

MINUTES OF THE
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS
February 25, 2016
THURSDAY, 3:00 P.M., CITY HALL

MEMBERS PRESENT

Joe Waggoner
Kenny Maples
Jack Miller Jr.
Ron Smith

MEMBERS ABSENT

Cyndi Bowling

OTHERS PRESENT

Carol Muszik
Donna Cantrell
Juli Neil, Mountain Press

Staff Representatives: David Ball, City Planner
Gerri Lawall, Executive Secretary

Chairman Waggoner called the meeting to order at 3:00 P.M. The minutes of the January 28, 2016 meeting were unanimously approved following a motion by Mr. Kenny Maples, and a second by Mr. Ron Smith.

Petitions and Communications from the Public

There were no petitions or communications from the public.

Staff Report

There was nothing for Staff to report.

Old Business

There was no old business

New Business

Review and consideration of a request for “Ziplines Family Adventure,” located at 222 Savage Gardens Road, Zoned C-2, requested by Carol Muszik.

After reading the request, Mr. Joe Waggoner asked the applicant, Ms. Carol Muszik, to explain to the Board the nature of her request, as it was not apparent on the Review Request application. Ms. Muszik then explained that her question was whether or not the car was truly a foreign or ornate object, which was determined by the EDRB and then denied by the EDRB. Ms. Muszik then added that she was then issued a citation by the City for not obtaining a building permit for the car. Ms. Muszik stated that she was under the impression that because this was an interchangeable element of the course, she was not required to obtain a building permit as it should be covered under the permit obtained in 2009 for the Course itself. Ms. Muszik stated that she was told that she only needed a permit for something added if it was located on the ground. Ms. Muszik stated that after being cited for not having a permit, she did apply for a permit for the car and even submitted engineering reports showing that the car was structurally sound, but the City denied the permit based on the fact that it had been denied by the EDRB. Ms. Muszik then noted that in her opinion the EDRB denied the car only because they did not like the color, and if it had been a brown or less noticeable color, we probably would not be needing to hear this before this board.

Ms. Muszik then proceeded to question the authority of the EDRB board and if they have the ability to deny a permit. Ms. Muszik then stated that the car was not meant to attract attention like a foreign ornate object would do, as you cannot see it until you had already purchased the ticket and were on the Course. So her question for the Board was two-fold: Can the EDRB determine that this is a foreign ornate object, when it is just an interchangeable element of the course, and did she even need a permit for this element?

Staff then explained that the EDRB did not deny the permit. It was denied by the City. Staff also asked Ms. Muszik who told her she did not need a permit, and she replied that he, Mr. Ball, had told her that. Staff then replied that Staff's response related to whether the zipline platforms required Planning Commission review and that any structures added to the course would need a permit. Staff also stated that the City does in fact have the right to deny a permit based on EDRB disapproval.

Mr. Kenny Maples then noted that in reviewing the minutes of the MBZA meeting previously held at Ms. Muszik's request, the denial was based on there not being a hardship. And there still is not a hardship demonstrated with this request. If the request was to appeal the decision of the EDRB, then his opinion is that this Board does not have the right to overstep another Board's decision – it can only apply hardships to determine proper interpretations of zoning ordinance.

Mr. Joe Waggoner then asked if this request was to appeal the fact that they rejected her appeal the first time.

Ms. Muszik then replied that she still did not believe that the EDRB should have designated the car as an "ornate foreign object," because it is an element of the course, without the intention of drawing attention. In her opinion, the City made an error in classifying it as an "ornate foreign object," and that as an element of the course, it should be included in the 2009 permit.

Staff replied that once a permit is issued, when the construction is complete, there is a final letter or a certificate of occupancy issued, and at that point, the permit is closed. Any changes or renovations would require another permit.

Staff explained to the Board that in addition to the normal requests they review for variances to the Municipal Code, they can also be requested to perform an administrative review to determine whether Staff was correct in a particular interpretation or application of the Ordinance. He also noted that due to outstanding legal proceedings occurring regarding this same issue, it may be appropriate to table this request or have Ms. Muszik complete a new request with more details regarding what specifically she wants the Board to review.

Mr. Jack Miller then asked if it seemed like we were going in the direction of Ms. Muszik needing to request an administrative review, and Mr. Kenny Maples agreed.

Mr. Jack Miller then asked if Ms. Muszik had a permit to put the car up. Ms. Muszik again stated that she did not believe she needed a permit, as it was not on the ground and that, as an element of the Course, it was included in the permit from 2009.

Mr. Kenny Maples then asked Staff about whether this car would be deemed a structure, and Staff answered that anything that is attached to something which is attached to the ground is, in fact, considered a structure.

Mr. Kenny Maples then noted that there is a grey area surrounding the car in question, as it is actually located front and center by the sign, not in the middle of the course. Ms. Muszik then replied that all this was happening because the car was yellow, and the EDRB deemed it not appropriate to the surroundings and had it been a different color, then it would not have been denied.

Mr. Kenny Maples added that they would require Staff to provide more information on the definition of structures, and also noted that the previous request to this Board was denied due to no hardship demonstrated.

Mr. Joe Waggoner asked Staff that if they tabled the request, could Staff do some additional research and obtain some information on the original amusement ride permit from the State. Mr. Waggoner also stated that they would need a specific request from Ms. Muszik, as they could not be trying to guess what she was asking them to review.

Mr., Kenny Maples then made a motion to deny this request, with the recommendation that Ms. Muszik submit a new Request for Review specifically outlining what she was asking the Board to Review. Mr. Jack Miller seconded the request, and all members voted "Aye," passing the motion.

Unscheduled Items

Ms. Donna Cantrell was present to review a potential request to the Board for feedback. Ms. Cantrell had been hired by First Tennessee Bank to record an "as built" plat for 22 sites located in Hemlock Hills PUD for title purposes. Ms. Cantrell noted that upon surveying the lots, lots 2 and 3 had elements that had encroached on the peripheral setback and each would potentially need a variance request. Ms. Cantrell further noted that at this time, the bank needed to record a plat to enable closing on the other sites. Ms. Cantrell noted that this plat would need to be recorded with a reference subject to a variance approval from the City of Gatlinburg on lots 2 and 3, and the client wanted to make sure that a variance was possible so the plat in question could be recorded.

Mr. Joe Waggoner said that with a quick look, there does not appear that this potential request would pose much of an issue, and Mr. Kenny Maples agreed. Staff explained that it would be up to Ms. Cantrell to submit the request for review and to get notification to the surrounding property owners.

Mr. Joe Waggoner then asked if the area was surrounded by woods, and Ms. Cantrell confirmed that it was, and the property line follows the watershed. Staff also noted that if a variance was granted, that the 3' encroachment inside this PUD would still be further away than the 15' setback allowance if these lots were separate and not part of a subdivision.

Adjournment

The meeting was unanimously adjourned at approximately 3:44 p.m. after a motion by Mr. Kenny Maples and a second by Mr. Jack Miller, Jr.

Approved by:

MBZA CHAIRMAN

DATE