

PUBLIC HEARING and REGULAR BOARD MEETING of September 3, 2003, with Mayor Buck Trott and Commissioners H. N. James, Hank Ross, Mike Cavender, and Amy Patterson present.

Also present were Richard Betz, Lamar Nix, Larry Gantenbein, Selwyn Chalker, Cindy Sprouse, Kim Lewicki, Jim Jordan, Bill Bassham, Farrel Zehr, Edna Foster, Shane Griffin, Bob Wright, Bob Tietze, Dennis DeWolf, Alan Marsh, Rick & Helene Siegel, Barbara Werder, Kitty Byers, Lewis Doggett, Doris Long, Jim Mullen, and many others.

A. PUBLIC HEARING.

The Mayor called the Public Hearing to order at 7:00 p.m. The purpose of the hearing was to receive comments on a petition to amend the Zoning Map to change the zoning designation of the Main Street Inn property from B-2 Commercial to B-1 Commercial. The hearing had been duly advertized for this time and place. The Mayor asked for a show of hands from those who were in favor of the petition; most of those in the room raised their hands. He then opened the hearing up to comments.

Edna Foster said that she would very much like to see the property re-zoned so that it could operate the way it needs to be operated.

The restaurant had been serving wonderful meals since 1924; the current owners had renovated the building and were continuing that tradition. She also understood that a D.O.T. parking study had found that parking was not a problem.

Kitty Byers said that she had eaten at the Phelps House in her teens, and pointed out that it had offered decades of service to the public; she asked the Board to consider the re-zoning in order to restore that service.

Doris Long said that the building was part of the Town's heritage, and she hated to see it slip through our fingers.

Bob Tietze said that the building was a charming place, and he felt that it needed to be preserved as an inn on Main Street.

Jim Muller spoke in favor of continuing the use as Ms. Thurmond had operated it; he also did not see parking as an issue.

Alan Marsh said that the Planning Board had not objected to the restaurant itself; it had objected to the zoning change, which he said some had considered "spot zoning." The Board had also questioned how others could be turned down if this was granted.

Lewis Doggett said that the Planning Board had been concerned with parking; if the property was re-zoned, whatever use was made of it in the future would have the same rights, and another user might need much more parking. He also said the Board had felt there ought to be a compelling reason for the zoning change; the property owners had bought the Inn knowing the zoning laws. He also said that the Planning Board would like the opportunity to look at the entire block rather than one individual property.

There being no further comments, the Mayor closed the public hearing at 7:11 p.m.

B. REGULAR BOARD MEETING.

I. Call to Order.

The Mayor called the Regular Board Meeting to order at 7:11 p.m.

II. Approval of Agenda.

The Mayor reported that the Highlands Historical Society had requested that the consideration of sewer connection fees for the old Prince House, the only item under Old Business, be deferred.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE AGENDA AS AMENDED.

III. Approval of Minutes.

Copies of the minutes of the August 20 Regular Board Meeting Had been distributed by mail.

Comm. Cavender remembered that, during the discussion about Bowery Road on page 148, District Engineer Brian Burch had stated that the Town would have to specifically approve the expenditure of Small Urban Funds and would have the opportunity of reviewing the plans at that time for the improvements on the road; he asked that the minutes be amended accordingly.

MOVED BY COMM. JAMES, SECONDED BY COMM. CAVENDER, AND UNANIMOUSLY CARRIED TO APPROVE THE MINUTES AS AMENDED.

IV. Reports.

1. The Mayor reported that several merchants in Town had asked that September 18 be proclaimed Highlands Historical Society Day; a percent of sales would be voluntarily contributed to the Society by participating merchants.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO PROCLAIM SEPTEMBER 18 HIGHLANDS HISTORICAL SOCIETY DAY.

The Mayor also reported that he and the Town Administrator had delivered the resolution adopted at the last meeting in opposition to the closing of the Russell Bridge on US-28 at a public meeting at Satolah Fire Station last week; a similar letter from the Macon County Board of Commissioners had also been delivered. The meeting had been attended by 110 people and a petition containing 500 signatures had been submitted.

The Mayor also reported that the Highlands Chamber of Commerce had agreed to observe Halloween and hold the annual trick-or-treat celebration on Main Street on Thursday, October 30.

