

PUBLIC HEARING and REGULAR BOARD MEETING of April 16, 2003, with Mayor Buck Trott and Commissioners H. N. James, Ron Sanders, Hank Ross, Mike Cavender, and Amy Patterson present.

Also present were Richard Betz, Bill Coward, Lamar Nix, Larry Gantenbein, Kim Lewicki, Farrell Zehr, Bob Wright, Mitch Gurganus, Fred Jones, Bronce Pesterfield, Bill Mann, Thomas Craig, David Wilkes, George Schmitt, Dennis DeWolf, Rosemary Fleming, Bill Enloe, Richard Rhodes, and others.

A. Public Hearing.

The Mayor called the Public Hearing to order at 7:00 p.m. As explained at the previous meeting, he said that the Board was conducting this public hearing for the purpose of considering two applications pursuant to the Town's Subdivision Ordinance. The Zoning Administrator had distributed copies of background information together with the two applications at the previous meeting; in addition, he distributed copies of a memorandum he had written dated April 16 in reference to the Gurganus application. Notice of the public hearing had been provided in The Highlander pursuant to law.

1. Application No. 239 for a variance by Harold Gurganus to vary from the subdivision road specifications at Shelby Place by permitting the upper single-lane roadway that connects on both ends to Shelby Circle South to be used as a driveway by Lot 95.

The Mayor reviewed a memorandum from the Zoning Administrator dated April 8, which provided background for the case; the Board of Commissioners had addressed the issue in July of 2000. The Planning Board had reviewed the application, and recommended that the variance be granted, but only for Lot 95, owned by Mr. Gurganus, on the basis that he holds an easement across Lot 97 expressly permitting use of the roadway, the roadway was already in existence, and there are topographical features that make development from below problematic.

Since the Planning Board recommendation had been received, however, Mr. Gantenbein explained in his April 16 memorandum, several of the property owners served by the road--including Paul Schmitt, George Schmitt, Francis Dickson, and Shelby Place Limited--had agreed in writing to the variance. In addition, written confirmation had been received from legal counsel for Shelby Place Ltd., Mary Jo Crews and Francis Dickson, that they agreed with and encouraged the Town Board to approve the variance for all affected lots.

Fred Jones was sworn, and testified that he represented Harold Gurganus, owner of Lot 95. As indicated above, he said that it had become apparent since the Planning Board meeting that a number of other property owners wanted to join in the application. He then reviewed the application submitted, which included an excerpt from the July 19, 2000 Board minutes; a letter dated July 26 from the Town Administrator to Shelby Place Ltd. explaining Board policy with reference to the "upper" roadway (i.e., that it was a driveway serving George Schmitt's residence only, and all of the other lots on Shelby Circle South were to be accessed from the "lower" road which met subdivision standards); a written application from Fred Jones, addressing the required conditions for a variance; a deed of easement dated March 1, 1998 (Book D-23, Pages 1925-6, Macon County Register) from Shelby Place Ltd. to Harold Gurganus, for an easement to Lot 95; the applicable portion of the Shelby Place Subdivision Plat; and a survey dated July 25, 2002, prepared by L. Stephen Foster, RLS, of Lot 95. He then reviewed the four conditions for a variance set forth in Section 206, elaborating on the written application.

The "special circumstances" (Paragraph A) resulted from the subdivision already having been platted and approved, with a lower road in place that, due to a steep slope, did not provide reasonable access to the lots; George Schmitt had used the upper road as a one-way driveway, with Board approval, because his lots and the others were so small that a driveway from the lower road would use up all of the buildable space. The variance was "necessary for the preservation and enjoyment of a substantial property right of the petitioner" (Paragraph B) in that use as a residence was the highest

and best use; a private, deeded easement provided him with access when he had purchased the property. The circumstances were "peculiar to the parcel" (Paragraph C), as well as other parcels in this small area, by reason of topography. The variance would "not be detrimental to the public health, safety, and welfare" (Paragraph D); no change was proposed from what was already in place, and Town services would be provided from the lower road.

Comm. Cavender asked if the variance application was specifically for Lot 95 and not the others, and why the applicant required a variance when he had an easement providing access. Zoning Administrator Larry Gantenbein replied that the easement provided a legal right, but was contrary to the Town's Subdivision Ordinance, which required access from a subdivision road. Comm. James added that the upper road did not meet the road specifications for access to lots. Comm. Patterson asked why the road could not be widened to meet standards? Fred Jones explained that the lots were too small, and setbacks from both roads would make it unfeasible to use the lots; Larry Gantenbein agreed, and added that it would be difficult to obtain right-of-way, since part of it would have to be obtained from the dedicated "green areas" in Shelby Place. Comm. Patterson commented that it appeared that it would be easier for applicants who owned each of the lots to apply for setback variances.

