

## Phoenix Owners May Get Burned By Alleged Fire Violations

Some Ashe County land owners say they're afraid a developer left them high and dry when he failed to meet the conditions of a planning variance approved years before they purchased their lots at the peak of Phoenix Mountain.

County Planning Director Zach Edwardson raised the issue at the planning board's regularly scheduled meeting at the Ashe County Courthouse, July 5.

Variations are unique allowances in the county's planning rules that require approval from the planning board. The variance in question was recommended "around 2001" by then planner John Witherspoon and approved by the planning board in place at the time, according to Edwardson. It allowed developer Eric Hunter to gain final approval for a 16-acre, ridge-top plan on Big Phoenix mountain.

But Edwardson told the current board on July 5, at its regular meeting, that he'd recently been contacted by a Phoenix Mountain landowner who complained that Hunter had never met the variance's requirements.

Jack Drummond, the only Big Phoenix owner so far to complete a home at the 30-lot development, told Edwardson his insurance company had informed him it would not be renewing the policy on his \$1.9 million home at the end of his current term.

The reason given by the insurance company, Edwardson said, was that a fire suppression system required by the variance, was not in working order driving the fire risk was too high.

Edwardson said the variance allowed Hunter to develop the land on 4,600-foot Big Phoenix despite a steep, narrow, twisting approach road that fell short of county standards for fire vehicle access.

"The trucks can get up the road," Edwardson said. "The issue is whether they can get up the road full of water, and in a timely fashion."

Because of that, as a condition of the variance, the planning board agreed to allow Hunter's development to move forward on the condition that he build a self-contained fire suppression system — complete with a 10,000-gallon water tank, proper plumbing, and fire hydrants — near the home sites on top of the mountain.

But evidence before the board last week seemed to suggest that the developer had built his fire system right up to the point of making it operational.

Hunter apparently went so far as to sink a 10,000-gallon water tank into his own land to supply the fire hydrants he'd had erected around the development, though Edwardson said he could not confirm the location or even the existence of the tank.

He'd even buried the pipes to connect the tank with the hydrants — pipes, nonetheless, that were two times too small to meet the 4-inch-diameter legal standard.

Edwardson, again, said he could not confirm the reports.

"I did go up there with a representative of the Jefferson Fire Department and confirmed that there was no water in the hydrants," Edwardson said.

Colon McLean, president of the Phoenix Mountain Homeowners Association (PMHA), said he'd bought his parcel in 2003, but was completely unaware that the fire hydrants he'd taken for granted actually were dry.

PMHA board member Murray Nixon agreed. Nixon said she'd listened to her real estate agent's spiel on the development's self-contained fire-fighting infrastructure and let it go at that. Even when, out of curiosity, she'd opened a

valve expecting the water to gush forth, Nixon let it pass when no water appeared.

Without saying why, McLean said Hunter had threatened to cut off the water. But, since no one had actually reported seeing the water in the first place, it was unclear whether there had ever been any water to disrupt.

It remains a mystery exactly who did discover the broken system.

Edwardson told the planning board the issue first came to his attention when he received the complaint from Drummond, along with an explanation of why his insurance was about to be canceled. Edwardson said he dug the variance out of the files, read it over and confirmed with the chief of the Jefferson Fire Department that the hydrants were in fact dry.

The complaint's filing, Edwardson advised, would require the board to address Drummond's claims, in accordance with state law.

That might mean the board would have to hold a hearing, and might very likely be forced to revoke the Phoenix Mountain variance. Without a variance Hunter was unlikely to be damaged since he's already sold every lot in the development. On the other hand, McLean and Nixon, and the remaining PMHA members, could expect to watch their property's value go from prime to worthless. Without insurance, no bank would finance a loan. And, without financing, there isn't much chance for a sale.

Edwardson advised the board it would have to restrict future action to a single matter: whether or not the fire suppression variance had been violated.

"The only option we have, legally, is to revoke the variance," Edwardson said, adding that, doing so would leave the homeowners no recourse.

He said the homeowners were free to pursue civil action against Hunter but the county could not redress their damages.

A while later, though, pressed by Nixon and McLean on whether the county's rules carried any teeth at all, planning board chair Priscilla Cox ventured that Hunter may have violated state public safety laws. If so, the county might have the power to file an injunction and fine Hunter \$100 for each day he fails to comply.

Vice-chair Rick Surber suggested to his colleagues that they authorize a letter inviting Hunter to explain the dry fire plugs. The idea was adopted unanimously and Hunter was given to July 26 to reply. The issue will be taken up again at the Aug. 2 meeting.

### **Hunter's Other Legal Problems**

The threat of civil action may be looming, but Eric Hunter is facing some serious charges in criminal court as well. He was arrested in May and charged with two felony counts of assault with a deadly weapon with intent to kill. He's accused in that case of firing a shotgun at two building contractors near his property on top of Phoenix Mountain.

The contractors represented a man who'd recently bought a parcel in Hunter's Phoenix Mountain development. There has been no public speculation by law enforcement on what might have provoked the alleged shooting.

Hunter was scheduled to appear July 12 in Ashe County District Court on the assault charges.

### **Development Plans Move Forward**

In other business at the July 5 meeting, the board approved a preliminary plat on phase III of the seven-lot, 12.88-acre Laurel Mountain development, off Laurel Mountain Estates Drive.

A vote on preliminary plat approval for the Cedar Crossing Townhomes development – 45 townhomes on 11.7 acres off U.S. 221 – was delayed until the July 26 meeting in expectation that some remaining road construction and approvals

from the County Health Department might be completed by then.

And, the board voted unanimously to grant final plat approval for 12 lots at the 16.278-acre Little Phoenix Subdivision, off Wade Bare Road.