provided that a sufficient landscape buffer is installed around the structure's foundation.*

Staff stated that specifically the applicant has requested an interpretation as to whether or not footnote 7 applies to private streets within Planned Unit Developments.

Staff added that in review of the footnote, it appears that the term “street” is used as a general term for a specific point of reference in establishing the permitted building height. Staff also stated that whether the street is a City-owned public street or a privately owned street would not have any bearing because the street is only a point of reference to determine the building height. Staff further stated that staff feels that the intent of this section is solely to establish a point of reference.

Staff explained that however, in review of the definition of the term “street” in Article III, Section 329, the term is more specific and not so general in nature. The definition of street is as follows:

*329. STREET: A public right-of-way set aside for public travel which (a) has been accepted for maintenance by the City of Gatlinburg; (b) has been established as a public street prior to the date of adoption of this ordinance; (c) has been dedicated to the City of Gatlinburg for public travel by the recording of a street plat or a plat of a subdivision which has been approved by the Planning Commission.*

Staff stated that the applicant has asked that the Board review the provisions and render an interpretation as to whether or not footnote 7 should be applied to units on private streets within Planned Unit Developments. Staff added that if the Board agrees that the term “street” as used in footnote 7 is a general term being used as a simple point of reference and should be applied to private streets as well as City owned streets, then staff would ask that the Board not only make a motion of their interpretation, but also formulate a recommendation to revise footnote 7 to reflect the action of the motion. Staff explained that on the other hand, if the Board’s interpretation is that the term in footnote 7 only applies to City owned streets, then a motion and a proposed amendment to better clarify the intent would be necessary to avoid future conflicts or confusion.

After further discussion, Mr. Jim Johnson made the motion that the footnote would apply to both public and private streets and recommended that staff look at amendments to clarify footnote #7 of the Gatlinburg Municipal Zoning Ordinance. Mr. Joe Waggoner seconded the motion with all members voting aye. The Board further noted that this does not apply to driveways which have not been constructed to subdivision standards.

#### Unscheduled Items

Mr. Joe Waggoner voiced concerns regarding fire damage on Hwy 321 and Hwy 441 about glass and safety. Mr. Ron Greene noted that he had spoken to the Fire Department and they had spoken to the owners regarding the situation.

#### Adjournment

There being no further business to come before the Board, the meeting was unanimously adjourned at 3:25 p.m., after a motion by Mr. Jim Johnson and a second by Mr. Joe Waggoner.

#### Approved by:

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**MBZA CHAIRMAN**

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**DATE**



MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
May 22, 2008  
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

Jay Defoe

Staff Representatives:           David Ball, City Planner

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes of the April 24, 2008, meeting was unanimously approved following a motion by Mr. Fred McMahan and a second by Mr. Jim Johnson.

Petitions and Communications from the public

Staff Report

Old Business

New Business

**a) Review and consideration for a proposed variance for “Hilton Gardens,” from Section 408.2 of the Municipal Zoning Ordinance, located on River Road at Oak Street, zoned C-1, requested by Alex Davis.**

Staff presented the request for a variance from Section 408.2 of the Municipal Zoning Ordinance to allow for three points of ingress and egress onto Oak Street. Staff stated that the property has 265.51’ of frontage along Oak Street and based on Section 408.2 this would limit the property to only two points of connection onto the public road. Staff pointed out that Section 408.2 reads:

*There shall be no more than two (2) points of ingress and egress on any street for each three hundred (300) feet of lot frontage or fraction thereof; provided, however, that lots of one hundred (100) feet or less of frontage shall have no more than one point of ingress and egress to the same street.*

Staff noted that the property is currently developed with a commercial retail building (River Oaks Plaza), a commercial parking lot, and a single family residence. Staff noted that the existing structures would be removed from the property and the property parcels consolidated into a single tract. Staff added that normally, the additional point of ingress and egress along a public street could potentially allow for more congestion; however Oak Street currently has no means of access control. Staff further stated that therefore, the proposal would have a positive impact to Oak Street due to the proposed specific points of ingress and egress. Staff added that

the only hardship appears to be that the property is located in a special flood hazard area. Mr. Jay Defoe was present and gave a brief overview of the proposed development and request. After further discussion, Mr. Joe Waggoner made the motion to approve a variance from Section 408.2 of the Municipal Zoning Ordinance to allow for three points of ingress and egress onto Oak Street. Mr. Jim Johnson 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 3:10 p.m., after a motion by Mr. Fred McMahan and a second by Mr. Joe Waggoner.

