

**TOWN OF BLACK MOUNTAIN
BOARD OF ADJUSTMENT**

The Black Mountain Board of Adjustment held its regular meeting on Thursday, October 19, 2023, at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Lauren Dodgin, Chair
Andy Homrich
Nicole Stallings, Alternate

Absent:

Larry Pearlman, Vice Chair
Ben Cooper
Chloe Riddle
John Hines, Alternate

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator

The meeting was called to order at 6:03 p.m. and duly constituted and opened for business with a quorum of two (2) regular members and one (1) alternate.

II. ADOPTION OF AGENDA

Andy Homrich made a motion to adopt the agenda as presented. The motion was approved by a vote of 3-0.

III. ADOPTION OF MINUTES

Andy Homrich made a motion to adopt the minutes of July 20, 2023, as written. The motion was approved by a vote of 3-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Special Use Permit Amendment Request for Sweet Birch Commons, LLC

Chair Lauren Dodgin read the opening statement. None of the board members had any exparte communications to express.

Jennifer Tipton swore in all people with standing and all persons wishing to speak.

Russell Cate gave a summary of the application. Jack Weaver, Sweet Birch Commons, LLC, is asking that the gate at the end of Sweet Birch Park Lane be changed from its current status of use only by emergency vehicles to be allowed to be used by the residents to access Meadowbrook Drive. The gate would be accessed by a lock or a remote. Mr. Cate read from the 2017 order of the original special use permit that the gate would be used for emergency vehicles and emergency use by residents. The order also stated that there are to be no construction vehicles on Meadowbrook Drive. Mr. Cate also went over three of the findings of facts from the 2017 order

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that spoke directly about the access. To date, the Town has received nine emails and/or memos from household is the Meadowbrook community opposed to the amendment and two from households in Sweet Birch Commons opposed to the amendment.

Jack Weaver, 118 White Oak Circle, said that while he is a member of Sweet Birch Commons, LLC, he was there on behalf of the residents who would like the gate to be opened for regular use. Mr. Weaver said that when the development was proposed five years ago, he did not have an issue about the construction traffic not using Meadowbrook Drive because they had to bring in a lot of fill dirt to raise the property of the floodplain. Mr. Weaver said that he was required to put in the road along with a drainage system that was not anticipated. The drainage system project was extensive and involved laying three hundred and sixty feet of pipe to connect to the Swannanoa River. Mr. Weaver said that the drainage system would not have been necessary without the road. Mr. Weaver said that he is uncomfortable with only one way in and out of the development but did build the road to the Town standards so that it can be petitioned in the future to potentially be taken over by the Town. Mr. Weaver spoke about the system development fees and taxes that are paid by the residents and thinks the road should be open with no gate. Mr. Weaver did an ad hoc vote at a homeowners' association meeting and access would only be by the residents of the development with a garage door opener type of remote. Delivery trucks would not be allowed to use the gate and there would be no through traffic except for the residents. There are twenty homes in phase three so it would be a minimum amount of traffic. Mr. Weaver said that some residents want the gate opened permanently but that it would be up the residents once he leaves the subdivision. Mr. Weaver said that he has used the same paving contractor that the Town uses and will have Public Works Director Jamey Matthews do a walk-through of the road before the final topcoat. The development does have to wait for one year after completion before they can petition the Town to take over the roads. Mr. Weaver said that currently the gate has an audible alarm and Knox box that the Fire Department has a key to. Mr. Weaver stated that there are sixty homes in the subdivision and each unit can park two cars in the driveway and also have a two-car garage. Mr. Weaver said that a lot of the residents are not full-time and that about 80-90% of the residents are over the age of sixty and there is only one child in the development. Mr. Weaver said that he does not anticipate that demographic to change.

Currently, if the gate were to be allowed for regular use, the residents of Sweet Birch could use Meadowbrook Drive, but the residents of Meadowbrook Drive could not use Sweet Birch Park Lane. If the roads in the development do become public, then the gate would have to be removed as public roads cannot be blocked off.

