

BANNER ELK BOARD OF ADJUSTMENT  
MONDAY, 04/23/2018  
MINUTES

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

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

Chairman Fred Schmitt called the meeting to order at 6:00pm. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag. Chairman Fred Schmitt noted that there was a quorum present to hear the application.

Consideration of the February 20, 2017 Minutes

With no changes to the minutes, Joe H Perry moved to approve the minutes as submitted. Ted Silver seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Fred Schmitt - Aye

Deka Tate - Aye. The motion carried unanimously.

Chairman Schmitt opened the quasi-judicial portion of hearing #04181 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 – EN Marketplace

Zoning Administrator Cheryl Buchanan was sworn in by Chairman Schmitt and gave an overview of the application. She reviewed the application that was submitted as well as her review of the request as it relates to the requirements of the Banner Elk Zoning Ordinance. Additionally she introduced Elliot Harwell and Jason Gaston as representatives of the applicant and noted that a comprehensive set of plans showing 36 additional parking spaces had been provided for each member. Ms. Buchanan told the Board that the only pieces of missing information were the two approvals from NCDOT for the ingress and egress and the crosswalk over Highway 184. However, she said had spoken to NCDOT Engineer Brandon Greer prior to this meeting about the status of the permits and he said he would be issuing the approvals on both those permits this week. Ms. Buchanan also said that Derek Goddard of Blue Ridge Environmental had reviewed the stormwater plans and said that they meet the requirements of the ordinance for stormwater.

Chairman Schmitt administered the oath to Elliot Harwell and Jason Gaston and then asked if they had any additional testimony to provide. Mr. Harwell said he felt that Ms. Buchanan has pretty much covered everything. Ted Silver asked about handicap parking and Mr. Harwell said that this parking was in the lot in front of the EN Marketplace but he was unsure of how many spaces were marked as such. Mr. Silver noted that the proposed parking lot could be used by others. Mr. Harwell said he expected that this would probably happen and they were not too concerned with that.

Chairman Schmitt asked Four about the relevance of SECTION 307 Intent, which reads: "It is the intent of this article that if any use or class of use is not specifically permitted in a district as set forth in the sections below, it shall be prohibited in that district unless similar uses are described in the ordinance. Should an applicant petition the Town for approval of a use not covered specifically in this ordinance, the application may be considered as a conditional use," and how that relates to Section 400, Parking. Mr. Schmitt also questioned the potential for future development. Ms. Buchanan noted that if any future development plans come to her attention, she would then look at this parking lot and the needs of the future development as a whole and would make known any additional requirements at that time, but could not speak to that now.

Ted Silver expressed concern for not being able to review the information in the permit application to NCDOT in order to assess the design and location of the crosswalk and proposed signage and traffic studies which may have been conducted for this application. Mr. Harwell told Mr. Silver that this design had been done a couple of years ago but he wasn't sure by whom and that the NCDOT was familiar with the crosswalk project. Mr. Silver asked about the absence of a handicap platform on and off the sidewalk. Ms. Buchanan said that she had spoken to Mr. Greer not 20 minutes before the meeting and that a handicap platform would be placed at the crosswalk on both sides of the road and that the EN Marketplace would be providing those.

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. Ted Silver moved that the application is complete. Joe H Perry seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Fred Schmitt - Aye

Deka Tate - Aye. The motion carried unanimously.

Next Chairman Schmitt asked if the Board thought that the application was in compliance with the requirements of the ordinance and in harmony with the zoning district in which it would be located. Ted Silver moved to approve that the requirements had been satisfied, and that it is in harmony with the Zoning District C-2. Joe H Perry seconded. The vote was:

Jimmy Ollis - Aye  
Joe H. Perry - Aye  
Ted Silver - Aye  
Fred Schmitt - Aye  
Deka Tate - Aye. The motion carried unanimously.

Attorney Eggers said it would be appropriate to consider any conditions that may be necessary. Chairman Schmitt stated that as a condition all NCDOT permits must be issued before a zoning permit can be granted. Ted Silver moved to approve with this condition. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye  
Joe H. Perry - Aye  
Ted Silver - Aye  
Fred Schmitt - Aye  
Deka Tate - Aye. The motion carried unanimously.