**Approved by:**

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**MBZA CHAIRMAN**

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**DATE**

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
June 26, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Jack Miller, Jr.  
Jim Johnson  
Fred McMahan  
Joe Waggoner

MEMBERS ABSENT

Kenny Maples

OTHERS PRESENT

Mike Smelcer  
Jonathon Humbard  
Jay DeFoe  
Tom Trotter  
James Temple  
Gary Norvell  
Ron Hensarling

Staff Representatives:        David Ball, City Planner  
   Ashley Miller, Assistant City Planner

The meeting was called to order at 3:00 p.m., with Vice Chairman Jack Miller, Jr. presiding. The minutes, of the May 22, 2008, 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 “Sevier County Bank,” located at 959 East Parkway, zoned C-2, requested by Sevier County Bank.**

Staff presented the request for a front yard setback variance ranging from 13.5-feet to 14-feet from the required 15-foot front yard setback along Ridge Road, leaving a 1.5-foot to 1-foot setback for a proposed retaining wall structure. Staff stated that the structure will have a negative impact on open space in the proposed location. Staff added that the retaining wall structure will be located below Ridge Road street grade thus will not have a visual impact from the City street. Staff noted that no physical hardship has been presented at this time. Staff also noted that the designer has indicated that the wall is necessary to accommodate the parking and drive isles associated with the use. Mr. Mike Smelcer, project architect, was present and gave an overview of the site. Mr. Joe Waggoner asked if there was an existing building. Mr. Smelcer stated that the new structure would be located where the current building is now located. Mr. Joe Waggoner asked about the point of access on Cartertown Road. Staff stated that it was 25 feet back from the intersection of Ridge Road and Hwy. 321. After further discussion about the access and potential difficulty accessing Ridge Road, Mr. Joe Waggoner made the motion to approve as presented. Mr. Fred McMahan seconded the motion with all members voting aye.

**b) Review and consideration for a proposed variance from Article III, Section 321, and Article VIII, Footnote 6; Article VII, Section 712 and associated Appendices of the Municipal Zoning Ordinance for “Gateway Gatlinburg,” located on Parkway, zoned C-1 and C-2, requested by Real Estate Development Trust, LLC.**

Staff presented the request for an interpretive review of Article III, Section 321 - Maximum Building Height definition and Article VIII, Footnote 6 being the exception to maximum building heights; and also, a variance from Article VII, Section 712.1 and 712.2, being the Floodplain District provisions for floodway and floodplain construction.

Staff stated that the applicant is requesting an interpretation regarding whether or not the mechanical housing as shown above the maximum building height, is permitted based on Footnote 6, in Article VIII. This provision (Footnote 6) provides for exceptions to the maximum height which include steeples, elevator shafts, chimneys, stairways and similar structures. Staff also stated that there are five (5) separate mechanical structures located along the span of the roof which make-up approximately 25% of the roof area. Staff added that the architect has supplied various elevations depicting the structure with and without the mechanical covers to show the visual aesthetics of the elements in relation to architecture design of the building. Staff noted that the architect has supplied copies of the architectural design guidelines, recently completed by Clemson University for the City, to show that the elements if permitted are more in keeping with the recommended principles of the guidelines. Staff also noted that if the Board interprets that the structures are permitted based on Footnote 6, then the minimum and maximum heights are in compliance with the C-2 District height limitations. Staff added that if the structures are not considered similar structures under Footnote 6 and thus not permitted, the C-2 District average and maximum heights would be exceeded by the proposed structure.

