

Town of Mineral Springs
Town Hall
3506 S. Potter Road
Town Council
Public Hearings / Regular Meeting
February 8, 2018~ 7:30 PM

Minutes Draft

The Town Council of the Town of Mineral Springs, North Carolina, met in Public Hearings and Regular Session at the Mineral Springs Town Hall, Mineral Springs, North Carolina, at 7:30 p.m. on Thursday, February 8, 2018.

Present: Mayor Frederick Becker III, Mayor Pro Tem Bettylyn Krafft, Councilman Jerry Countryman, Councilwoman Janet Critz, Councilwoman Lundeen Cureton, Councilwoman Peggy Neill, Town Clerk/Zoning Administrator Vicky Brooks and Deputy Town Clerk/Tax Collector Janet Ridings.

Absent: Councilwoman Valerie Coffey and Attorney Bobby Griffin.

Visitors: Donald Gaddy, Alan Gardner, Elisa Holden, Kat, Lee, Constance Lemmond, Jim Muller, Kay Penniger, Roger Penniger and Carol Walser.

With a quorum present Mayor Frederick Becker called the Regular Town Council Meeting of February 8, 2018 to order at 7:33 p.m.

1. **Opening**

- Councilwoman Neill delivered the invocation.
- Pledge of Allegiance.

2. **Public Hearing – Conditional Use Permit – C17-01 - Holden**

- Mayor Becker welcomed the full house of guests and participants alike. Mayor Becker explained the first item of business was a public hearing on the Conditional Use Permit (C17-01) and the applicant is Ms. Holden.
- Mayor Becker opened the Conditional Use Permit Public Hearing at 7:35 p.m.
- Mayor Becker explained that he would need to swear in anybody who will be testifying (applicant, staff, other people) and he noted there was a handout in the back for anyone who would be participating. The Conditional Use Permit (CUP) is a quasi-judicial process and under that process witnesses are sworn in; it's not a normal legislative process where you just talk, you are actually sworn in. The council's ability to accept and consider testimony is dependent on the type of testimony; it needs to be evidentiary testimony, testimony by expert witnesses. Mayor Becker further explained when the council is looking to see if the CUP meets the Findings of Fact, the standards are much stricter on a CUP.
- Mayor Becker explained Councilwoman Krafft had indicated since she did hear this application as chairwoman of the planning board, because of the rules of the CUP, she has a lot of knowledge outside of what she is going to hear in this meeting and written exhibits that are submitted as exhibits, but Councilwoman Krafft has

participated and may also have formed an opinion on the matter since she has participated in either this discussion, the public hearing or the deliberation. Mayor Becker asked the council to make a motion to excuse Councilwoman Krafft from this process or ask that she recuse herself.

- **Councilwoman Critz** made a **motion** to excuse Councilwoman Krafft from the public hearing and the deliberation on the Conditional Use Permit (C17-01) and **Councilwoman Neill** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton, Krafft and Neill

Nays: None

- Mayor Becker asked whether Councilwoman Krafft needed to leave the room or if she could stay in the audience. Councilwoman Krafft did leave the council chambers.
- Mayor Becker swore in Zoning Administrator Vicky Brooks, Kay Penniger, Jim Muller, Elisa Holden and Carol Walser.
- Ms. Brooks noted the council had a conditional use permit in front of them this evening and as staff she would like to submit the Holden application as evidence in the hearing. Ms. Brooks noted she would also like to certify she had given notice to everyone that needed notice for this public hearing, the bulletin board has been advertised, the property has been advertised that this public hearing was going to take place. Ms. Brooks reiterated what Mayor Becker had stated, the only evidence the council can hear is going to be what is presented to them this evening. If the Holdens want to present more, that will have to go into our files. Mayor Becker commented “if you have written evidence that would be an exhibit that you would submit to the clerk”. Ms. Brooks continued if you have pictures or anything else that you want to submit. Ms. Brooks noted that she had pictures, but they didn’t have anything to do with the public hearing; they had to do with a complaint that she received, which is actually why we are here tonight. Mayor Becker asked if the complaint was unrelated to this application. Ms. Brooks responded that the application was because of a complaint that the town received, which is all in her staff report that she would also like to present as evidence this evening. Ms. Brooks asked Ms. Holden to present her case. Mayor Becker asked that Ms. Holden be the first up and give the council a summary of exactly what she was asking for in her application.
- Elisa Holden: *“I live at 6618 High Gap Road in Waxhaw, Mineral Springs. Am I supposed to go through the whole thing again?”* Mayor Becker responded, “what you feel this council needs in order to make a decision and for it to understand what your application is attempting to accomplish”. Ms. Holden *“okay, I understand. So, we purchased the house about a year and a half ago and it had a barn on the property that had an apartment in the barn. There was bathroom, half bathroom, toilet, shower, hot water heater, plumbing everything was there, electric, everything. The floors down and what not. When we bought the house, we renovated that space. We didn’t add any electrical, didn’t put in plumbing, didn’t do anything. We spoke with the neighbors next door to us and I think that is evidence as well. That barn was used for an apartment for the second owners of the house; their son lived there, and he had lived there for many years in that space. But, then there was another woman who owned the house prior to us that lived in the house*