Mitch Gurganus was sworn, and testified that he was the owner's brother and had been in the building business for some time. He submitted several photographs into evidence which showed lots in the area, both roads, and a rock formation between Lot 95 and 96. He said that building on the lot, due to its physical shape, would be unreasonably costly, due to the cost of a retaining wall; it would also create more environmental damage. He also said that several offers had been made on the lot and withdrawn due to this problem; the current contract was contingent on approval of the variance. Comm. Patterson asked what setbacks would be in effect, and he told her 25 feet from the right-of-way of the lower road and 10 feet from the property line, which varied in distance from the upper 12-foot paved road.

George Schmitt was sworn, and testified that he had situated his residence 15 feet from the upper road and 25 feet from the lower; the lot had been tight but he had been able to build. He said that he had bought the lot in 1988; he had been an original investor in Shelby Place before it went bankrupt, had bought it from Tubby Crews, and had understood that it and the other lots could be accessed from the upper road. The upper road had never been platted as a subdivision road, although a dirt road had been there from the very beginning. Nothing had been said until after his residence had been completed. He also pointed out that there was a precedent for other sub-standard subdivision roads accessing properties, such as Trillium Place. He said he would be willing to join in the application to get the road approved legally. He also suggested that, although not an issue here, there should be a 25-foot setback from both roads.

There was no further testimony, and no comments from the public.

2. Application No. 240 for a variance from subdivision road grade specifications by Gloria Pariseau, and application for a preliminary subdivision plat for a subdivision at Toad Hall on the Franklin Road.

The Mayor reviewed a memorandum from the Zoning Administrator dated April 8, which provided background for the case. The Planning Board had discussed the fact that three acres of the 6.15-acre property had been located underwater since the Town constructed the power dam years ago; it recommended requiring a density permitting five lots, rather than six, and a maximum "built-upon" area of 16% of dry land. The Planning Board had also recommended granting the variance because the environmental impact would be substantially less with an 18% grade, the terrain more readily lends itself to that grade, State DOT regulations permit an 18% grade, and such variances had been granted in the recent past where the road would be paved.

Bronce Pesterfield was sworn, and reviewed the application package which had been submitted. It included excerpts from the minutes of past Town Board meetings of November 5, 1997, January 21, 1998, and January 21, 1998; excerpts from a Town document entitled "Local Interpretations of the Town of Highlands Zoning Ordinance Watershed Amendments" dated April 20, 1994, stating that a portion of a lot underwater would not be included in calculating "built-upon" area; memorandum from Town Engineer S. Lamar Nix dated March 24, reviewing the subdivision plat; written application prepared by Mr. Pesterfield dated March 16, addressing the required conditions for a variance; and a copy of the preliminary plat of Sequoyah Point Subdivision, 15 pages, dated March 2003. Mr. Pesterfield pointed out that the 18% road grade, as shown on the road profile drawing, only affected 28 feet of the road; the road approached 5% and 4% respectively at either end. The plan allowed for it to be less intrusive, eliminated the need for high cut banks on either side, and also preserved several trees and substantial existing landscaping. He then reviewed the four conditions for a variance set forth in Section 206, elaborating on the written application. The "special circumstances" (Paragraph A) resulted from the previous development and a road that had been graded to accommodate that development. The variance was "necessary for the preservation and enjoyment of a substantial property right of the petitioner" (Paragraph B) because a grade less than 18% would reduce the enjoyment of the property due to the high banks and disturbance of property. The circumstances were "peculiar to the parcel" (Paragraph C), in that the site was previously developed and the applicant was merely changing the function of the land with the least intrusion. The variance would "not be detrimental to the public health, safety, and welfare" (Paragraph D); on the contrary, it met DOT road grade standards for mountainous areas. Mr. Pesterfield also testified that the plat submitted had been amended to incorporate the recommendations of the Planning Board with respect to the five lots and the 16% built-upon, as well as those of the Town Engineer.

The Mayor closed the Public Hearing at 7:45 p.m.

B. Regular Board Meeting.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:45 p.m.

II. Approval of Agenda.

Copies of the agenda had been distributed by mail.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS DISTRIBUTED.