Staff stated that the second request consists of a variance from Article VII, Sections 712.1 and 712.2 being the Floodway and Floodplain provisions of the FP-1 – Floodplain District. Specifically, these two sections reference the Zoning Ordinance Appendices that illustrate permissible construction practices within the floodplain district. Staff pointed out that the illustration depicts that no encroachment beyond the natural stream would be permitted with structures located with floodplain and floodway boundaries. Staff also stated that the subject property adjoins the West Prong Little Pigeon River along the western property boundary. Staff noted that the top of the natural stream bank meanders in and out along the property. Staff further stated that the site plan depicts a 210’ section of the proposed building that encroaches beyond the top of the stream bank. Staff noted that the encroachments range from 1’ to approximately 13’ and are primarily cantilever portions of the building consisting of mostly open patio/deck elements.

Staff stated that the proposed structure will have a negative impact on open space along the stream in certain portions along the stream and much less in other areas due to the distance from

the stream such as at the North end of the property. Staff noted that there are no other structures located downstream of the property and the proposed plan shows the structures located upstream to be substantially farther from the stream. If the existing, natural vegetation along the stream bank can be preserved, the impact would be lessened at the site.

Staff stated that the property is located within a Special Flood Hazard Area but is relatively flat where the proposed condominium building is proposed to be located. Staff noted that the 500 year floodplain area does extend into the property at a range of approximately 60' up to 280'. Staff added that the slope severity of the property does begin to increase about the mid-point of the property and becomes steeper at the southern most end of the property. Staff also noted that these slopes will factor in more so with other planned structures for the property.

Project architect, Mr. Tom Trotter, was present and stated that he would like to go through a visual presentation of the building and asked to address the top of the slope issue first. Staff stated that the projections beyond the natural stream bank are determined through an on-site evaluation of natural stream bank and through the use of the FEMA and TVA Flood Study maps. Staff further stated that the top of stream bank varies on the property and portions of the proposed building projects beyond the natural stream bank based on Staff's findings. Mr. Joe Waggoner inquired about the last time this rule was broken. Staff stated that there had been very few if any request related to this requirement and could only remember a single occasion related to a project on LeConte Creek resulting in an encroachment. Mr. James Temple was present and stated that the encroachment is approximately 11 feet at the apex of the building. Mr. Tom Trotter gave an overview of the development, and noted that it was a PUD on 8.1 acres in North Gatlinburg, consisting of mixed use retail, restaurant, condo/hotel units, and a parking garage. Mr. Trotter stated that this is good example of smart growth and infill development.

Mr. Trotter stated that the encroachment is approximately 11 feet beyond the natural stream bank at one point. Further, Mr. Trotter stated that in view of the sketch/appendix, before Staff's interpretation, the diagram was viewed as stream bank and stream edge being the same point. Mr. Trotter stated that the diagram doesn't really reflect the difference between the two. Mr. Trotter further noted that the encroachment also adjoins an 1,033 feet, of primary sewer line which has resulted in an erosion of the natural top of stream which makes it difficult to determine the exact location of the top of stream. Mr. Trotter stated that the topography map identifies a bank about 4 different locations with exception to the point in question, where no perfectly clear bank is visible. Mr. Trotter further stated that the determination of top of stream bank is very subjective and difficult to determine. Mr. Temple added that the storm water buffer between the development and river is about 18-25 feet at the closest point near the structure and the average buffer for the entire site is approximately 42.9 feet. The calculated buffer area is 47,250 square feet of buffer/open green space. Further Mr. Temple added that TDEC does provide for an average area to be utilized and therefore the point in question which at the closest point is 18 feet top of bank would be permitted because of overall average is more than required. Mr. Temple noted that if the structure is required to move back 11 feet, it would result in a

Municipal Board of Zoning Appeals Minutes

June 26, 2008

Page 4

serious consequence that pushes the development back towards Parkway and impacting the parking garage and access to the property.