Amber and Stephen Ratliff, 102 Meadowbrook Drive, said that they were at the meeting representing the Meadowbrook Community. They presented a PowerPoint presentation for the board. The presentation included a neighborhood petition signed by the majority of the community opposing the requested amendment due to increased traffic that would impact safety of walk pedestrians, residents, and vehicles, add additional wear and tear to the current poor conditions of Meadowbrook Drive, and increase and contribute to general traffic safety. Currently, the Village of Cheshire Flats are also using Dogwood Drive and Lynch Cove Road to come down to NC 9 Hwy, already causing additional traffic through the neighborhood, and opening the gate would just increase that traffic even more. Dogwood Lane is a narrow road with a bridge and has the entrance to the Creekside Complex and walking trails. There is limited

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visibility and vegetation in the sight triangle at the intersection of Dogwood Lane, Meadowbrook Drive, and Lynch Cove Road. There is also a misalignment of Lynch Cove Road which causes confusion for some drivers. Meadowbrook Drive is listed as a dead-end street with a sign along with a sign for children at play. The neighbors felt assured that Sweet Birch would not be used as through traffic based on the order from the 2017 special use permit. The presentation also provided a comparison of Meadowbrook Drive and Sweet Birch Park Lane showing the difference in road widths and conditions. There are already a bunch of pedestrians who walk along Meadowbrook Drive, including residents of Sweet Birch. The presentation also spoke about an advertisement on Greybeard Realty's website that the development is advertised as having no through traffic. Mr. and Mrs. Ratliff concluded their presentation asking that the board vote no to the requested amendment to help preserve their neighborhood.

Jack Weaver, 118 White Oak Circle, said that he lives in the Meadowbrook neighborhood and drives that road every day and said that the neighbors are treating the road like it is a private road when it isn't and that children should not be playing in the road. Mr. Weaver said that the residents of Sweet Birch would like to be able to drive their car to the YMCA or the Creekside Complex and not always have to walk.

Stephen Ratliff, 102 Meadowbrook Drive, said that everyone was a kid once and played in the road at one time or another. Mr. Ratliff feels like the request is being asked for convenience and is overlooking the safety concerns.

John Boring, 562 Sweet Birch Park Lane, said that he lives in phase three of the development and feels that there have been valid points brought up. Mr. Boring said that there is a lot of traffic coming from Lynch Cove Road and feels that if the gate were to be opened, it would bring additional traffic through Sweet Birch for people trying to bypass NC 9 Hwy to get to US 70 Hwy. Mr. Boring said that traffic is especially heavy in the morning as people are heading to work and in the evenings as people are coming home from work and has seen both large trucks and small cars using the roads. Mr. Boring said that most of the residents are sixty and older and some are disabled and feels that most of the residents would use the main entrance onto Lakey Gap Road and only five to six residents would use the gate. Mr. Boring strongly encourages that the gate remain.

Michael Bates, 545 Sweet Birch Park Lane, said that he feels the gate fails its initial intent because the road in the development was block by a utility truck and no one was able to get in or out and would have caused an issue for emergency vehicles. Mr. Bates said that there is no guarantee that someone would have a key to unlock the gate. Mr. Bates said that if there were a dire emergency, it could be too late if the gate cannot be accessed. Mr. Bates feels that the Town has an obligation to protect all of the citizens.

Mike Tobias, 546 Sweet Birch Park Lane, is a retired fire chief of thirty-five years and said that most developments do require two means of ingress and egress. Mr. Tobias said that the Knox Box that is on the gate is a controlled key way and duplicate keys cannot be made. Mr. Tobias noted that the in the order from 2017, it does state that the gate is to be used by residents in an emergency situation and suggested that there could be another controlled key way daisy-chained to the Knox Box that could be accessed by the residents in an emergency situation. It

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would require that a person get out of their vehicle, open the gate, drive out, close the gate, and lock the gate back, and that would help limit the use and not it make it routine.

