Town of Indian Trail

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PLANNING AND DEVELOPMENT DEPARTMENT
BOARD OF ADJUSTMENT MINUTES
January 22, 2015
06:30 P.M.

Call to Order

Roll Call

The following members of the governing body were present:

Board Members:	Tripp Melton, Daniel Takah, Shirley Howe, Tim Rogers, and Patrick O'Connor.
Members Present but not Voting:	Dr. Shamir Ally.
Absent:	Christopher Chopelas, Robert Thurbon, and Keith Merritt-Town Attorney.
Staff Members:	Rox Burhans-Interim Planning Director, Kevin Icard-Sr. Planner, and Pam Good-Board Secretary

Approval of Minutes - December 17, 2014

Shirley Howe made a motion to approve Minutes of December 17, 2014, seconded by Patrick O'Connor. Board voted unanimously in favor of the motion.

Public Hearings- none scheduled for January .

Other Business-

a. Training

Staff Kevin Icard presented a training time for quasi-judicial hearings involving the board. He concentrated the board training on the topics of Special Use Permits and Variances.

1. SUP- Special exceptions to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards and procedures specified in the ordinance.

2. Variance-When practical difficulties or unnecessary hardships would result from carrying out the strict letter of the zoning ordinance (UDO), the board of adjustment may, in passing upon appeals, vary or modify any regulation or provision of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.

SUP- The Board must determine if public health safety and welfare are achieved for a use that may or may not be appropriate at a certain location.

- Major Home Occupations
- Accessory Structures (larger than 60%)

- Commercial Projects (potentially conflicting uses)

VARIANCE- The vote is if an unnecessary hardship would result from carrying out the strict letter of the law. Using the 5 provisions the Board will need to determine if a variance should be granted.
- Encroachments into Setbacks
- Signage Deviation

Member Melton asked for an example of a sign deviation. Staff Burhans stated that Sun Valley area doesn't allow message boards. Someone wanted to have a digital message board and the variance was denied. Staff Icard gave another example of a sign that needed a different height than the Town ordinance because it couldn't be seen. The person would apply for a Variance to have permission for a different height of the sign.

Member Howe asked about the case with frontier circle and asked if they sold the lot. Staff Icard answered that they were able to sell; they had to do a bit of maneuvering of the building. Member Howe also asked about the neighborhood petition brought forward in that case. She mentioned that the attorney had said it was acceptable as it hadn't been challenged by the applicant. Staff Icard stated that he would speak to that at a later time in his presentation.

Member Rogers asked for a clarification regarding SUP's and Variances; is a Variance only issued after an approved SUP. Staff Icard answered no; they are separate items.

Staff Icard spoke about the roles and responsibilities of various persons involved with the cases: including Staff, the Attorney, the Board, the Applicant, and the Opposition. He made a clear point that Staff is providing an unbiased report, not a recommendation, for the board to make a decision.

Discussion ensued whether a petition should have weight. Member Melton reflected on a recent case whether the board gives weight to a petition or just the person present and speaking in opposition. Chair Takah stated he didn't put much weight in petitions as someone could be persuaded into signing. When a person comes before the board with a petition, they need to ask questions such as if staff checked facts, the petition should be turned in at least 48 hrs previous to the meeting. The board was advised that they may ask the attorney for clarification at any time. The attorney is present at the meeting to help the board.

Staff Icard spoke about preparation before, during, and after the meeting.

Member Melton asked for more clarification why the members are not allowed a pre-meeting drive by of a location site for an applicant. Staff Icard answered that all members should be coming in with the same amount of information. He added that the board members are allowed to contact Staff after receiving packets if they have questions.

SUP Examples of Facts:
- -Impact Statement
- -Site Plan
- -Staff Report

Member Rogers asked when the members receive a site plan in their packet, does it mean it is within the bounds of the UDO. Staff Icard answered yes, but it may also have conditions that Staff is recommending if the board decides to approve the application. Staff has discussed the conditions with the applicant and they are aware of the suggested conditions.

Member Howe asked how Staff verifies petition evidence. Staff Icard replied that Staff would go through each one, going through tax records to verify names that are tied to the deed. Member Howe asked if the petition would need to be notarized to be valid as evidence. Staff Icard answered that it is not required but would be beneficial to the person that is presenting it.

Staff Burhans stated that Staff can ask Attorney Merritt what he advises Staff's role should be with petitions.

Discussion continued regarding petitions and what would need to be notarized as a notary can only verify the person present that is signing a document in front of them. The board will have to decide how much weight to give to such items, and think about the amount of hard evidence associated with it.

Discussion continued involving such items as photos brought to a case hearing.
Staff Burhans stated that items can be discussed among board members before the Findings of Fact.

If the Applicant doesn't like the decision of the board, they can appeal to the Superior Court.

Variance Examples of Facts:
- -Application
- -Site Plan
- -Staff Report
- -Testimony (with tangible evidence by an expert in their field)

Board needs to make sure the Applicant has the chance for a final rebuttal to anything that was said.

WORKSHEET- VARIANCE
Step One-
Is the property in town's jurisdiction.
Is the application complete.
Does the application comply with all the applicable requirements of this ordinance.
Step Two
Five findings of fact- board should open floor for discussion, and can ask Staff for clarification.
Chair will give the board approximately 90 seconds to write on their worksheet.
Motion and vote each item separately. Motion should be concise and complete.

WORKSHEET- SPECIAL USE PERMIT
Step One-
Is the application complete.
If the application complies with all the applicable requirements of the UDO (with conditions).
Step Two-
Open floor for discussion.
Chair gives board 90 seconds for writing in worksheets.
Motion and Vote on each Finding of Fact separately.

Staff Icard gave an example of why motions need to be clear and concise. An example was shown of an approval and an example of a denial. He also showed the board what the final documents look like that the Chair and Board Secretary sign. Each must include specific written reasons why an application is approved or denied. Denials are signed by the Applicant and Chair but are not recorded.

Member Rogers asked if applicants can appeal the denial. Staff Icard replied that the Applicant has 30 days to appeal.

Staff Icard concluded his presentation explaining that after the board approves and denies, there is still work by Staff to do to finish the process.

Member Howe asked the question when an appeal goes to court does the board have to appear.
Staff Icard answered that no board member has to go to court; attorneys will be involved and represent the parties.

In Conclusion:
- Prepare
- Ask questions
- Listen
- Think
- Slow down

Staff Icard reminded the board that the Board of Adjustment is the second most influential committee/ board behind the Town Council and the responsibility that entails.

Member Rogers asked how to address staff in regards to professionalism. Discussion followed. Staff gave the board the option of whichever method of addressing Staff that they preferred.

b. Request of Board/Expense Policy Application Request:
Motion to approve additional refreshments of water, coffee, and light snack by Member Rogers, seconded by Member O'Connor. Vote to approve was unanimous.

Adjournment
Member Melton made a motion to adjourn the meeting. Seconded by Member Rogers. The vote was unanimous in favor of the motion. Meeting adjourned.

Chairman: Daniel Takeah

Date: April 1 - 2015

Secretary: Pamela L Sood