five years, she never used that space so just over time it was like really gross, cobwebs and what not. So, we did sheet rock and insulation, floors, we left the windows were fine, but we didn't change the structure of it and there was a complaint I guess by my neighbor across the street asking if it was permitted or if it was allowed and I didn't know that we needed a permit from Mineral Springs. When we bought the house, we did the property survey and it came back that the barn structure was, I guess because it was Waxhaw at the time, it wasn't." Mayor Becker corrected Ms. Holden "it was Union County, there was no municipal jurisdiction". Ms. Holden continued "so anyway, we had the, we asked if it could be grandfathered in with the setbacks and what not. The lawyer pretty much handled that part of it and did have it grandfathered so when I purchased the house and after we moved in, I thought, I really didn't think I was doing anything wrong, is pretty much how that goes. My daughter lives there, we bought the house because my daughter was getting married, she is 22, she is a registered nurse and she just got married this past October and it was really for our children so that we could give them a place so that in two to three years they can purchase a home and stay in Union County. So, we are not charging them rent, there is no stove, they have dinner with us, there is no washer and dryer, there is just a sink. There is no laundry in the apartment, it is literally just what it was, upstairs is just a bedroom, half bath and the main floor is a kitchenette with a sink and cabinets and a little living room area. So, here we are, going forward, trying to get this permitted by Mineral Springs and about two weeks ago I started receiving some letters from Union County because the neighbor then went to the county and started complaining if I had permits, if I had this, if I had that but I've been on the phone and speaking with Tracy Colley at Environmental Health; they are coming out to do, to make sure the septic is up to par and I have also spoken several times to Mark Griffin because I got letters from him; he is very nice. He doesn't think that anything should be an issue since the barn has been there 20 years and we did not do any electrical or anything like that in the place. So, my application is in to Union County and that's where we are at". Mayor Becker reminded the council how these were done, as witnesses are testifying the council should not ask them questions until it is time for the deliberation, because the participants will remain under oath and therefore the council can ask questions of the participants at that time, unless there is something really pressing. Ms. Holden continued "so, that's pretty much it and when we bought the house there was no, you know, we bought it because we were not in a neighborhood, I came from St. John's Forest were we had you know the Home Owners Association and all that, this didn't have any of that, I just, two blocks and never given any rules or as far as I know there is no covenants or anything with, you know those two blocks and if there are I never received anything from anybody regarding those".

- Mayor Becker explained that was the summary and asked that Ms. Holden to make sure she was subject to questioning by the council. Ms. Brooks followed up by explaining the reason they were here tonight was for the "use" not the structures; the structures are in fact grandfathered (the barn is fine anyway). They had an issue with the setbacks on the house; it is grandfathered, because it existed when the town took over zoning. Ms. Brooks reiterated that the council should bear in mind the only thing they are considering tonight is the "use". Councilwoman Critz asked Ms. Brooks as the zoning administrator if she was verifying that the structure has no issue. Ms. Brooks responded not as far as the town goes; all that we are

trying to determine is can they have the “use” of an accessory apartment. Mayor Becker asked Ms. Brooks just for clarification, for example, if Union County who seems to Ms. Holden, is looking at some aspects of this that are out of our jurisdiction, if Union County says this septic is inadequate, that’s an issue between Union County and Ms. Holden, the town has no jurisdiction over things like that. Ms. Brooks responded that was correct. Mayor Becker added all we can determine is can we approve this use as an accessory apartment or not approve it based on our zoning ordinance. Ms. Brooks responded that’s correct and our zoning ordinance does allow an accessory apartment with a principal structure on a property and we can only base it on what our ordinance says, not everything else that is going on around it. Mayor Becker explained that puts it in perspective of what Mr. & Mrs. Holden want to do; our ordinance is compelling us to consider.

- Kay Penniger – 3010 Low Gap Road – Waxhaw, NC. *“There are actually covenants, the restricted covenants and I’ve been there for 31 ½ years. I was there right after the covenants were written up, there wasn’t a house built and we have abided by the covenants and far as I know what she is talking about is just an outbuilding. I never knew it was an apartment at any time and evidently neither did the other neighbor so that was never notified to any of the neighbors under the covenant. Here is what No. 1 in this covenant is:*

- 1. Each tract shall be used for residential purposes only, and no structure shall be erected, placed, altered or permitted to remain on any tract other than one detached, single family dwelling together with outbuildings customarily incidental to the residential use of each tract.*
- 2. No single-family dwelling, one-story in height, shall be erected and maintained on any of said tracts with the heated living area of less than 1,200 square feet.*

It’s not even supposed to be there as far as what the neighbors are concern with is, we don’t want people renting out stuff because if these people leave and it’s not their child what’s coming in after that and it’s just going to set off a firestorm with other people doing the same thing. Somebody is going to turn a garage into the same thing. It wasn’t meant to be that way and for all we knew that was an outbuilding, so I don’t know how that got past to start with; it shouldn’t have and so these are still in place for 30 consecutive years. ‘The covenants are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date the covenants are recorded, after which time, said covenants shall be extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.’ So, we’re in the consecutive 10 right now, it’s been over thirty (30) but that’s how it stands now so we didn’t know it was there and we thought it was an outbuilding. They are all supposed to match the house and stuff like that so if you make another single family, I mean there is one single family dwelling on the plot now and to do another one heated square feet, that’s out of the covenants and so we were concerned why was only one person in the neighborhood, the neighbors that found out about it and why were they the only ones notified because we have the covenants which she didn’t know about. But, here they are and Ms. Brooks has a copy”.

