

Town of Beech Mountain
Planning Board Meeting Minutes
January 31, 2012

Call to Order:

Chairman Paul O'Connell, called the meeting to order at 9:15 AM. Other Board Members present in attendance were Bill Watson, and Andy Porter.

Adoption of Agenda:

Bill Watson made a motion to adopt the agenda and Andy Porter seconded. Said motion was carried with no objections.

Approval of Minutes:

Andy Porter made a motion to adopt the minutes from the previous Planning Board meeting with the change. Bill Watson seconded and motion carried with no opposition.

Discuss Board of Adjustment Appeal Fee:

Planning Director James Scott discussed that the current Town Ordinance requires a fee (which is set at \$350) to make an appeal of an action, requirement, or fine of Town Staff to the Board of Adjustments. This fee is not refundable. Mr. Scott discussed how this fee in itself could be seen as a penalty, and that if an accused person is required to pay this amount even if they are exonerated of charges, it is an unjust deprivation of their property. Moreover, such a fee opens the door to abuses by Town Staff in which they could bring unmerited charges against people, and those charged would have to pay to defend their selves. He presented the Board with an amended ordinance that made the fee reimbursable if the order, act, or fine issued by the Zoning Administrator was modified or reversed by the Board of Adjustment, the fee would be reimbursed.

Andy Porter stated that he was in favor of the amendment. He likened the situation to a speeding ticket. If a person is found not guilty in traffic court, they do not have to pay court costs.

Bill Watson agreed that the fee could be used as a penalty in itself, but was cautious about making it refundable. He questioned the purpose of the fee. If the fee fulfilled valid purposes, he said, he would not be in favor of making it refundable.

James Scott replied that the fee was intended to offset some of the costs of holding a Board of Adjustments Hearing, including staff time, the services of the Town Attorney, and the small compensation received by the Board of Adjustment members. Also, he mentioned that the fee acted to prevent frivolous appeals, because only a person who felt certain that they were right would pay the fee to be heard before the Board of Adjustments. However, he stated that the purpose of the fee was not mentioned in the text of the ordinance.

The logic of reimbursing the entire appeal fee when only a portion of an order was modified was discussed. James Scott discussed that he did not agree that the appeal fee could be partially reimbursed. If a person was proven correct, they deserved their fee returned in whole. Even unjustly charging a person a smaller amount is still unjust. It was also discussed whether

the fee should be reimbursed if an appellant was only proven partially correct, and the order was only modified rather than completely reversed. James Scott felt that the only fair way to deal with this is to reimburse the fee even if the order is only modified rather than reversed. He gave the example of a person who was fined \$4,000 for cutting 4 trees, when they had in fact only cut three. Should they be charged \$350 to prove that they only cut 3 trees or otherwise be forced to pay the entire \$1000 fine for a tree they did not cut? Such a person would not have even appealed if they had been correctly charged. Moreover, he commented that there was too much gray area in determining when an order had been “completely” reversed, and when it was merely modified.

After much discussion, Paul O’Connell made a motion that the proposed amendments be sent to the Town Council for possible adoption. Andy Porter seconded said motion. Bill Watson said that he was in favor of the motion as long as the purpose of the fee was not specified in the text of the ordinance. The proposed motion passed without objection.

Discuss Cellular Communications Tower Ordinance:

James Scott discussed that there was a pending application with the Board of Adjustments for a Conditional Use Permit to erect a cell phone tower. In reviewing the cell tower regulations, Mr. Scott had noticed several portions of this ordinance that were contradictory or that needed clarification. He stressed that while these changes would make the ordinance work better in the future, no changes that they made would make an impact on the current application.

First, Mr. Scott pointed out that the Cell Tower ordinance mentions that cell towers are not permitted in residential zoning districts. On the other hand, the Permitted Use Table for the Zoning Ordinance lists that cell towers are *only* allowed in Residential Zoning Districts (Mr. Scott commented that he had discussed this conflict with the Town Attorney, and that the attorney maintained that the Permitted Use Table would prevail in this situation).

Mr. Scott proposed to address this contradiction by making the cell tower ordinance say that the towers are not allowed within “Residential Areas” rather than “Residential Zoning Districts.” Then, he proposed that for the purposes of this section that “Residential Area” be defined as all locations within 250’ of a residential home.

