

MINUTES OF THE
GATLINBURG MUNICIPAL BOARD OF ZONING APPEALS
May 26, 2016
THURSDAY, 3:00 P.M., CITY HALL

MEMBERS PRESENT

Joe Waggoner
Kenny Maples
Cyndi Bowling

MEMBERS ABSENT

Ron Smith
Jack Miller, Jr.

OTHERS PRESENT

Carol Muszik
Taylor Forrester
Lora Boatman

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 March 24, 2016 meeting were unanimously approved following a motion by Mr. Kenny Maples and a second by Ms. Cyndi Bowling.

Petitions and Communications from the Public

There were no petitions or communications from the public.

Staff Report

Staff explained that there was an additional memo that was faxed to our office from Ms. Carol Muszik's attorney relating to item 6(a) that was not included in the packets. Staff then distributed the memo to the Board members.

Old Business

There was no old business

New Business

Review of an administrative interpretation of Article III - Definitions, "Other Ornate/Foreign Object," and Article IV, Section 412, being the "Super Graphics & Other Ornate/Foreign Objects," provisions of the Municipal Zoning Ordinance, for "Ziplines Family Adventure," located at 222 Savage Gardens Road, Zoned C-2, requested by Carol Muszik. Staff presented the request for a review of Staff's interpretation of an "Other Ornate/Foreign Object," and the application of said interpretation to the element (yellow corvette) located on the property at 222 Savage Gardens Road. Staff explained that Ms. Carol Muszik had indicated on her Request for Review that the element should not have been classified as an Ornate Foreign Object, requiring review by the Environmental Design Review Board on April 23, 2015, and that the subsequent building permit application should not have been denied based on the EDRB's denial. Staff went on to remind the Board that EDRB's decision was upheld by the Municipal Board of Zoning Appeal.

Mr. Taylor Forrester, attorney with Long, Ragsdale and Waters, presented Ms. Muszik's position that the building permit should not have been denied as the Corvette was an element of the course, and not an Ornate Foreign Object. Several exhibits were also given to the Board to help support the argument.

A lengthy discussion occurred regarding the need for a Building Permit, and Staff explained that even though the zipline itself was inspected by the State as an Amusement Ride, the City would still require a permit for any additional structures added to the Course to ensure that the ziplines were being inspected by the State and were structurally sound and safe. Staff noted that for additional platforms, the Building Official would also require engineered drawings to show how they are attached to the trees and to ensure they are safe and secure.

Ms. Muszik then explained that after it was determined a permit was required, an application was submitted to the City, which was denied based solely on the interpretation of the element as an ornate foreign object and the subsequent denial by the EDRB, not for zoning or any other factors that are looked at when a Building Permit application is processed.

Mr. Forrester presented the argument that the "Other Ornate Foreign Object" Section of the Gatlinburg Municipal Zoning Ordinance did not apply to the element, because the object is not a sign. Mr. Forrester added that in review of the zoning ordinance the "Other Ornate Foreign Object" section is found in the sign ordinance provisions. Mr. Forrester argued that the element was not a sign and therefore Section 412 is not applicable. Staff noted that the Sign Ordinance provisions of the Zoning Ordinance are in Section 411 not section 412. Staff further noted that the element was not reviewed by Staff as a sign but specifically as an object under the provision of Section 412. Ms. Muszik then noted that the Corvette was 1 of 27 elements of the course, and that it was not intended to attract customers, as a customer needs a ticket to actually get to the Corvette, Ms. Muszik further indicated that the element was yellow, again not to attract attention, but because of the idea of a yellow corvette and it was designed as a photo opportunity to customers enjoying the course, overlooking the City of Gatlinburg.

Staff informed the Board that if they did feel that the Building and Planning Department erred in classifying the Corvette as an Ornate Foreign Object, then the Department would then go back and look at the Building Permit Application.

After the Exhibits were presented by Mr. Forrester, Mr. Kenny Maples made the motion that the City operated correctly in the belief that this element was an ornate foreign object. Staff then asked Mr. Maples to state his motion again in order to insure it was correctly recorded. Mr. Maples restated his motion that the City correctly interpreted that this was an ornate foreign object. Ms. Cyndi Bowling seconded the motion and all members voted "Aye," passing the motion.

Review and consideration of a proposed replacement of an emergency services radio communications tower for the City of Gatlinburg and Sevier County E-911, located at 1393 Ski View Drive, being Tax Map 136, Parcel 1.00, requested by Chief Randy Brackins.

Staff presented the request by the Sevier County E-911 for review and approval to replace an existing 100' emergency services radio communications tower with a 180' tower. Staff went on to explain that the request was being made under the provisions of Article XIV - Wireless Telecommunication Towers and Antennas provisions of the Municipal Zoning Ordinance, and that

towers in excess of 150' must be reviewed by the Municipal Board of Zoning Appeals. Staff noted that Article XIV, Section 1412 - Exception of Height, and subsection (a), (1), (A) & (B) stipulates that applicants for Towers between 150' and 200' to provide evidence that the tower be owned by a person who will operate and locate one or more antenna(s) upon the tower and that the person actually plans to operate one or more antenna(s) on the tower, and that person must obtain a letter of intent from at least one other person who will also utilize the tower for the location and operation of one or more antenna(s).

Staff confirmed that there would be several antennas located on this Tower, providing emergency assistance communications for all the Cities and County Emergency Services, and the additional height is a result of Federal separation requirements for the multiple antennas. Staff explained that the site currently has the existing 100' Tower, as well as an adjoining 180' media tower, and the proposed tower would be located in approximately the same footprint location as the existing emergency radio communications tower, Staff then noted that even though the new tower would be visible, the tower is necessary to provide adequate emergency services communications between the various entities throughout the County, and the additional height needed is necessary to meet the antenna separation requirements of the FCC.

Ms. Cyndi Bowling made the motion to approve the Tower as presented. Mr. Kenny Maples provided the second, and the motion passed with all members voting "Aye."

Unscheduled Items

Adjournment

The meeting was unanimously adjourned at approximately 4:30 p.m. after a motion by Mr. Kenny Maples, and a second by Ms. Cyndi Bowling.

Approved by:

MBZA CHAIRMAN

DATE