2. Each Board member had received a copy of the Public Services Administrator's written report for the month. Lamar Nix reported that the Water Department was working on the items identified in the Inflow & Infiltration (I&I) study recently. He also said that the Water Treatment Plant was having excellent success with the use of a new polymer in the pre-clarifier, which allowed filters to work more efficiently in both high-turbidity and low-turbidity conditions.

3. Each Board member had received a copy of the Police Chief's written report for the month; Jerry Cook was not present, but the Mayor reviewed the report. He said that the Department had completed combat firing last week and all officers had scored in the high 90's. The Department had also held a rapid response training exercise at Highlands School in August, and had been training in the FATS program. He also reported that Parking Enforcement Officer Ryan Angel had become certified as a full-time officer.

4. Each Board member had received a copy of the Recreation Director's report for the month; Selwyn Chalker was present and reviewed the report. He said that the Recreation Committee had met, as requested at the August 6 meeting, and recommended denying the request from the Highlands Recreational Tennis Group to install memorial bricks. He also reported that work would begin on refurbishing the swimming pool next week.

5. Each Board member had received a copy of the Town Planner/Zoning Administrator's report for the month; Larry Gantenbein was present and reviewed the report. He reported that the Planning Board had recommended amending the regulations in the Highlands Code on

construction noise; the Board agreed by consensus to place the amendment of the Code on the agenda of the September 17 meeting. He also reported that he had received one proposal from Marketek for conducting a population study; Benchmark, the other firm contacted, had withdrawn from the RFP process due to a reorganization and consequent inability to take on any work. The proposal indicated that the study could begin within ten days of signing an agreement, and would be completed within three months; the cost was \$18,500, but could be reduced depending on how much information the Town had already accumulated. Mr. Gantenbein suggested that the firm be contacted and requested to provide more precise information on the amount of the cost reduction due to Town contribution.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO APPROVE THE CONTRACT.

6. Each Board member had received a copy of the Treasurer's Report for the month. The Town Administrator reported that the new auditing firm was working on the audit this week and the process was going well.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ACCEPT THE TREASURER'S REPORT.

7. The Town Administrator reported that he had received a copy of a letter dated September 3 from Richard Melvin to Town Attorney Bill Coward, stating that the defendants in the Edwards case will submit to the jury verdict and consent to entry of the Town's proposed judgement, without appeal, provided that each party pay its own costs.

He also reported that he had contacted and written to Kendall Hobson concerning the deed restrictions on the Town's water tank lot on Satulah Mountain, as requested at the last meeting; he had not yet received a reply.

He also reported that he had received a letter dated August 27 from David Rohrer, Shelter Manager for the Red Cross Disaster shelter at the Peggy Crosby Center. The Board of the Crosby Center had informed him that they would begin charging rent for storage space for the shelter, amounting to \$1,020 per year, and he had asked if the Town had the funds to maintain the shelter. The Board agreed by consensus that it did not have such funds; Comm. James pointed out that the Town had provided \$20,000 in funding to the Crosby Center this year, and felt that the Crosby Center should be written a letter reminding them of this.

V. New Business.

1. The Board considered a petition for re-zoning of the Main Street Inn property from B-2 to B-1 Business, subject of a public hearing immediately preceding the meeting.

Lewis Doggett said that, as a private citizen, he would love to see the Inn operated, but as a member of the Planning Board, his decisions were sometimes not the same as his private opinions.

Jim Jordan thanked the Board for its willingness to consider the issue from all sides; he said he hoped the Town would look at the request as a positive one which would preserve the viability of the Main Street Inn. He pointed out that the request involved support for the Inn in terms of Land Use rather than any major changes. He then discussed some of the issues which had been raised during the public hearing. He felt that there was some confusion about spot zoning, and he said that this was not an instance of spot zoning as defined by the law since the property was contiguous to the B-1 District. He also said that nothing in the law required that a full block be re-zoned, and in fact an older statute no longer in effect would have given this property the right to be rezoned since it was opposite two corners zoned B-1. He also did not think that the law required a compelling reason; a re-zoning was based on the best and most appropriate use of the property, and the standard was thus a

good reason, not a compelling one. He also did not think that another way could be found to permit operation of the restaurant; he pointed out that the law favored conforming uses and intended the phasing out of non-conforming uses, and continuing a non-conforming use meant continuing uncertainty. He said that getting the zoning right would ultimately be in everyone's interest. He also agreed that the D.O.T. parking study had found that parking was not a problem at this location. He pointed out that the site itself was self-limiting with respect to keeping the use as it is now, and said that there was no potential for a 500-seat restaurant. Finally, with respect to setting a precedent, he thought the Board could consider each request on its own merit, and he did not feel that there would be a domino effect for the whole block.

