

MINUTES OF THE
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS
January 28, 2016
THURSDAY, 3:00 P.M., CITY HALL

MEMBERS PRESENT

Kenny Maples
Jack Miller Jr.
Cyndi Bowling
Joe Waggoner
Ron Smith

MEMBERS ABSENT

OTHERS PRESENT

Stephen Kircher
Henry Byma
Wayne Kline
Bruce Cantrell
James Tomiczek
Jim Coykendall
Logan Coykendall
Randy Watson
Jack Maples
Allen Barker
Brian J Jensen
Jay Defoe
Carol Muszik
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 October 22, 2015 meeting were unanimously approved with the correction made that Joe Waggoner be listed as present following a motion by Mr. Ron Smith, and a second by Mr. Jack Miller.

Petitions and Communications from the Public

Staff Report

Old Business

New Business

Review and consideration for a proposed variance from Article VIII of the Municipal Zoning Ordinance, being the “Area, Yard and Height Requirements,” for the “Gatlinburg SkyLift,” located at 765 Parkway, Tax Map 126K, Group D, Parcels 21 and 22.01, C-1 and C-2 Zones, requested by Boyne USA, Inc.

Staff explained to the board that the request consists of height variances for two (2) commercial Planned Unit Development attraction elements, for the “Gatlinburg SkyLift” located at 765

Parkway. Two of the attractions, an 800' long zipline and a 670' long pedestrian cable bridge, are in excess of the current height restrictions of the property. The zipline is proposed at 187' above the ground at its highest point and the pedestrian cable bridge structure is proposed at 147' above the ground at the highest point. The project is located in a C-2 (General Business) District which has a maximum height limitation of 84'. The Municipal Zoning Ordinance establishes the height limitations for each district under Article VIII (see attached). In Article V, Section 507, the ordinance states, "No building or structure shall hereafter be erected or altered so as to exceed the height limit ...than are required or specified in the regulations herein for the district in which it is located." While these elements are not buildings, they are considered structures as defined in Article III, Section 330 (see attached). Because of these facts, the requestors had only 2 options: lower the height of the attractions or request a height variance. Due to the topography and the nature of the projects, they elected to request a height variance for the elements.

Mr. Stephen Kircher was present explained that they had purchased the property over 4 years ago and they had done extensive research during that time to find the most suitable use of the property. He noted that the plan they are proposing is the best use of the natural attributes of the area and was the least invasive of the possible uses and attractions they had considered. Even with the severe terrain slopes, they could have gone with alternative attractions or elements not requiring any variances, but those would do more harm and would require more changes to the natural surroundings than the two elements they are requiring height variances for. He noted that the adjacent business, Gatlinburg Inn, was agreeable to the plans and supported the project.

Mr. Hank Byma then made a presentation of the proposed project. He explained to the board that they do an extensive analysis on projects, including various neighborhood and vegetation impact studies, climate, wind and sun. With this project, their goal was to provide an opportunity for the SkyLift riders to stay at the top and enjoy the natural terrain and surrounding nature. The project is comprised of many natural elements, including a ropes course, a boardwalk system among the trees, and the Cable Bridge and Zipline. The Cable Bridge and Zipline are the only two elements that require a height variance. He also noted that the project includes selective clearing of trees and vegetation and that they will, in fact, do some additional native planting to help offset whatever small portions they may need to clear for key structural components of the attractions.

Mr. Byma then presented the Zipline. The Zipline is requiring the largest of the variances, as it is 187' above the ground. He then explained that the ravine in which the Zipline spans is completely vegetated and has a grade of over 30%. The treetops are right below the 84' allowable height, so if they constrained the height to the allowable footage, they would be forced to take the tops off of trees to give enough clearance for the attraction. He then also explained that even though this is the highest element, it is not above the horizon line, as the ridge line that Campbell Lead Rd follows is behind and above it.

The Cable Bridge was then presented by Mr. Byma. He explained that it is 147' above the ground at its highest point and again will not be above the ridge line. The key attraction to the SkyLift is to admire the view. The Cable Bridge and Zip Line will put the people above the trees to get the view. Mr. Byma then explained that because the key point of these attractions is to have people enjoy the natural surroundings, the intent is to make all of the elements of this attraction out of sustainable materials that will blend more with the surroundings. Although the Cable Bridge will require lighting for safety reasons at dusk and at dawn, they plan to design the feature so the lighting will not be visible from any point outside of the bridge, as it will be there for safety reasons and not to draw attention to the attraction.