- Mayor Becker noted the covenants were entered as an exhibit.
- Roger Penniger – 3010 Low Gap Road – Waxhaw, NC. Mr. Penniger stated Ms. Penniger spoke for him too.
- Jim Muller – 3427 Buckboard Lane – Mineral Springs, NC. *“Good evening, I just came to speak on behalf of the planning board. I am a member of the planning board. We did review the request, we did review the application, we did review the plat maps and the setbacks and just wanted to clarify that the planning board did unanimously vote to recommend that the council pass this request based on the fact that the structure had been modified long before the Holdens had purchased it and we felt that it was not an impingement to any of the neighbors, there was no detriment to the neighbors or to the values of the properties. Thank you”.*
- Carol Walser – Low Gap Road. Ms. Walser declined to speak.
- Mayor Becker announced he was not going to close the public hearing, because they do want to question persons. They have the covenants, which are a good piece of evidence in certain cases, but the only thing (cautioning the council) in their deliberations is that our municipal government has no jurisdiction of covenants and has no authority to enforce them or to recognize them; they are legally binding on the residents of the property. Mayor Becker explained he lives in a subdivision without an HOA, but with covenants and the town has no jurisdiction over any of those. That is an important distinction to make as the council considers what the role of the covenants is, that is usually handled separately if the use were approved and it turned out to be a violation of covenants. That would be a separate legal action taken by one of the other parties depending on what the outcome was, because the council cannot enforce a neighborhood’s covenants or have any jurisdiction over them; that is something very important to recognize. Mayor Becker stated even though he would accept the fact that they are legally binding on the residents, the town has no control over those.
- With no other comments, Mayor Becker opened the conditional use permit up for council discussion and reminded everyone they were still under oath and the public hearing was still open. The council can feel free to question witnesses, the applicant or staff.
- Councilwoman Critz noted that she was from the same neighborhood as Mayor Becker and she is familiar with deeded road rights and covenants. Councilwoman Critz had an issue 20 years ago on her property with a covenant violation of a neighbor. Ms. Brooks mentioned that it doesn’t relate and Mayor Becker agreed. Councilwoman Critz stated she was just saying she understood that, but also because of her involvement in that realized that the town was a separate issue. Mayor Becker commented the council has to rule based only on our ordinance and on the facts that staff has presented and the witnesses have presented, which is exactly his understanding of it. Councilwoman Critz commented just so they understand the town has no authority here and the council truly understands. This is legitimate and viable, but there is nothing relevant to what the council is doing here tonight. Ms. Penniger asked *“so, in order to enforce this I have to go to Union County”?* Mayor Becker responded he didn’t want to discuss the covenants much longer, because the council doesn’t have jurisdiction, but his understanding (he is not a lawyer, so he doesn’t want to be giving legal advice) is that it definitely is a legal matter that’s outside of the town’s jurisdiction. Ms. Penniger stated they would get a lawyer. Councilwoman Critz stated she wanted to make sure that she

understood Ms. Penniger's concern; putting the covenants aside for a moment, the concern is that this might open a Pandora's box? Ms. Penniger replied *"that was not just my concern, it was a number that I talked to about it. I just didn't know if you had seen this"*. Councilwoman Critz noted that was hearsay and all she could do right now was "just me and you". Mayor Becker asked that Ms. Penniger come to the microphone, since this was legally binding. Councilwoman Critz stated she just wanted to be clear that Ms. Penniger's concern other than the covenant (because it's a separate issue) was that she was not aware that this structure existed. Ms. Penniger replied *"no, I knew it existed, but we drove by and thought it was an outbuilding, just because outbuildings are allowed, we knew that nothing else was allowed"*. Councilwoman Critz asked Ms. Penniger if she never knew it had been an apartment. Ms. Penniger replied *"for all we knew they stored stuff in there. We never knew anybody lived there"*. Councilwoman Critz asked if Ms. Penniger's concern now was that even though they're going to use it for their children that someone in the future might use it for something else. Ms. Penniger replied *"that was the concern that everybody had was what would it come up with after that, who else has something that we are thinking is an outbuilding and now it's going to be rented, because we bought, you know, like one acre tracts based on our parcel, a certain number of people in there, so when you start putting other buildings in there and it's going to change the whole look. That's why we don't want to open up that kind of Pandora's box. We don't know what else is sitting there about to explode, we had no idea of this. We should have said something long before now. We had a neighbor, I wouldn't know about it now, somebody brought it to my attention. Most of us that have been there a long time know full well of the covenants. I don't know what happens when they resell property, if they are getting it or not, but you should get it"*. Councilwoman Critz stated when she purchased her property.... Mayor Becker commented then again you are saying that the covenants, we don't want to belabor the covenants too much, because the town really has no jurisdiction over those. Councilwoman Critz responded exactly, but just for clarity it should be given to you by your attorney at closing; it wouldn't be the responsibility of the town. Ms. Penniger replied *"I understand that, we have it and you can get it, so I can't be responsible for other people buying a house about the covenants"*. Councilwoman Critz asked Ms. Holden if she got a copy at their closing. Ms. Holden responded *"we did not, it wasn't even advertised as not having an HOA"*. Mayor Becker commented let the record indicate that the applicant stated that they did not receive or were not made aware of these covenants for whatever reason, again they are not the town's responsibility; the record can reflect that. [Another member of the audience wished to make comment; however, they needed to be sworn in and Mayor Becker asked that they wait until the council was finished with this]. Ms. Penniger commented *"do you have a response to, I mean, you are asking me was that the concern, yeah, we are concerned about what would happen later on once it started"*. Councilwoman Neill asked if that was her only concern. Ms. Penniger replied *"that was the primary concern and that building that you are talking about sits awful close to the road. I mean it is about on it. Again, that's not my problem, I mean its like right there"*. Councilwoman Cureton asked if Ms. Penniger did not see that building when she first moved there. Ms. Penniger replied *"my house was like one of the first ones built down there"*. Councilwoman Cureton clarified she meant was it not close to the road then. Ms. Penniger replied *"I am saying the building is there, but we*

