



## **City of Mount Airy Board of Adjustment Meeting Minutes**

June 21, 2016 – 5:30 PM  
First Floor Conference Room, City Hall  
300 S. Main Street – Mount Airy, NC 27030

*Members Present:* Elizabeth Martin, Chair  
Rawley King  
Tim Devore  
Carlos Mabry  
Sharon Gates  
Rixie Gordon  
Roscoe Easter  
Mary Botkin  
Luke Morrison

*Member Absent:* Mark King

*Staff Present:* Andy Goodall, Jr., CZO  
Nicki Brame  
Hugh Campbell, City Attorney

*Guest(s):* Greg Bell  
Jonathan Bell  
Suzanne Lewis Brown  
Kathleen McCullough  
Commissioner Shirley Brinkley

### **I. Call to Order**

Chairwoman Martin called the meeting to order at 5:30 PM.

### **II. Determination of a Quorum**

With nine (9) members present, Chairwoman Martin determined there was a quorum.

### **III. Approval of Agenda**

Chairwoman Martin asked the Commission for a motion to approve the amended agenda that includes the swearing in of Luke Morrison. Ms. Botkin made a motion to approve. Ms. Gates seconded the motion, which passed unanimously (9-0).

### **IV. Swearing in of New Member**

Luke Morrison was sworn in as the newest member of the Zoning Board of Adjustment.

### **V. Board of Adjustment Cases**

#### **1. 2016-CUP-01**

*Mr. Gregory Bell of the Grand Pup Hotel and Resort has submitted a Conditional Use Permit application to permit the opening of an indoor animal kennel (pet hotel) at 259 N. Main St. The property is more specifically identified as parcel 5020-11-75-0138.*

Before the hearing began, Chairwoman Martin stated the following: 'All parties who plan to testify in this case shall come forward to be sworn in. Those who testify must state their name and address at the podium for the benefit of the Board's clerk. All material presented must be presented to the clerk and will become part of the record. This Board can only accept sworn testimony, no hearsay evidence is admissible.'

Ms. Brame swears in Mr. Gregory Bell of the Grand Pup Resort and Planning Director Andy Goodall.

City Attorney Hugh Campbell then addressed the Board to define 'conflicts of interest' for the benefit of the applicant and the members of the Board and to ensure that every permutation of what a conflict of interest could be is covered. After Mr. Campbell went through the list of possible conflicts of interest, no conflicts were identified and the case was allowed to proceed.

Mr. Goodall began by going over the basics of the case, including the site and situation of the property. That applicant, he continued, would like to open up a hotel and spa for pets (an 'indoor animal kennel' per the ordinance). Mr. Bell approached staff in the spring to apply for a zoning text amendment to allow this particular use in the downtown zoning district, and the text amendment was approved as a conditional use, first by the Planning Board and then by the Board of Commissioners.

This particular case, he continued, is also subject to additional requirements including, but not limited to, the maximum number of animals allowed, soundproofing, outdoor exercise area, and separation from residential uses and other kennels.

Mr. Goodall then reviewed the check off list provided to the Board showing that each one of the special requirements of the ordinance has been met by the applicant. Notices were mailed to all surrounding property owners, the applicant, and a public meeting sign was placed in the storefront.

Before the Board is allowed to vote on the outcome on the case, he continued, the Board of Adjustment will need to adopt the following five (5) findings of fact:

1. *The use requested is among those listed as an eligible conditional use in the district in which the subject property is located.*
2. *The conditional use will not materially endanger the public health or safety if located where proposed and development according to the plan as proposed.*
3. *The conditional use meets all required conditions and specifications.*
4. *The conditional use will not substantially injure the value of adjoining or abutting property or that the use is a public nuisance.*
5. *The location and character of the conditional use, if developed according to the plan as proposed, will be in harmony in the area in which is it to be located and in general conformity of the plan or development of the city and its environs.*

If the Board finds any of the aforementioned facts to be “no”, than the conditional use permit cannot be awarded to the applicant.

Mr. Goodall passed out pictures that show what the inside of the animal hotel looks like, including pictures of the size of the rooms and type on insulation being used to ensure that the building is soundproofed. He also reviewed the site plan for the required outdoor exercise area. Examples of the landscaping materials were also provided, as well as the required 8 ft. tall fence.

Additionally, he states, the new ordinance had several separation distances that must be met. Mr. Goodall goes over the requirements and notes that all separation distances are met by the applicant.

Mr. Easter asked Mr. Goodall about parking at the subject property. Mr. Goodall responded that it is a private parking lot and the applicant may do with it what they wish. He added that the design of the exercise area was laid out in a way to maximize parking on the bottom lot.

