

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 02/20/2017
MINUTES

Members Present: Jimmy Ollis, Joe H. Perry, Fred Schmitt, Ted Silver

Staff Present: Cheryl Buchanan, Rick Owen, Town Attorney Stacy Eggers, IV.
Esq.

Chairman Fred Schmitt called the meeting to order at 6:06pm. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag. Chairman Fred Schmitt noted that there is a quorum present to hear the application.

Chairman Fred Schmitt stated that the order of the Agenda could be changed to accommodate the applicants before the Board's discussion on Section 307. Jimmy Ollis moved to change the order of the Agenda to put the application for a Conditional Use Permit before the discussion on Section 307. Ted Silver seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye. The motion carried with a majority.

Consideration of the November 21, 2016 Minutes

With no changes to the minutes, Ted Silver moved to approve the minutes as submitted. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye. The motion carried with a majority.

Chairman Schmitt opened the quasi-judicial portion of the hearing with an introduction of procedures for a conditional use hearing and an opening statement. All Board of Adjustment (BOA) members were seated with no objections.

Application for a Conditional Use Permit – The Vistas, Phase II – Banner Elk Vista Properties, LLC

Because one of the members of the Board was absent and due to the nature of the request, Chairman Schmitt offered the Applicant the opportunity to

postpone the meeting until all the members were present, or he could proceed with the understanding that he would need a majority in order to obtain the CUP. Mr. Cogdill chose to proceed.

Zoning Administrator Cheryl Buchanan was sworn in by Chairman Schmitt and gave an overview of the application based on the progress of the development since 2005. She introduced JP Cogdill and informed the Board that Mr. Kent Smith, owner of The Vistas, had sent a letter authorizing Mr. Cogdill to speak on The Vistas' behalf. The application is for a Conditional Use Permit for Phase II, buildings #11 through #16.

Ms. Buchanan reviewed the history of the development since its inception in 2005. Buildings #1 through #3 and #7 through #10 have been finished and sold. Infrastructure is in the ground and stormwater measures appear to be successful to date. Ms. Buchanan mentioned that there was an item of interest that came up during the Planning Board meeting that she had been unaware of before that meeting. Ms. Buchanan's understanding had always been that the Town's responsibility for street maintenance ended at the beginning of the parking lot for building #1, but that Town Manager Rick Owen had told the Planning Board that he had observed a recorded plat with a hand written note on it that stated that the Town of Banner Elk had agreed to snow removal up to the overflow parking lot below building #7. Ms. Buchanan wished to have this become part of the record, and although she had not seen the plat, the Town Manager had stated that he has.

Chairman Schmitt asked if there were any questions for Ms. Buchanan. Mr. Silver asked the identity of the responsible agency that monitors stormwater. Ms. Buchanan said that Avery County is the jurisdiction for stormwater in Avery County as well as the town, but that she has made numerous trips to The Vistas during heavy storms to ensure that everything is holding as it should be. Ms. Buchanan also mentioned that she and Mr. Cogdill had talked about this very subject and he had told her that because it had been 12 years, the land was settled and all of the stormwater measures appear to be working as they were designed to.

Ted Silver noted that the grades of the road were 16% to 17% and that this was pretty steep. He inquired about the ability of a fire truck to make that grade and then be able to turn around. Ms. Buchanan answered that there were fire hydrants at the top and that the buildings were sprinkled to aid in fire suppression, but that she was confident that a fire truck could make the short steep grade and that there was sufficient room to turn around. There was an approval letter submitted with the first application from the Avery County Fire Marshall stating that he felt the local fire department could maneuver the roads in the development should they need to.

Ms. Buchanan mentioned in her closing statement that the contour map had the old configuration of the buildings on it as it was a last minute request for

the Board. Chairman Schmitt said he would like to see a correct one and suggested that this could be a condition of the permit.

