

## Boone Wins Latest Round in Templeton Lawsuit

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The Watauga County Superior Court has found in favor of the Town of Boone in the 2007 lawsuit brought against it by Templeton Properties, LP.

On February 25, 2011, the Honorable Marvin P. Pope, Jr. upheld the Boone Board of Adjustment's recent decision to again deny the application of Templeton Properties to construct a 10,010 square foot medical clinic on State Farm Road at VFW Drive. This was the second time the Board of Adjustment has turned the project down. In 2009, the North Carolina Court of Appeals returned the case to the Board of Adjustment because in its original decision it did not adopt specific findings of fact in support of its decision. At the time Templeton filed the application to develop the property, the Town's Unified Development Ordinance allowed, subject to Board of Adjustment approval, a medical clinic over 10,000 square feet to be built in single family residential zoning districts (R-1) while it prohibited smaller medical clinics in the same districts. This led some to conclude that it was simply a mistake in the Town's ordinances that the clinics were allowed at all in an R-1. In 2007 the Boone Town Council amended the UDO so that such uses would no longer be allowed in an R-1 neighborhood. When it revisited the proposal in 2010, the Board of Adjustment concluded that the proposed project was not in harmony with the surrounding neighborhood, that it was not consistent with the Town's comprehensive plan for future growth, and that it would create dangerous traffic conditions on State Farm Road because of the tight curve and limited view available to drivers at that location.

In the Superior Court, Templeton complained that the Board committed procedural errors in denying the permit in 2007, that the Board's findings and decision then and again in 2010 were not supported by sufficient evidence, that in its new decision the Board went further than it was authorized by the Court of Appeals' decision, that the Board of Adjustment is given too much discretion under the UDO in evaluating development applications, and that Templeton's due process rights were violated by the Town Attorney asking questions of the witnesses, including Templeton's attorney, who testified at the 2007 hearing. Judge Pope rejected all of these arguments as meritless and held that the Board's decision was supported by competent, material and substantial evidence.

Templeton now has until April 1, 2011 to again appeal the case to the Court of Appeals.