Mr. Gordon asked who would be in charge with looking after this property to make sure that it is built to specifications. Mr. Goodall responded that Planning Staff will keep an eye on the project to make sure it is built to the requirements set forth in the ordinance.

Mr. Devore asked Mr. Goodall whether or not R-19 insulation is appropriate for soundproofing. Mr. Goodall responded by stating that the insulation is being placed in the ceiling and that the walls are solid brick and soundproofed to the maximum extent feasible.

Before Mr. Bell was allowed to address the Board, City Attorney Hugh Campbell had three questions for Mr. Goodall:

1. ‘For the record have you, Mr. Goodall, reviewed the application?’ Mr. Goodall answered in the affirmative
2. ‘Do you find it to be complete in all material respects?’ Mr. Goodall answered in the affirmative.
3. ‘Is there anything that you would like to introduce as evidence?’ Mr. Goodall wished to submit the staff report and pictures.

There was no objection by the Board to this request.

Mr. Bell then addressed the Board by providing some background information about the Bark & Meow Company. The building has 7,500 sq. ft. and gave him enough room to have his dream pet resort. He also addressed concerns regarding soundproofing in the building, and described the look and feel of each pet hotel suite.

In respect to the play area, he described it as a place for the hotel guests to go out, do their business, and come back in. They (pets) will never be unleashed or allowed to run around. There will also, he continued, never be more than one pet in that space unless they were from the same family. His company is also working out an agreement with the Homeowners Association for Spencer's Lofts and Renfro Lofts to join in efforts to help maintain the park and allow residents to use the park as needed.

Mr. King asked Mr. Bell if he had previously owned a business on N. Main St. Mr. Bell answered yes, that he started his business at the location (806 N. Main St.) but the building was condemned by the police and fire department. The owner of the building failed to maintain it properly, so that caused the reason for the move. Mr. Mabry asked if there will be grass in the park. Mr. Bell answered in the affirmative, that it would be maintained immaculately by him and likened the space to a putting green.

City Attorney asked Mr. Bell if he would like to submit any additional evidence. Mr. Bell stated that he would not. With there being no other questions or comments, no one speaking in opposition, and no cross-examination, the Board closed the hearing.

Chairwoman Martin proceeded to read the Findings of Fact:

1. *The use requested is among those listed as an eligible conditional use in the district in which the subject property is located.* Mr. Goodall confirmed that the use requested is eligible. Chairwoman Martin entertained a motion that the preceding finding of fact is a 'yes' from all Board members. All members voted 'yes'.
2. *The conditional use will not materially endanger the public health or safety if located where proposed and developed according to the plan as proposed.* Motion was made to accept the applicant's response by Mr. Devore. Motion was seconded by Mr. King, which passed unanimously (9-0 yes).
3. *The conditional use meets all required conditions and specifications.* Motion was made to accept the applicant's response by Mr. Devore. Motion was seconded by Mr. Morrison, which passed unanimously (9-0 yes).
4. *The conditional use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity.* Motion was made to accept the applicant's response by Mr. Devore. Motion was seconded by Mr. Mabry, which passed unanimously (9-0 yes).
5. *The location and character of the conditional use, if developed according to the plan as proposed, will be in harmony with the area in which is it to be located and in general conformity with the plan of development of the city and its environs.* Mr. King made a motion to accept the applicant's response. Motion was seconded by Ms. Botkin, which passed unanimously (9-0 yes).

Following the Findings of Fact, Mr. Goodall then read the following statement to the Board regarding the granting of a conditional use permit:

*'In granting a conditional use permit, the Board of Adjustment may impose such additional restrictions and requirements upon such a permit as it may deem necessary or that the purpose and intent of this ordinance are served, public welfare secured, and substantial justice done. While requirements and additions are accepted by the applicant, the Board of Adjustment shall authorize of the issuance of the Conditional Use Permit, otherwise the permit shall be denied. Any Conditional Use Permit so authorized shall be perpetually binding upon the property included in such permit unless subsequently changed or amended by the Board as provided for in Article 12 of the City of Mount Airy's Zoning Ordinance.*

He continued by stating that Planning Staff does not recommend any other conditions to be met due to the thoroughness of the existing requirements already in place. He informed the Board that they may, if they so choose, approve the Conditional Use Permit as submitted. Mr. Devore makes a motion to approve the Conditional Use Permit as stated. Ms. Gates seconded the motion, which passed unanimously (9-0).