With no further questions, JP Cogdill was called before the Board and administered the oath for testimony. Mr. Cogdill said that the Vistas had a great working relationship with the Town and that Ms. Buchanan had pretty much covered everything. Mr. Cogdill said that the nature of the development was to build as they go and remain debt free on the property. He testified that he had several pre-sales for the proposed buildings for Phase II.

Jimmy Ollis asked about the dimensions of the hammer head turn around he sees on the plans. Mr. Cogdill said that instead of a cul-de-sac there was a hammer head turn around for emergency vehicles to use. The hammer head turn around tends to be more space efficient and works just as well for larger vehicles.

Fred Gore, Engineer for the project was sworn in and told the Board that although the roads had 16% and 17% grades, it was for a very short distance and that the grades in the parking areas and at the top were 2% grades.

At this point there were no more questions and Chairman Schmitt closed the public evidentiary section of the hearing and asked the Board to begin deliberations on the application.

Chairman Schmitt said the first step is to determine that the application is complete. Joe H. Perry moved that the application is complete. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Fred Schmitt - Aye. The motion carried with a majority.

Next Chairman Schmitt asked if the Board thought that the requirements in the ordinance had been satisfied with the exception of the conditions.

Chairman Schmitt noted that the application states that the property is zoned R-1, but it is actually R-2 and he asked that the minutes reflect this correction to the application. Ted Silver moved to approve that the requirements had been satisfied, and specifically find that the zoning of this parcel is R-2. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Fred Schmitt - Aye. The motion carried with a majority.

Attorney Eggers said it would be appropriate to consider any conditions that may be necessary. Chairman Schmitt stated that as a condition, a new

topographical map with the correct configuration of buildings should be prepared by the applicant to be filed with the Planning Department before a zoning permit is issued. Fred Schmitt moved to approve this as a condition. Ted Silver seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye. The motion carried with a majority.

A second condition to allow the vested right period to increase from two (2) years to five (5) years. Mr. Perry said they had been excellent neighbors and had presented an excellent product. By the nature of the project and the economy not being as stable as it once was, Mr. Perry felt that five (5) years would be better for the developer and the Town. Joe H. Perry moved to change the vested right period from two (2) years to five (5) years. Ted Silver seconded the motion by Mr. Perry. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye. The motion carried with a majority.

Joe H. Perry moved to issue the CUP based on the two (2) conditions listed above. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye. The motion carried with a majority.

A motion by Jimmy Ollis to close the hearing was seconded by Joe H. Perry. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye.

Public hearing 2217 came to a close. Attorney Eggers said that the Zoning Administrator would be working with his office to prepare the documents within 30 days.

Section 307 Ordinance Change – Intent on Zoning Districts and Uses

Chairman Schmitt said he had asked Zoning Administrator Cheryl Buchanan to prepare some comments as to the recent change of wording under Section

307, Intent in the ordinance. Mr. Eggers addressed this topic with the Board instead of Ms. Buchanan.

Mr. Eggers explained how the previous approach for many municipalities, including Banner Elk, was for uses not listed in the ordinance was that they were not allowed. Recently the North Carolina Courts ruled that this was too restrictive upon land owners and without appropriate reasoning uses could not be restricted in this manner. Banner Elk has proven to be fairly proactive in updating their table of uses, but Mr. Eggers submitted wording that would allow Banner Elk Town Council and the Board of Adjustment a process to hear a request for a use not listed and decide if it was suitable based on comparison with other uses listed in the zoning table and upon consideration of such manners as safety, increase in traffic and the best interest of the community. It is with hope that the Town can remain proactive and perhaps not be faced with such a challenge, but this would be the process to handle such an issue if it arose. Attorney Eggers also discussed with the Board the specific findings of the Town Council regarding concerns for uses which are compatible with our resort and retirement community.

With no further comments, Ted Silver moved to adjourn. Jimmy Ollis seconded. All were in agreement and the meeting came to a close at 7:16 pm.

Respectfully submitted,

Cheryl Buchanan,
Zoning Administrator, Town of Banner Elk