Another contradiction was identified in that the ordinance in one section specifies that all applicants for cell towers must have either fee simple ownership or a recorded leasehold of all property within a distance equal to a radius the height of the tower. However, other provisions stipulate that the tower could be located closer to property lines than the height of the tower if an engineer certifies that the fall zone for said tower was within the property or lease. Mr. Scott recommended that the exception for the engineer certifying that the tower would fall within the property be abolished, and that the ordinance simply revert to the straightforward requirement that a tower has to be located at least as far from property lines or boundaries of the leased area as its height. Paul O’Connell stated that he was in favor of changing this provision as well.

Finally, Mr. Scott mentioned that he had also wanted the Board to consider the procedure for preliminary hearings as outlined for Conditional Use Permits. He stated that at a Board of Adjustments training workshop that he had attended, one of the instructors had questioned the legality of that provision because it provided an opportunity for the Board to form prejudices and opinions before the case was heard. Mr. Scott did not have the text to an amendment to this provision prepared, but that since there was no rush to accomplish these amendments, the Board could consider them at the next meeting.

The Board discussed the 250' area restriction considering the possibility that such a restriction would eventually result in there being no place for towers to locate. They agreed that such a situation was not likely in the foreseeable future given the amount of open land left in Beech Mountain. The Board also discussed modifying the Permitted Use Table such that these towers were also allowed in the Manufactured Housing district as well as the R1 and R2 districts.

The board moved to table this discussion until the next meeting.

Discuss Spring Work Plan:

James Scott explained that he had been tasked with developing a "Special Project Calendar" for the spring and summer months by the Town Manager. The purpose of this project was twofold. First, having such a calendar would increase efficiency and lead to more work being accomplished. Second, such a calendar would minimize conflicts in the schedules of projects where multiple departments and entities are involved.

Mr. Scott had prepared a draft of the calendar which he provided to the Board members. He also had prepared a detailed map that illustrated the location and nature of projects that the Planning Department intended to accomplish.

After showing the board these plans, he asked them to comment on any additional items they would like to see accomplished over the coming working season, or on any modifications to the plans he had proposed. The Board supported the plans as proposed and had no additions or modifications. Also, the Board agreed that the creation of such a calendar was very useful.

Discuss Temporary Signs:

Mr. Scott discussed that one of the most difficult portions of enforcing the zoning ordinance is keeping a handle on temporary signs. He showed the Board how several different provisions allowed for signs of a temporary nature, and that these signs were allowed so long as they complied with the ordinance, and that a permit was not required for them. He wanted the Board to discuss the possibility of making permits required for these signs, and that this would help to keep better track of them. Or, in the alternative, that the regulations surrounding them be altered such that they were more permissive. He felt that the aesthetic improvements sought by the sign ordinance were to be realized more through the enforcement of standards for quality on permanent, commercial signs than on small advertisements for specials or banners for sales or events. Finally, he questioned the wisdom in being so restrictive on signs in a time when our town's businesses were facing economic hardship. He likewise questioned whether the town should be turning away all the possible permit fees it could collect from allowing such signs.

After much discussion, the consensus from the Board was that it was unrealistic to make businesses obtain permits for their "accessory" or temporary signs. However, they were in favor of possible amendments that would make regulation of this type of sign more realistic and also suggested some possible wording changes that would simplify the ordinance. Finally, they also considered the possibility of limiting every property to a maximum of 1 "accessory sign" at any given time.

It was agreed to continue the discussion of temporary and "accessory" signs at a future time.

Comprehensive Planning:

Mr. Scott handed out a copy of a draft of the "Public Participation and the Planning Process" chapter of the Comprehensive Plan. He stated that in preparing this section, he realized

that the need to get more public input on planning was essential. While he realized that it might amount to taking a step backward in the planning process, he suggested that a survey be sent out to as broad an audience as possible to gather input for the plan.

He had prepared a draft of this survey and asked the Board to complete it over the next few weeks and get back with him with any corrections, additions, or amendments they might have. The Board agreed that the survey would be helpful to gather input.

Call to Adjournment:

Chairman O'Connell called for a motion to adjourn. John Hoffman moved for the motion and Bill Watson seconded and was carried with no objection.

Respectfully Submitted,

James Scott
Secretary to the Board