## **2. 2016-BOA-01**

*Ms. Suzanne Lewis Brown has submitted an appeal in the nature of certiorari of the decision made by the Historic Preservation Commission on March 16, 2016 denying a Certificate of Appropriateness to allow a circular driveway at 501 S. Main Street. The property is more specifically identified as parcel 5020-16-83-4545.*

Before the hearing began, Chairwoman Martin asks City Attorney Hugh Campbell to provide a rundown of this particular case. He states that the Board will go through the same analysis about impermissible contact but asked them to change focus since this is a different type of hearing than what they had previously heard. He then described the process of a Conditional Use Permit case and how a case like that might be appealed if the Board had of voted against the applicant. As far as this hearing, the Board of Adjustment is the appellate body charged with reviewing the record from the Historic Preservation Commission meeting to see if there is a reason to reverse their decision against the applicant. He continued by stating the Board may allow additional evidence to be added to the record. Generally speaking, he continued, the Board is limited in your decision making in only considering what in is in the record that has been developed.

With there being no questions, Mr. Campbell went through the list of potential conflicts of interest, no Board member stated that they had a fixed opinion, there was no ex parte communication with the applicant or interested party, no board member has a business or professional relationship with any party related to the outcome of this case or any financial interest. For the record, no conflicts were identified and the case was allowed to proceed.

Mr. Goodall talked about additional evidence stating that Ms. Brown submitted a letter from her doctor that was not submitted to the Historic Preservation Commission but was submitted as part of the appeal, as well as past medical records. One Board member asked what the additional information is relevant to the BOA if the Historic Preservation Commission did not

see it. Mr. Campbell stated that it is up to the Board as to whether or not they would like to supplement the record with evidence that may have been available to the Historic Preservation Commission had she been able to attend the initial hearing.

In reference to allowing Ms. Lewis Brown to speak on this appeal, Mr. Easter made a motion to let Ms. Lewis Brown speak. Mr. Mabry seconded the motion, which passed unanimously (9-0).

Before being sworn in, Mr. Campbell asked Ms. Lewis Brown whether or not she would like to testify to the documents provided to the Board. She replied in the negative. Ms. Nicki Brame then swore Ms. Lewis Brown in.

Ms. Lewis Brown then asked permission to address the Board. Chairwoman Martin allowed her to proceed. Ms. Lewis Brown then began to give the Board background about her life, growing up in Mount Airy, and her desire to come back after retirement to open a bed and breakfast. Once she found out that a house she knew well from her childhood was in foreclosure, she submitted an offer on the house located on N. Main St. She then proceeded to discuss the poor condition of the house after she purchased it. She also stated that she was in very good health when the home was purchased, but fell after re-plastering the ceiling and fractured both knees. Accordingly, she required a double knee replacement. She then showed the Board the types of medical devices she must wear during the day and while she sleeps. It has, she stated, changed her life incredibly. She cannot walk, because of the steel pin, except on a very level, straight surface. Loose gravel is dangerous to walk on and she cannot go up and down a ramp because of the permanent steel rod in her leg.

She desperately needs, she continued, a circular drive to accommodate her disability because it negates the need of having to back out of a driveway. The rear, because of the steps and condition of the concrete, is also inaccessible due to her condition.

She stated that Larry Combs, Mitch Williams, and Will Linville all took a look at the proposed driveway and said not even the trees would need to be taken out to accomplish the driveway, and that she would, of course, be responsible for the cost of curb cuts on the sidewalks that would be needed.

She purchased the home for \$109,000 and invested another \$100,000 into the home. If this cannot be done so that she is able to get in and out of the house, she stated that she might have to sell the property. Her ultimate goal is to move back to Mount Airy full-time after she sells her home in Chapel Hill. Ms. Lewis Brown informed the Board that she also has a fused neck due to a hit and run accident that occurred in the eighties. This, she commented, severely limits her ability to turn her neck and back out of parking spaces.

After Ms. Lewis Brown was finished with her testimony, Chairwoman Martin entertained a motion to accept this additional evidence to the record. Mr. Easter made a motion to accept additional evidence. Mr. King seconded the motion, which passed unanimously (9-0). The record shall be amended to include that additional information.

The floor was opened for questions.

Mr. Devore asked whether or not the operation and subsequent handicap requires her business to be ADA (Americans with Disabilities Act) compliant. Ms. Lewis Brown answered 'no', that her Bed and Breakfast did not have enough rooms.

Chairwoman Martin asked how, if Ms. Lewis Brown can't walk very far and cannot utilize a ramp, she would be able to get in and out of the house with the existing steps at the front porch. She stated that she can pull up to the steps and utilize her front steps with minimal issues because they are deep and short and easy for her to traverse.

Mr. Morrison asked Ms. Lewis Brown how long her team of medical professionals expects her to have physical limitations. Ms. Lewis Brown stated that she will get stronger muscles as time progresses, but the damage and limitations to her legs is permanent.