Comm. James asked if "conditional zoning" was legal; he pointed out that the owners may sell the property next year, and could cover the parking areas with more buildings. Mr. Jordan again said he felt the site was self-limiting, and that Planning approval would be required for any new construction. He assured the Board that, while he could not guarantee it, there was no present intention other than to operate the Inn as it was now being operated.

Comm. Cavender asked if the Inn had been licensed as a restaurant at the time the current owners purchased it, and if service had been limited to Inn guests only. Mr. Jordan replied that it had been, but he pointed out that the definition of a restaurant in the Zoning Ordinance did not differentiate between serving inn guests and serving the public. He said that anyone who asks for a re-zoning knows what the existing zoning is, and he pointed out that his client was not requesting a variance. He also referred to a Rocky Mount case which he felt was analogous to this one.

The Mayor then asked Zoning Administrator Larry Gantenbein to elaborate on the limitations of the site. Mr. Gantenbein said that the Inn was licensed for 40 seats, but that he had actually counted 48 seats earlier in the day. Mr. Jordan admitted that this was an oversight and would be corrected. Mr. Gantenbein said that, if the property was re-zoned to B-1 Business, the guest rooms would become non-conforming and would be limited in number and size. As far as expanding the restaurant seating, the building probably did not exceed either the 70% built-upon requirement or the 1:1 ratio of building to lot required in the B-1 District; it thus appeared that they had some room left for expansion, but not a whole lot. He also pointed out that any addition would have to be approved by the Zoning Board through a Special Use Permit. With respect to parking, he felt that noon lunch service would add to congestion on Main Street, but there was still adequate parking on side streets in the area.

Comm. Ross asked if perhaps the Board should consider a new zoning district, which would recognize historic buildings.

Comm. Cavender recommended deferring the petition pending the Planning Board immediately beginning a review of the Land Use Plan, beginning with commercial districts and including a comprehensive review of appropriate uses; he did not feel that there was any point in waiting until after the election when there were issues that needed to be addressed now and there was a good Planning Board. and he felt that otherwise this would be an example of piecemeal zoning. He said he would like to see the restaurant permitted ultimately, but that it was not right to zone property according to personality. He also felt the Board should give credence to the Planning Board recommendation.

Comm. Patterson said she felt this property was another old Inn, just like the others on Main Street, which had been overlooked in the process when the B-1 District had been established; it was contiguous to the B-1 District, and it was obvious that the owners wanted to operate it as an Inn.

Comm. Ross said he felt the restaurant should be there, but said again that he would like to see a change in zoning to allow historic uses in historic districts. He did not see any problem with the

B-1 District jumping a street, however, and he felt that the Board could deal with other petitions when they come.

MOVED BY COMM. PATTERSON, SECONDED BY COMM. JAMES, AND CARRIED TO RE-ZONING THE PROPERTY FROM B-2 TO B-1. Comms. Patterson, James, and Ross voted "aye;" Comm. Cavender voted "nay," commenting that he was not opposed to the outcome, just the procedure.

2. Each Board member had received a package of information from the First Presbyterian Church, requesting the Board to consider a revocable license agreement for a wooden awning to be installed at a new street-level entrance on Church Street, and also a handicapped parking/drop-off area on Church Street.

MOVED BY COMM. JAMES, SECONDED BY COMM. CAVENDER, TO APPROVE BOTH REQUESTS.

Comm. Patterson said that she saw no reason to break a rule that permanent structures not be allowed in the right-of-way. She pointed out that the Thomas Craig building had been constructed with a recessed entry that was set back into the property; she did not understand why the Church should not be required to do something similar. Comm. James said that he had no problem with the request subject to a revocable license agreement; the Board had permitted a stone wall, for example, at the Mountain High Motel several years ago.