thought it was just an outbuilding and people were storing stuff in. that's what outbuildings are for and that's what is allowed in the covenants. I didn't know it was anything other than that". Councilwoman Cureton asked if it looked like an outbuilding. Ms. Penniger replied "yes". Mayor Becker stated that covers the character of the building.

- Mayor Becker swore in Constance Lemmond.
- Constance Lemmond – 6705 High Gap Road. *"I am Connie Lemmond, I live on High Gap Road, not far from almost across the street in fact. I had noticed that the building looked, did not look like an outbuilding. Anyway, I didn't think it looked like an outbuilding, it didn't bother me, I did kind of really think, I thought it was like a tiny house, that's what I called it. I was not aware of any covenant, I moved in 1989/1990 and have never heard of a covenant until this meeting right here and I don't think I'm the only one in this room that has not heard of the covenant. There are other things in the neighborhood that concern me more than this building that is being used as an apartment for a family member. I mowed grass right across the street, that's a larger concern to me than that. I do have a concern that it's just going to open up gates for other people to say well my mother-in-law would like to have a place to live so I'm just going to build me a little house over there or you know something like that. That does you know, it's a concern but I think since the building is there, has been there and nobody has ever said anything until now, who's it bothering, I mean it is not bothering me. I haven't seen bad traffic, I haven't seen drugs or anything like that. It's of no concern to me as I said what concerns me is the house across the street that has grass this high". Mayor Becker explained that was not relative to this hearing. Ms. Lemmond replied "I know that, I'm just saying". Councilwoman Neill stated that was for another day.*
- Ms. Holden asked to say one more thing. Ms. Holden commented *"I just want to read this very quickly, it's a letter dated 11/14/2017 and its addressed to the Town of Mineral Springs: 'we are currently residents of the Town of Mineral Springs, we resided at 6610 High Gap Road since August 2006, at which time we met our next-door neighbors at 6618 High Gap Road. At the that time and for many years, our neighbors had a relative residing in the outbuilding closest to the road known as the barn. All utilities for daily living were available to him in his residence during that time. Any questions regarding this matter you may direct to us at our home address. Thank you. Helen and David Robinson'. Mr. Robinson has passed away". Mayor Becker asked if Ms. Holden had a copy of that to submit to Ms. Brooks as evidence. Councilwoman Critz stated what Ms. Holden submitted further establishes the previous existing for the verification of grandfathering and asked what else validates this as a barn; she was a little confused. Ms. Brooks asked if Councilwoman Critz meant as an accessory structure. Councilwoman Critz responded Ms. Brooks was calling it a barn and our ordinance allows for it. Ms. Brooks responded it looks like a barn, but it's not being used as a barn, its being used as an accessory, so she didn't know how to answer that. As far as the grandfathering goes, Ms. Brooks explained she did have this letter when she was doing her investigation of the complaint and her first thought was to grandfather it, because it was something that had existed. Ms. Brooks did get in touch with Union County Zoning Administrator Jim King who informed her that there was never a conditional use permit for that use; therefore, she could not grandfather the use. The building (barn) is not in question, it meets setbacks; the house doesn't meet*

the setbacks, which is grandfathered. It's the use that we are concerned about here, because it never received a conditional use permit from the county. Councilwoman Critz asked if the letter just verified it had been used that way. Ms. Brooks responded yes. Mayor Becker added "but, not with a permit. Ms. Brooks responded "exactly, somebody just did it, because people do that". Councilwoman Critz asked if we were just trying to bring it up to compliance. Ms. Holden responded "*correct, we are trying to make an acceptable permit*".

- Mayor Becker swore in Roger Penniger.
- Roger Penniger – 3010 Low Gap Road. "*We've been there for 31½ years and our biggest concern is if and it may not be a problem, I don't know, but if this is allowed to be a piece of rental property down the road are all of our neighbors going to be able to erect a 16' x 16' building and that's basically what it is with a loft in it and rent it out causing more traffic into the neighborhood. If it was just one, that's one thing but if everybody in the neighborhood wanted to do the same thing, it changes the neighborhood; that's our biggest concern. I remember when they built the building. I actually worked in the building and they were using it for storage at that time. I didn't realize that they were putting a bath in and everything, I put some vinyl floor in for the guy but at that time I didn't understand it. We don't ride around and check on the neighbors, but we are concerned about down the road what it's going to do to the neighborhood as far as rental property that being allowed on each lot and some of them are three-acre tracts but that's basically all I've got to say*".
- Mayor Becker stated he had a question that maybe he shouldn't, it's probably an opinion question, but the building as he has heard people say is that it looks like a barn, it is wood sided. Ms. Holden responded "*it's a two story building, it looks like a barn, two stories and it even has stairs going up to the second story and like I said it has been there for so many years and you've all been there for so many years and I don't see anybody in the past 30 years that has put up another structure like it, so I don't think that people are just going...*" Mr. Penniger commented "*that's what we want to prevent any further*". Mayor Becker asked that there not be any crosstalk and then asked if the barn had windows and doors. Ms. Holden responded "*we, it has windows and doors*". Mayor Becker asked if it's a frame construction or log. Ms. Holden responded, "*oh yeah*". Mayor Becker commented it's not a metal building or prefab; he just wanted to see in his minds eye to get an idea of what the building looks like. Ms. Holden responded "*it looks like a tiny house. It looks like what you see on tv, like a small barn, tiny house, that's what it looks like, about 700 square feet total*".
- Councilwoman Critz summarized that before her is the recommendation of the planning board, which they have heard from a planning board member was unanimous, also to have that in their packet, a unanimous vote came not because no one is sympathetic to other people's concerns (just to get that out there). You have a council and a planning board that are very sympathetic to other people's concerns, but that doesn't mean that that's what they base the decisions on. The council has to base their decisions on what's in black and white, so the zoning ordinance was strategically (with a lot of blood, sweat and tears) developed over a year with the help of UNC-Charlotte; they partnered with the town for a year and worked with the town on zoning, so this was no small feat and it was certainly not done haphazardly or without a lot of planning. It is Councilwoman Critz's

