

MINUTES OF THE  
GATLINBURG BOARD OF APPEALS  
SPECIAL CALL MEETING  
April 28, 2015

MEMBERS PRESENT

Mitch Ayers  
David Hadden  
Garry Shultz  
David Ogle  
Mike Smelcer

MEMBERS ABSENT

OTHERS PRESENT

Guy Wantiez

STAFF REPRESENTATIVES

David Ball, Building & Planning Director  
Jay Horner, Building Official

The Gatlinburg Board of Appeals met in a special called meeting on April 28, 2015 at 1230 East Parkway, Gatlinburg City Hall. Chairperson Garry Shultz called the meeting to order at 3:00 P. M. The minutes of the previous meeting of February 25, 2014, were approved on a motion by Mr. Mike Smelcer and a second by Mr. Mitch Ayers, with all members voting aye.

PETITIONS AND COMMUNICATIONS FROM THE PUBLIC

None

STAFF REPORT

Building and Planning Director welcomed the newest Board Member, Mr. David Ray Ogle.

OLD BUSINESS

None

NEW BUSINESS

**6 a) Review and consideration for a proposed variance from the Gatlinburg Storm Water Ordinance, Section 8, being the “Stream-side Buffer” requirements, for “Silverbell Parkway, LLC,” Development, located at the intersection of Parkway and Cherokee Orchard Road, C-1 Zone, requested by Civil & Environmental Consultants, Inc.**

Staff stated that the applicant is requesting a variance from the buffer requirements of the Storm Water Ordinance, “Section 8(1)(a),” requiring certain water quality buffers for both during construction and post construction conditions, for the proposed redevelopment of the property which adjoins “Baskins Creek” (see attached Exhibit A). Staff pointed out that the adopted

ordinance currently requires a 60' buffer zone for sites that contain or are adjacent to a receiving streams designated as impaired or exceptional waters (see attached requirements). Staff noted that the receiving stream "Baskins Creek," has been designated as an impaired stream. Staff also stated that the applicant is requesting a 60' variance from the 60' requirement, leaving a zero (0) buffer area.

Staff stated that the site engineer, Mr. Guy Wantiez, with CEC, Inc., has provided site information as well as a written description of the request (see attached Exhibit B). Staff also stated that Mr. Wantiez has indicated that the existing developed conditions of the property significantly impact the buffer zone which preceded the adoption of the Storm Water Ordinances. Staff further stated that Mr. Wantiez has indicated that the proposed development will improve site conditions as it relates to direct site runoff into Baskins Creek and reduce impervious surfaces within the buffer area. Staff finally stated that the engineer has provided maps of the existing and proposed conditions of the property indicating the areas where buffers will be improved (Exhibit C) and where the buffer will be decreased (Exhibit D).

Staff pointed out that Under "Section 8(b)" the current adopted Storm Water Ordinance provides for the ability to obtain a buffer variance provided mitigation measures are at least as protective as the undisturbed buffer. Staff stated that in this instance, the undisturbed buffer area does not exist due to the developed conditions of the site. Staff also stated that the project Engineer has indicated that the proposed development will improve the conditions by reducing the direct surface runoff from the site into Baskins Creek. Staff added that in "Section 11 – Appeals" the Storm Water Ordinance further authorizes the Board to consider and approve variances from the Ordinance provisions when the applicant can demonstrate to the satisfaction of the Board that the variance will not lead to any of the following conditions:

- (a) Deterioration of existing culverts, bridges, dams and other structures;
- (b) Degradation of biological functions or habitat;
- (c) Accelerated stream bank or streambed erosion or siltation;
- (d) Increased threat of flood damage to public health, life and property.

Staff stated that based on the technical information from the design engineer and state and federal permitting of the proposed site improvements, it does not appear that the aforementioned conditions will occur as a result of this variance.

Chairman Garry Shultz asked staff to explain about the impaired stream and/or exceptional waters and the buffer zone. Staff began to explain the definitions and then Mr. Guy Wantiez, with CEC, who was present explained the definitions. Staff read the definition of "buffer" from the Storm Water Ordinance to the Board. Mr. Guy Wantiez further explained that the TDEC Representative, Mr. Bob Fullwood had been contacted about the issue and explained that sites with existing developments already located in closed proximity to a stream are considered to have no undisturbed buffer zone and therefore the requirements to maintain a buffer zone would not be applicable in the redevelopment of the property. Staff noted however, that even though the State

may not require a buffer zone that the locally adopted Storm Water Ordinance did stipulate a buffer zone for all new and redevelopments and therefore the reason for a variance request. Staff read the buffer requirements for the Board of Appeals. Mr. Wantiez explained that they have had to check with TDEC, TVA and the Army Corp of Engineers when working around the waters of the state. Mr. Wantiez added that all of the above mentioned governing bodies had approved the plan submitted. Mr. Wantiez explained the reasoning he had requested a zero buffer zone and requested that if the Board chose to approve the request that the variance be specifically attached to the approved site plan. Mr. Wantiez further noted that by attaching the approval to the specific site plan, the encroachment locations would be better illustrated as opposed to granting a broad a 5 ft. buffer variance that would possibly result in everything being built to within 5 feet of the stream. Mr. Wantiez showed the Board two (2) site plans, one existing and one proposed.

The Board inquired as to how the proposed plan is an improvement over the existing conditions and if the area was quantified to determine if the area had increased. Mr. Wantiez explained that upon removal of the existing structures the proposed development would provide more linear buffer zone area adjoining the stream than what currently exists. Mr. Wantiez noted that it appeared that approximately 130 linear feet of area would be provided versus the current conditions where no buffer zone exists. Mr. Mike Smelcer made the motion to approve the appeal. Staff stated that more discussion ensued and Chairman Garry Shultz asked about the future and the Board and staff need to establish a way to prove that the "Silverbell Partners Project," is improving the conditions and not making them worse.

Both Staff and Mr. Wantiez explained that the buffer zone along Baskins Creek would be widened by reducing the buffer zone. Staff stated that the consensus of the Board is to set a standard to go by with some type of proof that what is proposed will not make things worse but, will keep the buffer the same or better.

Mr. Dave Hadden seconded the motion to approve after Mr. Wantiez stated that the proposal is to improve 130 linear feet but not 40 linear feet, and all Board members voted aye.

Mr. Mike Smelcer stated that based upon the decrease of run-off water and that 130 feet is improved and 40 feet was not improved.

#### UNSCHEDULED ITEMS

None

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ADJOURNMENT

With no further business to come before the Board, Mr. Mitch Ayers made a motion to adjourn. Mr. David Ogle provided a second and by a unanimous vote the meeting was adjourned at 4:07 P.M.

**Approved:**

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**BOA Chairman**

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**Date**