III. Approval of Minutes.

Copies of the minutes of the March 19 Regular Board Meeting had been distributed by mail. The Clerk noted that an error had been pointed out by Comm. James; paragraph 6(D) on page 77, second sentence, should have read "Comm. James disagreed; he did not see how a variance could be granted except to all of the lots."

MOVED BY COMM. SANDERS, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS CORRECTED.

IV. Reports.

1. The Mayor reported that he had been asked by AARP North Carolina to sign a proclamation designating the month of May as Osteoporosis Awareness and Prevention Month.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY

CARRIED TO AUTHORIZE THE MAYOR TO EXECUTE THE PROCLAMATION.

He also reported that the Town had received a memorandum from the D.O.T. requesting potential local projects for the new North Carolina Moving Ahead program; the deadline was May 2. He said the program was intended to use the Highway Trust Fund for small projects, not just those in the Transportation Improvement Program, and also to provide more money to the western part of the State. Comm. Cavender asked if roads submitted were required to meet D.O.T. right-of-way requirements; the Mayor said he suspected they were, but would ask the question. Comm. Cavender said that, if not, Hickory Hill Road should be included. The Board agreed by consensus for the Mayor and the Town Engineer to submit a list of appropriate projects.

2. The Street Committee, Comms. Sanders and Cavender, had met on April 14 and reviewed a request for two-hour parking along Church Street made at the previous meeting. Comm. Cavender said that the Committee agreed there was a problem for area merchants due to congestion and construction, and the Committee recommended two-hour parking on a temporary basis along both sides of the street, from Fourth Street to Fifth, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Saturday, between May 1 and October 31 of each calendar year. They also recommended moving the construction trailers for the Old Edwards Inn project to the owner's lot on Spring Street and creating a loading zone in that location, adjacent to Dunfergots.

Bob Wright was present representing the Building Committee of First Presbyterian Church, and he asked the Board to consider designating two-hour parking only on the western portion of Church Street, as far as the driveway from Kelsey-Hutchinson Lodge, leaving approximately 15 to 16 spaces undesignated; he said that church staff and groups met during the week and would be affected by two-hour parking. He outlined plans to rough grade the Child Care Center property at the south side of the eastern end of the street, which would create between 20 and 40 spaces; these spaces would be used for parking by the Church's contractors and others. Comm. James felt that it would not be unreasonable to require two-hour parking for the entire street; he noted that the Church had parking available on Fifth and Main Streets. Comm. Sanders said he would not want to set a precedent which would, in effect, designate spaces for the Church.

MOVED BY COMM. SANDERS, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO DESIGNATE TWO-HOUR PARKING ALONG BOTH SIDES OF CHURCH STREET, FROM FOURTH STREET TO FIFTH, BETWEEN THE HOURS OF 10:00 A.M. AND 4:00 P.M., MONDAY THROUGH SATURDAY, BETWEEN MAY 1 AND OCTOBER 31 OF EACH CALENDAR YEAR. AND ALSO TO DESIGNATE A LOADING ZONE NEAR THE EAST END OF THE STREET AS RECOMMENDED.

The Street Committee, with Comm. Ross, had also reviewed the Town's landscaping maintenance contract, as requested at the previous meeting. Comm. Ross had prepared an informal Request for Proposals, identifying 11 areas, including Maple Street; the proposals was very general, and bidders were to submit information on programs for fertilizing, pruning, etc. It also addressed new plantings, urging a move toward perennials, as well as providing for unit prices for future additional landscaping.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED FOR A COMMITTEE CONSISTING OF COMMS. SANDERS, CAVENDER, AND ROSS TO SOLICIT PROPOSALS PURSUANT TO THE REQUEST, REVIEW THEM, AND BRING THEM BACK TO THE BOARD.

It was also suggested that the Committee talk to the Garden Clubs in order to determine which areas they may wish to continue to maintain; the Board agreed that the Clubs did an excellent job.

#### V. New Business.

1. The Board discussed an application by Harold Gurganus for a

subdivision variance, subject of a public hearing immediately preceding this meeting, at some length. Comm. Cavender asked if the application was for the single Lot No. 95 owned by the applicant.

Comm. James said he felt the whole road ought to be considered. The Zoning Administrator said that the applicant's attorney had represented that others would join in the variance. He also reported that the Planning Board had recommended that the Board include as conditions on the variance a requirement that the road remain privately-maintained, and that all Town services be provided from the lower road; as Zoning Administrator, he recommended that the Board include a condition requiring a 25-foot setback from the edge of the pavement of the upper road. Fred Jones commented that such a condition had not been part of the application, nor had it been a Planning Board recommendation; the present setback along the upper road would be 10-feet from the property line.