understanding at this point that guidelines within the town ordinance that allow for an accessory building, basically a barn, to have an accessory apartment above it. The town has several that have already been constructed. Mayor Becker commented “big barns” and they were permitted differently, but they exist. Councilwoman Critz continued that we are still speaking of an accessory apartment although these are larger. Councilwoman Critz stated she didn’t see anything with her understanding of the ordinance as it’s written, that the town doesn’t have anything that they can do here, but to permit the conditional use permit, to allow it based on what the council has legally to do in our ordinance, right? Mayor Becker responded the council must go through the Findings of Fact.

- Councilwoman Critz personally recommended that they have a great opportunity here to work together on their street with the neighbors and she would encourage them. What the council is going to do here tonight is just logistics, but Councilwoman Critz encouraged the neighbors to get together and work together. It’s remarkable what Councilwoman Critz has seen happen on streets and small communities and large communities, and larger communities (we don’t have any large communities here), but larger communities when people just get together and work together (that was free of charge and off the record here); it has nothing to do with what the council is about to do. Councilwoman Critz stated she understood the planning board unanimously approved this to the council based on all the existing information that they have on our zoning. Mayor Becker commented that was testified to by Mr. Muller and of course their finding is in the exhibits. The planning board recommendation is not binding, it is strictly a recommendation. It is admissible, because it is a specific action by a board. Councilwoman Critz explained that the planning board recommendation holds a lot of weight for the council, because they do their job well; we don’t have a planning board that gets together and just haphazardly does whatever.
- Mayor Becker asked if there were any questions of the other applicants or witnesses. If there were no other questions the council could start looking at the Findings of Fact. Mayor Becker asked Ms. Brooks a technical staff question – as always, there are seven of them and several of them are not necessarily applicable to this type of application. Mayor Becker believed that “f” and “g” is that situation and he just wanted to clarify this for everybody here to make sure that they were on the same page. If one is not applicable then they would say that the finding is in the affirmative, because it’s not applicable.

3. **Consideration of a Conditional Use Permit – C17-01 – Holden**

- Mayor Becker presented the Findings of Fact:
 - a. The use will not materially endanger the public health or safety if located where proposed and developed according to the submitted plan.

Mayor Becker commented the use was the daughter and son-in-law living in this apartment. Was there any evidence, testimony or written evidence that would give the council guidance either way on that finding? Councilwoman Neill responded they had no factual evidence that there would be any harm to the property. Mayor Becker noted public health or safety and commented he was not aware of any testimony that would say that the use would result in

public harm or safety. Councilwoman Neill responded she did not hear any testimony. Mayor Becker asked if the council felt they could find in the affirmative. Councilwoman Neill responded yes.

Councilwoman Neill made a **motion** to find in the affirmative on number “a” and **Councilwoman Cureton** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill
Nays: None

This decision was based on:

1. No testimony of factual evidence.
 2. No one testified; there was just no evidence.
- b. The use meets all required conditions and specifications.

Mayor Becker asked Ms. Brooks if there was any specific condition or specification in the ordinance. Ms. Brooks responded no. Mayor Becker commented the council could impose an additional condition on this, i.e. what type of rental use would be allowed (type of occupancy, number of people). Mayor Becker believed the council had the legal right to impose reasonable conditions at any point during these findings. Ms. Brooks responded they would probably do that at the end. Councilwoman Cureton asked how the town would impose how many people are going to be there, because if their children move there she can have two kids. Mayor Becker responded it would be difficult to enforce, so the number of people might not be a condition they want to put it; he was just throwing that out there, because they are allowed to put reasonable conditions if they think the use would be more in harmony with the environment, but the council will get to that at the end. Mayor Becker noted as far as required conditional specifications, they don't know of any additional ones.

Councilwoman Critz made a **motion** in the affirmative based on the content of our zoning ordinance, according to our ordinance it meets all conditions and specifications and **Councilman Countryman** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill
Nays: None

- c. The use will not substantially injure the value of adjoining or abutting property, or the use is a public necessity.

Mayor Becker stated the council would need evidence from an appraiser and asked if they had any such evidence. Councilwoman Neill responded they have had no such evidence. It's not a public necessity, but they could say that it is a convenience. Mayor Becker did not believe that's a specific condition.

