

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 08/20/2018
MINUTES

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

Staff Present: Cheryl Buchanan, Town Attorney Representative Josh Coffey

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 April 23, 2018 Minutes

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

Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye
Deka Tate - Aye. The motion carried 4 – 0 in favor.

Chairman Schmitt opened the quasi-judicial portion of hearing #82018 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 – Louisiana Purchase, INC.

Zoning Administrator Cheryl Buchanan was sworn in by Chairman Schmitt and gave an overview of the application. She reviewed the application that was submitted for a conditional use permit for a restaurant in the C-1P zoning district as well as her review (please see attached review) of the request as it relates to the requirements of the Banner Elk Zoning Ordinance. Additionally she introduced Patrick and Laurie Bagbey as representatives of the application and noted that a site plan showing 23 parking spaces and 65 seats in a 2034sf building had been provided for each member. Ms. Buchanan told the Board that the only issue that was left to be resolved was a continuation of the Town's Streetscape sidewalk. Ms. Buchanan said there are two options, 1) that the proposed sidewalk on the west side of the building could be built to the streetscape standards and direct foot traffic around the front of the parking spaces proposed along Azalea Way or 2) a sidewalk could be built flush along the road right-of-way on the other side of the proposed parking spaces along Azalea Way. Ms. Buchanan told the Board that she would like for this to be

considered a condition of this permit approval and that the condition would state that the decision on which option would be worked out between the Town and the Bagbeys.

Deka Tate asked about Stormwater, to which Cheryl Buchanan answered that the runoff for the parking lot would be directed into the current stormwater system available at the southwest corner of the property. Ted Silver asked about the right of way and expressed concerns regarding the width of Azalea Way and the ability to access bike racks on the property from across the street.

Chairman Schmitt administered the oath to Town Manager Rick Owen so that he could testify to the requirements of the Town for the widening of Azalea Way and the requirements for a sidewalk. Mr. Owen went into further explanation on the 30 foot portion of the property owned by the Town that contains the street known as Azalea Way and where the neighboring properties lie. Mr. Owen told the Board that the current street is 14 feet wide but should be widened to 18 feet to better accommodate additional anticipated traffic due to the restaurant.

Fred Schmitt asked Mr. Owen to come before the Board and to point out the area he is talking about on the plans. Ted Silver asked about the sidewalk and stated that he thought it would be best if the owners felt it was better to use option #1, then the sidewalk should come out to the street so foot traffic would know to take the sidewalk once they passed the entrance to the rear parking lot. Deka Tate asked about the liability for using the sidewalk if this option is built. Town Manager Rick Owen responded that the Bagbeys would need to dedicate the sidewalk to the Town in order to transfer that liability to the Town.

Ted Silver asked about the elevation in front of the property where the bike rack would go. Rick Owen said there is a little bit of slope there but it should be gentle enough to get to the bike rack from the front sidewalk, even during bad weather.

Chairman Schmitt administered the oath to Patrick and Laurie Bagbey and then asked if they had any additional testimony to provide. Laurie Bagbey said they were pleased with the opportunity to present this project to the Board, but were a little unprepared to be required to put in a sidewalk. Chairman Schmitt asked if they were cognizant of the two options being considered. They responded that they were clear on the options.

Ted Silver again reiterated that those coming from the parking lot in the rear would need to be careful of the walkways in bad weather and that the Bagbeys might want to pay special attention to those areas as well, in addition to the concerns of handicapped patrons traveling that length of sidewalk.

The Bagbeys asked if they would be required to have a sidewalk the entire length of their improved property. Rick Owen answered that yes, this would likely be the case. The Bagbeys indicated that they understood.

Chairman Schmitt asked if the Zoning Administrator has any more questions, to which she replied, no. Rick Owen nor the Bagbeys had any additional questions at this point in the hearing.

At this point there were no more questions and Chairman Schmitt closed the public evidentiary portion 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:

Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye
Deka Tate - Aye. The motion carried 4 - 0 in favor.

Next Chairman Schmitt asked if 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-1P. Deka Tate seconded. The vote was:

Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye
Deka Tate - Aye. The motion carried 4 to 0 in favor.

Chairman Schmitt said it would be appropriate to consider any conditions that may be necessary at this point in the hearing. Ted Silver motioned that there is a proven necessity for a sidewalk adjacent to said property on Azalea Way, that placement of the sidewalk on the property and length of the sidewalk running North on the West side of the property is to be agreed upon between the Town and the Bagbeys. Joe H. Perry seconded. The vote was:

Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye
Deka Tate - Aye. The motion carried 4 to 0 in favor.

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

Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt - Aye
Deka Tate - Aye. The motion carried 4 to 0 in favor.

A motion by Deka Tate to close hearing #82018 was seconded by Joe H Perry.
The vote was:

Joe H. Perry - Aye

Ted Silver - Aye

Fred Schmitt - Aye

Deka Tate - Aye. The motion carried 4 to 0 in favor.

Public hearing #82018 came to a close. Attorney Josh Coffey said that the Zoning Administrator would be working with his office to prepare the documents within 30 days.

With no further comments, Chairman Schmitt called the meeting adjourned at 6:57 pm.

Respectfully submitted,

Cheryl Buchanan,
Zoning Administrator, Town of Banner Elk