Bob Wright said that the purpose of the request was to provide an all-weather, street-level entrance for both the Church and for the general public, and not to cause any controversy. He had understood that this was the route to take for approval for the awning, but said that the Church could consider constructing a canvas awning if necessary, which would require no permit. He also said that the handicapped parking/ drop-off area had been reviewed by the Street Committee, and its recommendations had been incorporated into the design. He pointed out that there was no handicapped space on Church Street at present; the proposal would be a way of both providing handicapped access and also beautifying the street. He also said that there were no plans for changing the slope at the parking spaces.

Comm. James agreed to amend his motion. Comm. Ross asked if he could be excused from voting on the issue because he had been involved in the design of the Highlands Community Child Development Center for the Church. The consensus of the Board was that this was not a conflict and he should not be excused.

MOVED BY COMM. JAMES, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE HANDICAPPED PARKING DROP-OFF AREA PURSUANT TO THE PLAN SUBMITTED, BUT NOT THE COVERED ENTRYWAY.

3. MOVED BY COMM. CAVENDER, SECONDED BY COMM. JAMES, AND UNANIMOUSLY CARRIED TO ADOPT THE FOLLOWING RESOLUTION:

**RESOLUTION
SUPPORTING THE EXPENDITURE OF SMALL URBAN FUNDS
FOR THE CONSTRUCTION OF TURN LANES AT BUCK CREEK ROAD
AND THE ENTRANCE OF HIGHLANDS-CASHIERS HOSPITAL
BY THE N. C. DEPARTMENT OF TRANSPORTATION**

WHEREAS, there is a recognized need for turn lanes off US-64 at Buck Creek Road and the entrance of Highlands-Cashiers Hospital in order to improve the public safety; and

WHEREAS, said turn lanes have often been requested by officials from Macon County and Highlands-Cashiers Hospital, and the Town of Highlands also supports this project; and

WHEREAS, it would be desirable to complete construction of these turn lanes prior to the paving of

US-64 scheduled for 2004, and it appears that these projects could be completed before then by using Small Urban Funds allocated to this Division.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the Town of Highlands hereby supports the expenditure of Small Urban Funds for the purpose of constructing turn lanes at Buck Creek Road and the entrance of Highlands-Cashiers Hospital.

This resolution is adopted this 3rd day of September, 2003.

4. Shane Griffin, a landscape architect from Planters Inc., was present to review proposed streetscape plans for the new Boardroom Building, part of the Old Edwards Inn project, located on the site of the old Christmas Tree Shop on South Fourth Street north of Church Street. He submitted plans for ground-level landscaping on Fourth Street, and also for window boxes attached to balconies on the second story. He said that the old Christmas Tree Shop had extended into the right-of-way between two and four feet, but that the new building would be located on the property line; he was requesting consideration of landscaping in that area, which he understood would be in keeping with the Town's streetscape and also permit a six-foot sidewalk. The flower boxes would be added to new balconies, and also to existing balconies which were scheduled to be removed and strengthened; they would extend one foot into the right-of-way.

Larry Gantenbein expressed some concerns as Zoning Administrator. He said that if the Town had the opportunity to make the sidewalk wider than six feet, he felt the Board should consider it. At the same time, the Board now permitted benches to be located on sidewalks, provided there was six feet of clearance.

Comm. James felt that the Planning Board should review the request, since they would be meeting next Monday to discuss streetscapes. He also raised some questions about the accuracy of the plans submitted and the location of the property line.

MOVED BY COMM. JAMES, SECONDED BY COMM. ROSS, AND UNANIMOUSLY CARRIED TO TAKE UNDER ADVISEMENT THE REQUEST FOR THE GROUND-LEVEL LANDSCAPING, ASK THE PLANNING BOARD TO REVIEW IT ALONG WITH ITS REVIEW OF STREETSAPES, AND CONFIRM THE LOCATION OF THE PROPERTY LINES SHOWN ON THE PLAN.

MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO APPROVE THE REQUEST FOR REPLACING THE EXISTING BALCONIES AND ADDING THE FLOWER BOXES TO THEM AND TO THE NEW BALCONIES, PURSUANT TO THE PLANS SUBMITTED.

VI. MOVED BY COMM. CAVENDER, SECONDED BY COMM. PATTERSON, AND UNANIMOUSLY CARRIED TO ADJOURN.

There being no further business to come before the Board, the meeting was declared adjourned by the Mayor at 8:50 p.m.

Richard Betz, Town Clerk