Councilwoman Neill responded there is no evidence that it would injure the value of adjoining or abutting property.

Councilwoman Neill made a **motion** to find in the affirmative based on the fact that there is no evidence and **Councilwoman Critz** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill

Nays: None

This decision was based on:

1. There being no evidence testified to and the expert testimony on any possible injury to the value of adjoining property.

Mayor Becker noted he asked a question about the appearance of the building that probably was not/shouldn't have been admissible, because the council isn't giving a permit to build the building, so it's more just a residence use he thought was what they are looking at.

- d. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this Ordinance and the Town of Mineral Springs Land Development Plan.

Councilman Countryman commented he didn't think it applies. Mayor Becker asked if the use was in character with the neighborhood; it's a residential use, it's an occupancy. Is that in keeping with the council's knowledge of how the property/neighborhood is being used? Councilwoman Critz stated she thought it goes back to what she said on "b", she would vote in the affirmative, because it does follow the guidelines of our ordinance. Councilman Countryman responded he didn't disagree with that and he would also refer back to "c" where it says the use will not substantially injure the value of adjoining or abutting property. Obviously if it has been that way for 17 years, it doesn't seem to have affected anybody in that length of time. Mayor Becker commented that was good testimony and thanked Councilman Countryman for it. The previous use does apply and Mayor Becker believed it was testified to under oath (even though it was not done with a permit), it was taking place; that is a very good point. Councilman Countryman commented the location and the character of the use doesn't seem to violate the ordinance; we have a number of those already and when you tie that to "c" when you talk about the fact that it has been there for so long and it has been used that way for so long, that in itself is evidence that it didn't present a problem until now.

Councilman Countryman made a **motion** to find in the affirmative based on the location and the character of the use doesn't seem to violate the ordinance. We have a number of those already and secondly, when you tie that to "c" when you talk about the fact that it has been there for so long and it has been used that way for so long, that in itself is evidence that it didn't present a problem

until now and **Councilwoman Cureton** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill

Nays: None

- e. Additional review criteria, as stated in the Ordinance shall also be considered and addressed where required.

Mayor Becker asked Ms. Brooks if there were any additional criteria in the ordinance for this use. Ms. Brooks responded no. Mayor Becker stated this one is an easy one to have a motion, because there are no additional review criteria.

Councilman Countryman made a **motion** there is no additional review criteria that would apply and therefore it is found in the affirmative and **Councilwoman Critz** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill

Nays: None

- f. Any deviation from the terms of this Ordinance will result in a project that is at least equal to or better than what would be accomplished under the strict application of this Ordinance.

Mayor Becker asked Ms. Brooks if they were deviating from the terms of the Ordinance. Ms. Brooks responded no. Mayor Becker commented there is no deviation for the terms of the Ordinance, so that means by default the council could make a motion in the affirmative.

Councilwoman Critz made a **motion** to find in the affirmative based on the fact that there is no deviation from the Ordinance and **Councilman Countryman** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill

Nays: None

- g. Any deviation from the terms of this Ordinance will not adversely affect the right of other abutting or nearby property owners in any material manner.

Councilwoman Neill made a **motion** to find in the affirmative based on the fact that there is no deviation from our Ordinance and **Councilwoman Cureton** seconded. The motion passed unanimously as follows:

Ayes: Countryman, Critz, Cureton and Neill

Nays: None

- Mayor Becker noted at this point all seven findings were found in the affirmative, which does give the council the opportunity to approve this application based on

those findings. Are there any conditions the council feels could be enforceable to be imposed? The council may not apply any conditions, they could disapprove it, but Mayor Becker didn't think that would be in keeping with how the process works since all the Findings of Fact were in the affirmative. Mayor Becker stated he wasn't going to tell the council how to vote, but that probably would not be a legally supportable vote to deny. Councilwoman Neill commented she knew they can't say that they want, they would prefer, they are concerned about the number of people that occupy the structure, but could they insure that it is single family residential dwelling only and not multiple families? That is what the property is zoned for. Mayor Becker responded they could limit it to immediate family. Councilwoman Critz commented she was thinking about that and asked if they could limit it to immediate family and also exclude it from rental property? We are trying to reach a happy medium here where it could be immediate family only and no rentals. Mayor Becker noted that immediate families are usually siblings, spouses, parents and children.

- **Councilman Countryman** made a **motion** that we put a conditional use on it that it applies only to immediate families and that it can never be used as a rental property. Mayor Becker commented that does address some of the concerns that we're not necessarily able to.... Councilman Countryman commented and it doesn't negatively impact those that are already established. Mayor Becker responded he thought that. Councilwoman Critz added it also puts to rest any concern. Mayor Becker noted enforcement could be a problem, but we are equipped to make somebody prove that they are a relative if there was a complaint; we could enforce it if we had to be believed. That's something our attorney always says "make sure that you have a means of enforcing the condition or ordinance or a requirement", if it could be enforced; immediate family and no rentals. Mayor Becker stated "that was Councilman Countryman's suggestion". **Councilwoman Neill** seconded the motion by Councilman Countryman.
- A member of the audience asked to speak and Councilwoman Critz stated at this point they couldn't discuss anymore and apologized, but it was the law. Mayor Becker explained the council was in the process of.....he didn't close the public hearing; he would close it at the end of the council vote. Councilwoman Critz asked if the audience member was sworn in. Ms. Brooks asked if the council wanted to take more evidence after they've gone through the Findings of Fact. Mayor Becker responded he thought that would be a bad thing to do since they have found the Findings of Fact and he thought if they have to go back.... Councilwoman Neill stated, "we don't want to backtrack". Mayor Becker responded he didn't think it was a good...we have had the evidence. Councilman Countryman stated, "and the opportunity". Mayor Becker commented they needed to move on. Ms. Walser asked a question – "I am a single person living by myself, what about a caregiver". Mayor Becker responded "hold on here, we are only talking about this one particular building, we are not setting policy for conditions town wide. I hated to accept this, but I want to clarify, this condition applies to this application only. We have this ordinance available if somebody needed a caretaker, they might apply, it's a totally standalone thing. We are not changing municipal policy. I hope that answers your question. Then I am glad I allowed you to ask it. It's a little bit out of the ordinary, but I wanted to make sure that, we are only addressing Mr. & Mrs. Holden's specific building on their property and that's it, that's all this applies