Mr Byma then went through several views from various points throughout the city, demonstrating where the attractions would be and determining that the attractions would not be highly visible, and if they were, they would not detract from the mountain side. Staff informed the Board that this particular area would be considered Hillside Overlay District and would be reviewed by the Planning Commission. That is why these particular views were chosen.

Mr. Kenny Maples asked Mr. Byma to confirm that the average grade was greater than 30%, which Mr. Byma did confirm. Mr. Maples also asked to verify that if the 187' above the ground, it will require a 103' variance from the already allowed 84' so they were asking for a 103' variance, which again Mr. Byma agreed with.

Chairman Waggoner then asked Mr. Byma if he was absolutely certain that 103' was all that would be needed due to the give and takes of engineering. This was confirmed by Mr Byma.

At this point, Chairman Waggoner asked if there were any questions from the public. Mr. Wayne Kline, an attorney with Hodges, Doughty, and Carson, asked to address the Board on behalf of Atlantic Land Co. He stated that his clients were in opposition to the variance, and he then presented the Board and Staff with a handout and requested that it be made part of the public record and meeting minutes. Mr. Kline then explained that his clients felt that the attractions will be a scar on the mountain and that the cable bridge, at the length of 2.5 football fields and with the proposed height variance, will definitely be visible to various points throughout the city. Mr. Kline further noted that the bridge will be massive enough to hold 600 people. Mr. Kline stated that variances are usually granted based on hardship and he felt that the requestors had not demonstrated any physical hardship but merely made a development presentation. Chairman Waggoner then asked if the yellow line that was used to represent the Cable Bridge on the printout that was provided by Mr. Kline was in correct proportion and scale. Mr. Kline then stated that it was not in proportion and was merely drawn in to show where the bridge would be located on the property. Mr. Kline then stated that there is a safety issue with the bridge, as it is only 4' wide, not allowing for emergency vehicles if needed, and that it will sway in the wind. Mr. Kline then stated that there will have to be lighting for safety issues at night and that it will be an advertisement and highly visible for miles. Mr. Kline also commented that the bridge is well above the 60' Hillside Overlay District height limits. Staff then explained that the 60' Hillside Overlay District (HOD) limit was the bench mark to establish whether or not the overlay district provisions applied to a property. Staff noted that if a portion of property was located 60' above the listed Scenic Land Resources of Significance (SLRS's), then the HOD provisions would be applicable to any development that occurred above those elevations.

Ms. Cyndi Bowling then stated that there was a mistake in their printout, as the height variance on the Cable Bridge is 147' – not 177' as is noted on the handout. Mr. Kline agreed there was a misprint on the handout.

Mr. Kenny Maples then asked if the requested variances already accounted for the 30' sag that the attractions naturally had. Mr. Byma then confirmed that it was in fact included in the variance. Mr. Kircher then explained that this is the least invasive of all of the options for the property with the least effect on the surroundings. Staff then stated that Mr. Kline's point with regard to establishing a physical hardship for a variance was relevant to the Board and stated that the applicants should speak to that particular point. Staff also noted that the applicants had prestopography was an issue with this property and that the ravine and steepness was the hardship.

Mr. Kenny Maples then asked staff to confirm that average slope of 30% or greater has historically been the threshold used to determine hardship when considering variances. Staff confirmed that 30% has traditionally been that "magic number," or threshold to demonstrate hardship.

Mr. Joe Waggoner then asked again if 103' was enough, and Mr. Byma said, let's make it 105' just to be safe.

Chairman Waggoner then asked again if there were any more questions from the Board or from the Public. Mr. Jay Defoe then asked if they did grant this variance, what precedent would be set for other requests. Chairman Waggoner then stated it was his opinion that this was a unique situation, and that the Board faces this every time a variance is requested. Each request represents a one situation exception. Mr. Kenny Maples then stated that he agreed and that he does not believe in precedents as it relates to these requests.

Kenny Maples then stated that due to the average slope being greater than 30%, which is the threshold by the Board to consider variances, there has been a hardship demonstrated, and because the proposed use is less invasive than other possible developments, he was making the motion to grant the variances requested.

Mr. Bruce Cantrell then stated that the ground creates the hardship and it cannot be the hardship. He explained that the bridge and abutments could be lowered, not requiring such a high variance.

The motion presented by Mr. Maples was then seconded by Mr. Jack Miller, Jr, and it passed unanimously with all members voting "Aye".

Unscheduled Items

There were no unscheduled items presented.

Adjournment

The meeting was unanimously adjourned at approximately 4:10 p.m. after a motion by Mr. Ron Smith and a second by Mr. Kenny Maples.

Approved by:

MBZA CHAIRMAN

DATE