Bob Morrison, 601 Sugar Magnolia Place, said that he advocates for no gate and asked if there have been any other developments that have petitioned the Town to take over the roads. Mr. Morrison said that he has lived in the development for three years and feels that only the residents at the very end of the development would use the gate because there is really no benefit to going through the Meadowbrook neighborhood. Mr. Morrison said that he would be hard pressed as a taxpayer to limit access to a public road.

Mikey Nelson, 504 Sweet Birch Park Lane, said that he worries for the neighbors at the end of the development and asked if there are other neighborhoods or roads that have blocked off connecting streets. Mr. Nelson spoke about double locks that are used by Fire Departments and have a combination lock on the bottom and could be used by the residents to allow access of the gate as a secondary way out in an emergency. Mr. Nelson said he is in favor of removing the gate, but in the meantime, the issued could be easily resolved by the tumbler lock in conjunction with the Knox Box.

Stephen Ratliff, 102 Meadowbrook Drive, asked if two means of ingress and egress are required for subdivisions and that there could have been other alternatives, such as Blue Ridge Road. Mr. Ratliff said that the fire department is one mile down the road and they will cut the lock if they can't access the Knox Box.

Jack Weaver, 118 White Oak Circle, said that he could not get access to Blue Ridge Road as DOT would not allow it and it would have required deacceleration lanes and he was required to have the two means of ingress and egress.

Allen Burpeau, 102 White Oak Circle, said that he does not support the gate being opened and spoke about the minutes and the order from the 2017 special use permit hearing in that it was stated that the gate would not be opened at any time except for emergency use. Mr. Burpeau said that since that is what was promised and is in the order and the minutes, then it should be upheld. Mr. Burpeau said that the Town has a great 911 infrastructure and to call them in an emergency. Mr. Burpeau spoke about the developer building the road to Town standards to then force the Town's hand to remove the gate. Mr. Burpeau spoke about understanding the risk and rewards of the communities and that is they people have moved here, but then don't try to change it to what they had.

Michael Bates, 545 Sweet Birch Park Lane, spoke about emergency access and ADA compliance and that is not practical to have a lock, but a clicker would work and the gate needs to be accessible to all.

Mike Tobias, 546 Sweet Birch Park Lane, stated that the order also included that the gate could be used by residents in an emergency. Mr. Tobias said that while calling 911 is important, if the fire department is at minimum staffing and has a structure fire, then that is what they are going to focus on to save life and property, so the residents need to be able to access the gate in an emergency situation.

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Andy Homrich made a motion to go into recess at 7:45 p.m. The motion was approved by a vote of 3-0. The board discussed that any road could be obstructed and the Town has lots of small roads. They also discussed that the 2017 order does have a provision for residents to use the gate in the case of an emergency. The board also felt that it was unfair to the Meadowbrook community since they would not be able to use Sweet Birch Park Lane and the increased traffic would dramatically change the community. The board also noted that there has not been a change in conditions since the original order that would necessitate that the gate be opened or used on a regular basis. Andy Homrich made a motion to come out of recess at 7:56 p.m. The motion was approved by a vote of 3-0.

In closing statements, Jennifer Tipton just noted that the development having a gate does not make it a gated community and that the specific request is that the gate be allowed to be used on a regular basis.

Stephen Ratliff, 102 Meadowbrook Drive, said that they have shown where the Meadowbrook community stands and that it would be a dramatic impact to the neighborhood and that they would not have the same access through Sweet Birch.

Andy Homrich made a motion to close the evidentiary hearing. The motion was approved by a vote of 3-0.

Due to the original order having a provision for residents to use the gate in an emergency and having a remote or clicker is not in the spirit and intent of the order, Andy Homrich made a motion to deny the special use permit amendment. The motion was approved by a vote of 3-0.

VI. COMMUNICATION FROM BOARD OF ADJUSTMENT

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

With no further business, Chair Dodgin made a motion to adjourn the meeting at 8:01 p.m. The motion was approved by a vote of 3-0.

Prepared by:

Lauren Dodgin
Lauren Dodgin, Chair

Jennifer Tipton
Jennifer Tipton, Senior Admin

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