Mr. Joe Waggoner asked if the building would meet height requirements without the added roof structures. Staff stated that the building, without the added mechanical roof screens, would meet the average and maximum heights per the zoning district. Mr. Tom Trotter stated the reason for the height issue is due to the floodway and the location of the 500 year floodplain. Mr. Trotter stated that because the site cannot be filled and utilized, that the heating and air units had to be moved to the roof. Mr. Trotter presented various diagrams of the building elevations and view points. Mr. Waggoner stated that he questioned the height request. Mr. Trotter stated that the purpose of the screening of the mechanical units would be an enhancement to the aesthetics of the building. Mr. Jay Defoe was present and stated that there are a total of 140 mechanical units. Staff added that the applicants were requesting that Article VIII, Footnote 6 of the zoning ordinance be applied to the mechanical screening. Mr. Trotter stated that the mechanical units cannot be placed on the ground because of the floodway. Mr. Waggoner asked if the dormer height was 20 feet. Mr. Trotter replied that the height was approximately 14 feet above the flat roof of the building. Mr. Fred McMahan inquired about the traffic congestion. Mr. Trotter stated that the turn lane would be extended all the way down to the curb cut and access to the property via Dudley Creek Road traffic signal. Mr. Waggoner stated that he did have a problem with the overhang on the river, but had no problem with the roof structures. Mr. Trotter stated that the intent to emphasize the vertically of the building may be modified some, but steeper roof slopes are expected in a Mountain environment. Mr. Waggoner stated one project was previously rejected because it was fairly high and not considered under Article VIII, Footnote 6. The Board asked about the height of the HVAC units. Mr. Trotter explained that the units were approximately 3 feet in height, so the screening was about 11 feet higher. Mr. Jay DeFoe was present and stated that screening was needed for the adjacent 120 hotel units looking out onto this building. Mr. Defoe further stated that height helps achieve screening of the units because of the elevation differences between the two structures. Mr. Ron Hensarling stated that the added screening is actually extra cost to the project but was added in an effort to create a more aesthetically pleasing building in keeping with the City's Architectural Design Guidelines. Mr. Jonathon Humbarnd stated that the gable features make up only 25% of the total roof area. Mr. Gary Norvell was present and stated that the Sevier County Gas Company building would be relocated and the road to the Herbert Holt Park realigned. Mr. Waggoner asked about the bridge. Staff stated that the State will be replacing the bridge. Mr. Temple stated that the apex of the building will be 25 feet away from the waters edge. Mr. Temple further stated that the sewer line placement caused the migration of the stream bank onto the property. Mr. Temple added that the proposed building is not overhanging the water at all, only in a flood situation. Mr. Waggoner asked what FEMA had to say. Mr. Temple stated that a no-rise certificate for both FEMA and the City would be provided for the 100 and 500 year floodway areas. Mr. Temple continued that a certification can be provided based on preliminary calculations. Mr. Temple added that TDEC viewed this project as a re-development site and a unique situation as it pertains to storm water

permitting. Mr. Jack Miller stated that the project would be welcomed to clean up that end of town and in conjunction with what the Ogle's have done across Parkway will awaken this end of town. Mr. Hensarling discussed potential businesses to be located within the development. Mr. Waggoner again stated that he had no problem with roof but he does have a problem with the overhang. Mr. Temple stated that in the area of the proposed building there will be vegetation beneath the building and use stormwater techniques to mitigate buffering concerns.

After further discussion, Mr. Jim Johnson made the motion to approve the exception to maximum building heights to provide aesthetic screening for the AC units; and also, a variance from Article VII, Section 712.1 and 712.2, being the Floodplain District provisions for floodway and floodplain construction. Mr. Fred McMahan seconded the motion with all members voting aye with exception of Mr. Waggoner who voted nay to the stream encroachment. Mr. Jack Miller stated that this was the best presentation to come before the Board.

Unscheduled Items

Adjournment

There being no further business to come before the Board, the meeting was unanimously adjourned at 4:07 p.m., after a motion by Mr. Joe Waggoner and a second by Mr. Fred McMahan.

**Approved by:**

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**MBZA CHAIRMAN**

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**DATE**

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
July 24, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Kenny Maples, Chairman  
Jim Johnson  
Fred McMahan  
Jack Miller, Jr.

MEMBERS ABSENT

Joe Waggoner

OTHERS PRESENT

Mike Line  
Kathleen Line  
Carlos Burton  
Brenda Buschman  
Teresa Burrell  
Jeff Price  
Chip Miller

Staff Representatives:        David Ball, City Planner  
   Ashley Miller, Assistant City Planner

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes of the June 26, 2008 meeting were unanimously approved following a motion by Mr. Jim Johnson and a second by Mr. Jack Miller, Jr.