to, applies to their property permanently unless it is changed through a CUP process again”.

- Councilwoman Critz seconded the motion by Councilman Countryman; however, it had already been seconded by Councilwoman Neill. *The motion that was made by Councilman Countryman to put a conditional use on it that it applies only to immediate families and that it can never be used as a rental property passed unanimously as follows:*

Ayes: Countryman, Critz, Cureton and Neill

Nays: None

- Mayor Becker closed the conditional use permit public hearing at 8:31 p.m.
- Councilwoman Krafft reentered the meeting.
- Mayor Becker hoped the council had come up with a fair finding for everybody in the neighborhood and the applicant. Mayor Becker appreciated everybody’s good efforts on behalf and also our staff and our planning board.
- Councilwoman Critz commented now that they have all met each other, even though it started out negative, maybe they can make lemonade out of lemons.

4. Public Hearing – Gardner Voluntary Annexation

- Mayor Becker opened the Gardner Voluntary Annexation Public Hearing at 8:32 p.m.
- Mayor Becker pointed out to the council (on the advice of our attorney) that they have four pieces of paper in front of them. There are two sheets of the ordinance with yellow highlight - “WHEREAS, the aforementioned petition was not submitted under subsection (b1) or (j) of NC G.S.”, he recommended adding that because those are very specific findings and it actually says in the statute that the council should find that those two conditions don’t apply. Therefore, Mayor Becker also printed out the statute on Attorney Griffin’s advice. It’s a very short statute for North Carolina General Statutes that governs three and a half pages, it’s not bad for those people in Raleigh. Basically the things that are highlighted are the things that are mentioned in our ordinance that we are going to find based on the documentation we have, the petition that was submitted and any testimony we have. Mayor Becker also stated that this is a much easier process; this is not a quasi-judicial hearing, it is simply a public hearing on a legislative decision, so nobody is sworn in and anybody can talk or not talk, and the council doesn’t have to give their reasons for accepting it, but they should be doing it by the law. The council should make sure that they are following the statute just because they like to do things right.
- There was no one signed up to speak.
- Mayor Becker explained he believed the petition was very self-explanatory; the council touched on it last month. Mayor Becker asked the council if they had any comments or questions about it. This would be an ordinance (O-2017-07) to extend the corporate limits to the Town of Mineral Springs under the authority granted by Chapter 168, Article 4A, Part 1 of the General Statutes of North Carolina.

5. **Consideration of Adopting an Ordinance on the Voluntary Annexation**

- **Councilman Countryman** made a **motion** to accept the annexation petition and adopt this ordinance and **Councilwoman Krafft** seconded. Councilwoman Critz commented that she would just like to say that she was really excited that people are starting to realize that there's a value in being in a place like Mineral Springs that takes their zoning and other things a little more seriously than some of our surrounding neighbors. Councilwoman Critz welcomed the Gardners. Councilwoman Neill concurred. Mayor Becker noted there was a motion and a second and asked the council for a vote. *The aforementioned motion by Councilman Countryman passed unanimously as follows:*

*Ayes: Countryman, Critz, Cureton, Krafft and Neill
Nays: None*

- The Ordinance is as follows:

STATE OF NORTH CAROLINA
TOWN OF MINERAL SPRINGS

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF
THE TOWN OF MINERAL SPRINGS,
UNDER THE AUTHORITY GRANTED BY CHAPTER 160A, ARTICLE 4A, PART 1 OF THE GENERAL STATUTES OF
NORTH CAROLINA
O-2017-07

WHEREAS, all owners of record of certain property described in Section I of this ordinance have submitted to the Town of Mineral Springs a petition as described in NC G.S. § 160A-31(a) & (b) for annexation into the Town; and

WHEREAS, the Town Council of the Town of Mineral Springs directed the Town's municipal clerk to determine the sufficiency of the aforementioned petition under NC G.S. § 160A-31; and

WHEREAS, the municipal clerk of the Town of Mineral Springs has determined that the petition meets all requirements of the statute and certified this sufficiency to the Town Council; and

WHEREAS, the Town Council of the Town of Mineral Springs has caused a public hearing on this petition to be conducted on February 8, 2018, at 7:30 PM at the Mineral Springs town hall and the municipal clerk of the Town has caused the required notice to be published; and

WHEREAS, all the prerequisites to adoption of this ordinance as prescribed in Chapter 160A, Article 4A, Part 1 of the General Statutes of North Carolina have been met; and