Joe H. Perry moved to issue the CUP based on the condition listed above. Deka Tate seconded. The vote was:

Jimmy Ollis - Aye  
Joe H. Perry - Aye  
Ted Silver - Aye  
Fred Schmitt - Aye  
Deka Tate - Aye. The motion carried unanimously.

A motion by Joe H Perry to close hearing #04181 was seconded by Deka Tate. The vote was:

Jimmy Ollis - Aye  
Joe H. Perry - Aye  
Ted Silver - Aye  
Fred Schmitt - Aye  
Deka Tate - Aye. The motion carried unanimously.

Public hearing #04181 came to a close. Attorney Eggers said that the Zoning Administrator would be working with his office to prepare the documents within 30 days.

Application for an Extension of a Conditional Use Permit – Elk Creek Development Company of Banner Elk, LLC

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 the second CUP was granted in 2016. The original CUP was issued in 2006 to a different set of owners, but expired after the property was foreclosed on, due to a severe downturn in the housing market. Ms. Buchanan introduced Valerie Cogdill as representing Angelo Accetturo tonight on behalf of Elk Creek. Chairman Schmitt asked Mrs. Cogdill what her connection is to this project and she replied that she is Vice President of Elk Creek Development Company of Banner Elk, LLC. The application is for an extension of a Conditional Use Permit for the multifamily portion of the development Elk Creek.

Ms. Buchanan reviewed the history of the development since its inception in 2006. She noted that the single family lots are not included in this request as they have already been recorded and are separate. Ms. Buchanan stated that extensive infrastructure has been put into this development and reviewed the information submitted with this application. One of those items in particular was the General Statute on vested right, which she believes applies here. According to NCGS §160A-385.1(d)(2), “a city may provide that rights shall be vested for a period exceeding two years but not to exceed five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need of development, economic cycles, and market conditions.” Ms. Buchanan said that several of these factors come into play in determining the eligibility of this development for an extension.

Chairman Schmitt asked Ms. Buchanan if the 401 and 404 permits are still in place and who monitors those for compliance. Ms. Buchanan said she is in that development at least once a week and possibly more when the weather is bad to ensure that everything is as it should be pertaining to those permits. Ms. Buchanan said that currently there are four multifamily units, one single family house finished and another one being built. Additionally, she issued a zoning permit for a unit for the multifamily section we are discussing tonight.

Ted Silver asked if the Town had called on an independent geotechnical engineer. Ms. Buchanan answered that the need had not arisen but that she wanted to keep that option available should she need it.

Chairman Schmitt asked Mrs. Cogdill to be sworn in so that she could give testimony as well. Chairman Schmitt asked about the zoning permit for the multifamily section and how that would affect this development if the extension were not granted. Town Attorney Eggers told the Board that as long as a permit is open and Avery County performs an inspection every six months, whether they pass the inspection or not, it remains a valid permit and Elk Creek is allowed to continue operating under this permit. Mr. Silver asked

which unit was going to be constructed and Mrs. Cogdill indicated on the site plan where this unit would be built, adding that she was ready to obtain a second zoning permit and that these two units would be spec homes.

Ms. Buchanan told the Board that she did not have any more testimony to give and would not be issuing a closing statement. Mrs. Cogdill said she had nothing further to add as well.

At this point there were no more questions and Chairman Schmitt closed the public evidentiary section for hearing #04182 and asked the Board to begin deliberations on the application.

Ted Silver moved to grant the application for a three (3) year extension. Joe H Perry seconded. The vote was:

Jimmy Ollis - Aye  
Joe H. Perry - Aye  
Ted Silver - Aye  
Fred Schmitt - Aye  
Deka Tate - Aye. The motion carried unanimously.

A motion by Joe H Perry to close hearing #04182 was seconded by Deka Tate. The vote was:

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

Public hearing #04182 came to a close. Attorney Eggers said that the Zoning Administrator would be working with his office to prepare the documents within 30 days.

With no further comments, Joe H Perry moved to adjourn. Deka Tate seconded. All were in agreement and the meeting came to a close at 7:24pm.

Respectfully submitted,

Cheryl Buchanan,  
Zoning Administrator, Town of Banner Elk