Petitions and Communications from the public

Staff Report

Old Business

New Business

**a) Review and consideration for a proposed rear yard setback variance, located at 128 Oglewood Lane, zoned R-1, requested by Carlos Burton.**

Staff presented the request for a 7.95-foot rear yard setback variance from the required 20-foot rear, leaving a 12.05-foot rear yard for a proposed 14'x 32.5' carport. Staff stated that the structure could have a negative impact on open space in the proposed location. Staff also stated that the adjoining property is several feet above the elevation of this structure. Staff further stated that no physical hardship has been presented with the request; however the property has been retained above and below the existing structure due to the natural topography. Staff stated the proposed carport would go to the right of the existing carport. Staff added that the applicant has requested that the existing carport area be enclosed, and that is what has prompted the request for the new carport. Mr. Jim Johnson asked if the existing retaining wall would be higher than the carport. Staff stated that the retaining wall would project above the ceiling height of the proposed carport. Chairman Maples asked about the zoning. Staff stated that the property is zoned R-1 which allows for single-family residences. Chairman Maples stated that because of the retaining walls on the site and the limited impact to the adjoining property owners, that he did not have a problem with the variance request. After further discussion, Mr. Jim Johnson made the motion

to grant the 7.95-foot rear yard setback variance, leaving a 12.05-foot rear yard for the 14' x 32.5' carport and stipulated that the approval is strictly for the carport which shall not be enclosed. Mr. Jack Miller, Jr. seconded the motion with all members voting aye.

**b) Review and consideration for a proposed PUD setback variance, located at 170 Glades Road, zoned C-2, requested by Jeff Price.**

Staff presented the request for a 5.57-foot setback variance along a portion of Shields View Drive from the required 25-foot exterior property line setback for PUDs, leaving a 19.43-foot setback from the exterior property line for an existing retail building. Staff stated that the structure could have a negative impact on open space in the proposed location. Staff also stated that no physical hardship has been presented with this request. Staff noted that the property is gently sloping with steeper slopes to the rear of the property. Staff added that the area where the existing structure is located slopes slightly down to the public right-of-way area. Staff further stated that there does not appear to be an apparent hardship associated with the property to constitute an encroachment. Staff stated that the as-built survey has been included in the packet. Mr. Jack Miller, Jr. asked how the encroachment occurred. Staff stated that they were unaware of the encroachment until the as-built survey was submitted by the applicant. Mr. Miller questioned Mr. Price as to why the building was encroaching into the setback area. Mr. Jeff Price was present and stated that because of the curve of the property an error was made in the positioning of the building. Mr. Price added that if the development was not classified as a PUD then the front yard setback for the C-2 zone would have been 15-feet. After further discussion, Mr. Jack Miller, Jr. made the motion to grant the 5.57-foot setback variance along a portion of Shields View, leaving a 19.43-foot setback from the exterior property line for an existing retail building. Mr. Fred McMahan seconded the motion with all members voting aye.

**c) Review and consideration for a proposed front and side yard setback variance, located at 841 Chewase Drive, zoned R-1A, requested by David and Brenda Buschman.**

Staff presented the request for an 11-foot front yard setback variance along Chewase Drive, a 7-foot front yard setback variance along Holston Drive, and an 11-foot side yard setback variance from the required 25-foot front and 15-foot side setbacks, leaving a 14-foot front yard along Chewase Drive, an 18-foot front yard along Holston Drive, and a 4-foot side yard setback areas for proposed additions to the existing single-family residence. Staff stated that the structure could have a negative impact on open space in the proposed location. Staff added that no physical hardship has been presented with this request. Staff also stated that this property is gently sloped to relatively flat with no apparent hardship present that would constitute an encroachment into the required setback areas. Staff noted that the adjacent property owner, Mr. Mike Line, has notified staff regarding the 11-foot side yard encroachment adjoining his property and has indicated an objection to the proposal. Staff passed out four letters that had been received by other adjoining property owners supporting the request.