Mr. Devore asks counsel for clarification about the decision making of the Board of Adjustment. Mr. Campbell stated that it involves determining whether or not there was competent evidence produced at the previous hearing to support the conclusion made by the HPC. Mr. Devore contended that since we (the Board) have allowed this evidence in, would it not make sense to send it back to the HPC with additional evidence? If that was done, would that make a difference in their decision making? Mr. Campbell informed him that he would wait to answer those questions until the conclusion of the hearing.

City Attorney Hugh Campbell asked Ms. Lewis Brown whether or not the drawings of the home with the house and circular driveway were professionally done. She stated that one was completed by an architect and the other by Planning Staff. Mr. Campbell added that he was wondering if there were any scaled drawings that would inform the Board as to the amount of impervious surface that would be added by the drive and how much would stay grassed and landscaped. She stated she did speak to a couple paving companies that stated they would be able to construct what she was wanting without disturbing existing landscaping.

She went on to state that she read the minutes from the Historic Preservation Commission meeting concerning her case and that there were a lot of things in those minutes that were simply not true regarding previous injuries or chasing a garbage truck down the street.

Mr. Mabry asked if the car would be parked in the driveway at all times. Ms. Lewis Brown stated that she hoped to hire part time help that could move her car out to the street or behind the property on occasion.

Mr. Easter asked if the drive would be concrete or asphalt, and it was his determination is that it would have to be in concrete to stay similar to the sidewalk and other drive. Gravel, Ms. Lewis Brown contended, was not possible because she uses a walker and that she got quotes for both asphalt and concrete.

Mr. Goodall gave a brief overview of how we arrived at this meeting. The COA application was submitted on March 10 with the HPC meeting on 16<sup>th</sup> of the same month. The Historic Preservation Commission reviewed the application and the design guidelines for the district. The request was denied but also found findings of fact. Mr. Goodall then read the findings of fact from the Historic Preservation Commission's meeting for this case that were used to deny the application. The motion was made, seconded and passed unanimously. The Certificate of

Appropriateness was then denied. However, the HPC also made a third motion that Ms. Lewis Brown work with Planning Staff to develop alternatives that would work within the confines of the historic district design guidelines. None worked for the applicant. In May, she appealed the decision of the HPC.

Mr. Goodall also submitted a drawing from Doug Hooker Paving and Grading which the Board may choose to place into record as evidence. The drawing is not to scale. Mr. Campbell asked Mr. Lewis Brown if she would like to submit it as evidence, and agreed to allow it to be included in the record with no objections.

Mr. Easter stated that Ms. Lewis Brown should get a scaled drawing by someone who is capable professionally and sent back to the HPC. Mr. Easter stated that he feels that would be fair to everyone. He concedes that Ms. Lewis Brown has a large investment and health problems and needs to be taken into consideration.

Mr. Devore asked whether or not there is a provision in the HPC design guidelines that says there are considerations for disability. Mr. Goodall responded by saying yes, the HPC was given a handout that talked about giving health and safety considerations with historic properties.

Chairwoman entertained a motion to close the hearing. Mr. Gordon made the motion, which was seconded by Ms. Gates. Motion passed unanimously (9-0).

Counsel wanted to make sure that the Board understands the requirements with this case. It's a little bit out of sequence because there was additional testimony consistent with the record that had been developed. Legally, before you now sitting here is this appellate court to make sure there is adequate competent in the record to support the decision that was made by the HPC. The record now consisting of the documents that I understand the Board has reviewed beforehand, plus the supplemental information submitted tonight. Page 3, he continues, sets out the findings that the Board would make tonight. For example, number 1 if you conclude that there was a procedural error made by the HPC (proper notice was not given, etc., or evidence was excluded that should have been admitted, then you could send this hearing back to the HPC and allow them to correct that procedural error). Secondly, he continued, the Board may conclude that the HPC did not make appropriate findings of fact to allow you to review their decision and send it back to them to make additional, more detailed findings. The board may also decide that having reviewed the record, that there is not sufficient, competent evidence upon which they could have made their decision – essentially the HPC's decision was wrong and not supported by the evidence submitted and should be sent back to the HPC's decision was incorrect and order it to reverse its decision.

Lastly, he continued, the Board may also make the decision that the decision made by the HPC was based on competent evidence and consistent with the ordinance and affirm the decision made by the commission.

Mr. Devore made the motion to affirm the action of the HPC as it stands. Mr. King seconded the motion. There was no discussion. The motion passed (6-3).

**VI. Adjourn**

With there being no further discussion, the meeting was adjourned at 7:30PM by a motion made by Ms. Gates. Mr. Mabry seconded the motion, which passed unanimously (9-0).