MOVED BY COMM. CAVENDER TO APPROVE THE VARIANCE ONLY WITH RESPECT TO LOT NO. 95 OWNED BY HAROLD GURGANUS, AS REQUESTED.

Comm. James said that he felt approving a variance for one lot was a piecemeal solution. Comm. Cavender pointed out that if others wanted variances, they could apply. Comm. James asked why the whole matter should not be put to rest; he also felt that a 25-foot right-of-way would be reasonable. Comm. Cavender felt that if all of the other lots were going to be included, the application should be sent back to the Planning Board for a recommendation. Town Attorney Bill Coward expressed a concern over setting a precedent; by granting a variance for one lot, the Town might not have grounds for denying one for the other lots. Fred Jones reiterated that the extra setback had not been part of the Planning Board recommendation, nor had there been any evidence submitted that the existing setback was not adequate. Comm. James felt that approving the variance would make this road the primary access for all of the lots; he did not feel a 10-foot setback was adequate. He also pointed out that the paved road meandered along the property line, so that the setback would vary for each property. Comm. Cavender withdrew his motion; he commented that he hated to see the Board make it up as it went along; he would like to see the matter sent to the Planning Board and the problem fixed this time.

MOVED BY COMM. JAMES, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO GRANT THE VARIANCE WITH RESPECT TO LOT 95, AS WELL AS ALL OF THE OTHER LOTS SERVED BY THE UPPER ROAD, CONDITIONED UPON ROAD MAINTENANCE REMAINING PRIVATE, TOWN UTILITIES PROVIDED FROM THE LOWER ROAD, AND A 25-FOOT SETBACK REQUIRED FROM THE PAVEMENT OF THE EXISTING UPPER ROAD. Comm. Ross stated for the record that he had voted for the motion, but he did not think that this Board should accept poor subdivision design.

2. The Board discussed an application by Gloria Pariseau for a variance from subdivision road grade specifications, and an application for a preliminary subdivision plat for a subdivision at Toad Hall on the Franklin Road. The Zoning Administrator reviewed the conditions that the Planning Board had recommended--the maximum of five lots and the 16% built-upon--and reported that they had been incorporated into the preliminary plat submitted, as had the concerns of the Town Engineer.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. CAVENDER, AND CARRIED TO APPROVE THE VARIANCE, CONDITIONED UPON A MAXIMUM OF FIVE LOTS AND 16% BUILT-UPON AS INDICATED IN THE PRELIMINARY PLAT. Comm. Ross recused himself due to financial interest.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE PRELIMINARY SUBDIVISION PLAT AS SUBMITTED FOR SEQUOYAH POINT SUBDIVISION. Comm. Ross again recused himself due to financial interest.

3. Three sealed informal bids on paving had been received pursuant to advertisement, and they were opened and read by the Mayor as follows:

HMC Paving & Construction Co. Inc.....\$110,148.00  
Rhodes Brothers Paving Inc.....112,720.53  
APAC Carolina Inc.....124,033.74

MOVED BY COMM. PATTERSON, SECONDED BY COMM. SANDERS, AND UNANIMOUSLY CARRIED TO AWARD THE PAVING CONTRACT TO THE LOWEST QUALIFIED BIDDER, CONTINGENT ON REVIEW BY THE TOWN ENGINEER.

4. Each Board member had been mailed a copy of the draft Three-Year Update to the Solid Waste Management Plan for Macon County, the Town of Franklin, and the Town of Highlands, on March 27, 2003. The Town Administrator briefly reviewed the plan with the Board.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AN UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING RESOLUTION:

**A RESOLUTION APPROVING  
THE MACON COUNTY SOLID WASTE MANAGEMENT PLAN UPDATE**

**WHEREAS**, G. S. §130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to develop a ten-year Comprehensive Solid Waste Management Plan, and to update said plan every three years; and

**WHEREAS**, the Town of Highlands adopted a resolution on June 18, 1997, approving the ten-year Macon County Comprehensive Solid Waste Management Plan, and is now required to update said plan; and

**WHEREAS**, Macon County has prepared an update to said plan, based on information provided by the Town of Highlands, and the Board of Commissioners has had the opportunity to review it.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Commissioners of the Town of Highlands hereby approves the three-year update to the Macon County Comprehensive Solid Waste Management Plan.

This resolution is adopted this 16th day of April, 2003.

VI. There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 8:55 p.m.

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Richard Betz, Town Clerk