Mr. Jack Miller, Jr., stated that he would like to hear from Mr. Lines. Mr. Mike Lines was present and stated that 4-feet was too close to be to the property line, and voiced concern about

he visual impacts of the carport. Mr. Miller questioned applicant as to the design of the carport. Mrs. Brenda Buschman was present and stated that the plan is to build an open air carport to get the parking off roadway. Mrs. Buschman also stated that in 1982 a variance was granted to the Brakebill's for the rear yard. Mrs. Buschman added that the current request is to try to make the home more aesthetically pleasing. Mrs. Buschman stated that she was under the impression that the request was for 5-feet on the side until earlier in the day when she found out it was for 4-feet. Staff stated that regarding the 1982 action of the Board, the rear yard could have been determined based on the orientation of the building. Mrs. Buschman stated that the carport would have the same roofline as existing house and rest of the yard area would be a garden. Mr. Mike Line asked about the height of the carport. Mrs. Buschman stated that the carport would have an 8-foot ceiling. Mr. Hugh Clabo, the contractor, was present and stated that the roof has a 4.5:12 pitch, being approximately an additional 6-feet. Mrs. Buschman stated that no trees would be removed along the fence adjoining the Line's property. Mr. Miller asked if the carport would have siding on it. Mrs. Buschman stated that the carport would be open with stack stone columns. Chairman Maples stated that the property is a corner lot with two side yards and the lot is small. Chairman Maples added that due to the utilities the building should be at least 5-feet off the property line. Staff added that the Subdivision Regulations call for 6-foot utility easements along interior property lines. Mr. Jim Johnson asked Mr. and Mrs. Line if their only objection was for the carport. Mr. Line stated that they did not object to the deck addition on the other side of the house. Mrs. Lines was present and stated concerns about the carport being so close to their yard and seeing cars. Mr. Line added a concern about the carport evolving to an enclosed area in the future. Mr. Miller stated that the Board could restrict the motion so that the carport could not be enclosed in the future. Mrs. Buschman stated that she was fine with that stipulation. Chairman Maples questioned making the carport 21-feet with a 6-foot side yard setback. Mrs. Buschman stated that she did not have a problem amending the request to a 6-foot side. Mr. Miller stated that the Assembly Grounds is special area within the City due to the size of the lots. Mr. Johnson questioned for clarification that the applicant could leave the carport open with a 6-foot side yard. Mr. Clabo stated those stipulations could be done. After further discussion, Mr. Jack Miller, Jr. made a motion to grant an 11-foot front yard setback variance along Chewase Drive and a 7-foot front yard setback variance along Holston Drive, leaving a 14-foot front yard along Chewase Drive, an 18-foot front yard along Holston Drive for the proposed porch addition to the existing single-family residence. Mr. Miller amended the request to grant a 9-foot side yard setback variance, leaving a 6-foot side yard for a 21-foot wide carport and stipulated that the carport shall not be enclosed. Mr. Fred McMahan seconded the motion, which passed with all members voting aye.

Unscheduled Items

Adjournment

Municipal Board of Zoning Appeals Minutes  
July 24, 2008  
Page 4

There being no further business to come before the Board, the meeting was unanimously adjourned at 3:44 p.m., after a motion by Mr. Fred McMahan and a second by Mr. Jack Miller, Jr.

**Approved by:**

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**MBZA CHAIRMAN**

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**DATE**

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
September 25, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Kenny Maples, Chairman  
Jim Johnson  
Jack Miller, Jr.  
Joe Waggoner

MEMBERS ABSENT

Fred McMahan

OTHERS PRESENT

Jerry McCarter

Staff Representatives:           David Ball, City Planner

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes of the July 24, 2008, meeting, were unanimously approved following a motion by Mr. Jack Miller, Jr. and a second by Mr. Jim Johnson.

Petitions and Communications from the public

Staff Report

Old Business

New Business

**a) Review and consideration for a proposed rear yard setback variance located at 554 Crest Road, R-1A zone, requested by James A. Jones.**

Staff presented the request for a rear yard setback variance of 8-feet from the previously approved 10-foot rear yard setback, leaving a 2-foot rear yard area for a proposed retaining wall. Staff stated that the retaining wall will be approximately 8' in height and approximately 30 feet in length. Staff noted that this property was granted a front and rear setback variance at the November 28, 2007, meeting. Staff also stated that the structure will have a negative impact on open space in the proposed location. Staff added that the natural slope of the lot appears to exceed 30% grade and slopes from the rear of the lot (North) to the front of the lot (South). Mr. Jerry McCarter was present and noted that the actual wall would be approximately 60' long and include access stairs to the structure. Mr. McCarter further noted that the wall will not be visible from the adjoining neighbor because of the direction of the slope of the property. Mr. McCarter stated that the wall was needed to improve the turnaround area for the property. After further discussion, Mr. Joe Waggoner made the motion to approve an 8-foot encroachment for an 8-foot high and 60-foot long retaining wall including the accessory stairs leaving a 2-foot rear yard setback area. Mr. Jim Johnson seconded the motion with all members voting aye.