WHEREAS, the aforementioned petition was not submitted under subsection (b1) or (j) of NC G.S. § 160A-31; and

WHEREAS, the Town Council of Mineral Springs has taken into full consideration the statements presented at the public hearing held on February 8, 2018 on the question of this annexation; and

WHEREAS, the Town Council of Mineral Springs has concluded and hereby declares that annexation of the area described herein is in the best interest of the Town of Mineral Springs;

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Mineral Springs that:

Section 1. From and after the effective date of this annexation, the following territory shall be annexed to and become a part of the Town of Mineral Springs, and the corporate limits of the Town of Mineral Springs shall be extended to include said territory particularly described as set forth herein:

The following tracts of Waxhaw Meadows Plantation, Section 1, as described more particularly in a deed recorded at Book 6552, Page 893 in the Union County, NC Registry:

All of Tract 12, containing 10.05 acres, of Waxhaw Meadows Plantation, Section 1, as shown on a plat recorded in Plat Cabinet G, File 929 in the Union County, NC Registry, to which plat reference is hereby made for a more particular description, and

All of Tract 13, containing 10.119 acres, of Waxhaw Meadows Plantation, Section 1, as shown on a map of survey prepared by Carroll L. Rushing, NCPLS, dated October 2, 2006, and recorded in Plat Cabinet J, File 610 in the Union County, NC Registry, to which plat reference is hereby made for a more particular description, and

All of Tract 16, containing 10.015 acres, of Waxhaw Meadows Plantation, Section 1, as shown on a map of survey prepared by Carroll L. Rushing, NCPLS, dated April 23, 2008, and recorded in Plat Cabinet K, File 582 in the Union County Registry, to which plat reference is hereby made for a more particular description.

Section 2. From and after the effective date of this annexation, the territory annexed and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Mineral Springs, and shall be entitled to the same privileges and benefits as other parts of the town.

Section 3. The newly annexed territory described above shall be subject to town taxes according to G.S. 160A-58.10.

Section 4. The Mayor of the Town of Mineral Springs shall cause accurate maps of the annexed territory described in Section 1 hereof, together with a duly certified copy of this ordinance, to be recorded in the office of the register of deeds of Union County, and in the office of the Secretary of State in Raleigh. Such a map shall also be delivered to the County Board of Elections, as required by G.S. 163-288.1.

Section 5. This ordinance shall become effective upon adoption.

Adopted this 8th day of February, 2018.

Frederick Becker III, Mayor

ATTEST:

Vicky A. Brooks, Town Clerk

- Mayor Becker congratulated the Gardners and stated Mineral Springs can now say “we are the home of Storybook Farm and the almost famous tree house”.
- Mr. Gardner commented he had already changed to Mineral Springs. Mayor Becker replied he was very proud of him and noted there were some very important guests from the Town of Waxhaw here; Kat Lee - the new Commissioner in Waxhaw. Mayor Becker stated that “we love the farm” and we’ll reach out as far as we can. Mayor Becker thanked the Gardners for their confidence in our town and hoped that we would be a good fit.
- Mr. Gardner stated he just wanted to add to what Councilwoman Critz had said, because the part they love about Mineral Springs and they love this meeting (even with the conditional use permit), he was just wishing all towns would act like this and they feel so much the conservation is key to keeping their land like it is without all of that development. Mr. Gardner understands that development is necessary, but they just feel very proud to be a part of Mineral Springs, because they love the town motto and it is just an easy fit for them. The entire council thanked Mr. Gardner and welcomed him to the Town of Mineral Springs.
- Ms. Brooks noted that she did certify the sufficiency of the annexation. Mayor Becker responded “yes, just to be on the record, so it’s on the verbal record and the minutes that you see that Ms. Brooks had the certification of sufficiency, which in the case of this petition was fairly easy, because it was only one piece of property and we had to see that it met the rather uncomplicated requirements of the statute. Mr. Gardner commented he thought the town was going to get more applications in the future. Mayor Becker responded the town would welcome them if they are from wonderful places like Waxhaw Meadows Plantation.
- Mayor Becker closed the annexation public hearing at 8:39 p.m.

6. **Public Comments**

- Donald Gaddy – Mineral Springs Volunteer Fire & Rescue Department.

7. **Consent Agenda**

- Ms. Brooks noted that she had put “2018” on the tax report and finance report on the agenda, but the reports were for 2017.
- **Councilman Countryman** made a **motion** to approve the consent agenda as presented containing the following:

- A. *January 11, 2018 Regular Meeting Minutes*
- B. *December 2017 Tax Collector’s Report*
- C. *December 2017 Finance Report*

and **Councilwoman Neill** seconded. The motion passed unanimously as follows:

Ayes: *Countryman, Critz, Cureton, Krafft and Neill*
Nays: *None*

8. **Staff Reports**

- There were no staff reports.

9. **Other Business**

- Mayor Becker

10. **Adjournment**

- **Councilman Countryman** made a **motion** to adjourn and **Councilwoman Krafft** seconded. The motion passed unanimously as follows:

Ayes: *Countryman, Critz, Cureton, Krafft and Neill*
Nays: *None*

- The meeting was adjourned at 8:42 p.m.
- The next regular meeting will be on Thursday, March 8, 2018 at 7:30 p.m. at the Mineral Springs Town Hall.

Respectfully submitted by:

Vicky A. Brooks, CMC, NCCMC, Town Clerk

Frederick Becker III, Mayor