Unscheduled Items

Adjournment

Municipal Board of Zoning Appeals Minutes  
September 25, 2008  
Page 2

There being no further business to come before the Board, the meeting was unanimously adjourned at 3:15 p.m., after a motion by Mr. Jim Johnson and a second by Mr. Jack Miller Jr.

**Approved by:**

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**MBZA CHAIRMAN**

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**DATE**

MINUTES OF THE  
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS  
December 4, 2008  
Thursday, 3:00 p.m., City Hall

MEMBERS PRESENT

Kenny Maples, Chairman  
Fred McMahan  
Joe Waggoner

MEMBERS ABSENT

Jim Johnson  
Jack Miller, Jr.

OTHERS PRESENT

Lynn Pool

Staff Representatives:      David Ball, City Planner  
   Ashley Miller, Assistant City Planner

The meeting was called to order at 3:00 p.m., with Chairman Kenny Maples presiding. The minutes of the October 23, 2008, meeting were unanimously approved following a motion by Mr. Fred McMahan and a second by Mr. Joe Waggoner.

Petitions and Communications from the public

Staff Report

Staff wished the Board a Merry Christmas.

Old Business

New Business

**a) Review and consideration for a proposed front yard setback variances, located at 2004 St. Moritz Drive, zoned R-1, requested by Lynn W. Pool.**

Staff presented the request for a front yard setback variance ranging from 8.8' to 13.3' along the Nordic Circle property line, from the required 25' front yard setback, leaving an 11.7' to a 16.2' setback for the proposed rebuilding of a single family residence on an existing foundation. Staff stated that the structure will have a negative impact on open space in the proposed location. Staff also stated that the existing foundation is upslope from Nordic Circle and the property falls off toward the adjoining Lot 43. The Board asked if this house was destroyed by fire. Mr. Lynn Pool was present and stated that the house was destroyed by fire and all that remains is the foundation and chimney. Mr. McMahan questioned if the foundation was damaged in the fire. Mr. Poole stated that an engineer has assessed the foundation and has issued a letter to the City in regard to its structural stability. The Board questioned grandfathering provisions. Staff stated that grandfathering/non-conforming provisions are not extended to residential uses, only commercial and industrial uses. Staff further stated that based on Article IV, Section 401.2, non-conforming buildings damage to more than 50% by fire, shall be rebuilt in conformity with the current regulations.

Mr. Joe Waggoner questioned the front yard area. Staff stated that the front yard runs all along Nordic Circle, St. Moritz Drive, and St. Moritz Court. Chairman Maples questioned if the applicant also needed a variance for the proposed deck on the front of the foundation. Mr. Poole stated that the deck would project out from the corner another 6' towards Nordic Circle. Chairman Maples stated that the variance request should be amended to a 19' front variance along Nordic Circle, leaving a 6' front yard setback so Mr. Poole will not have any issues during construction with the Building Inspections Department. Mr. Waggoner asked if the parking would be beneath the building. Mr. Poole stated that the parking area would be to the side of the existing gravel driveway. After further discussion, Mr. Joe Waggoner made the motion to approve a 19' front yard setback variance leaving a 6' front yard setback along Nordic Circle to the edge of the deck. Mr. Fred McMahan seconded the motion with all members voting aye.

Unscheduled Items

Mr. Waggoner questioned the time limit on bringing the sign from the October meeting into compliance. Staff stated that the Building Official has been notified of the Board's action.

Adjournment

There being no further business to come before the Board, the meeting was unanimously adjourned at 3:34 p.m., after a motion by Mr. Joe Waggoner and a second by Mr. Fred McMahan.

**Approved by:**

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**MBZA CHAIRMAN**

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**DATE**