

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 10/15/2018
MINUTES

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

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 August 20, 2018 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 with a unanimous vote.

Chairman Schmitt opened the quasi-judicial portion of hearing #1015-18 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 – Beech Boys, LLC and Angelo Accetturo.

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, reviewed each exhibit and her Zoning Ordinance review that was submitted for a conditional use permit for an auto sales lot in the C-2 zoning district. Ms. Buchanan stated that Beech Boys, LLC were the owners of the property and were leasing it to Angelo Accetturo. Mr. Accetturo will be operating the car lot. She noted that Exhibit 3 was an email from Marty Schlosberg, who is known to Ms. Buchanan and represents the Beech Boys, LLC, authorizing the tenant to speak on behalf of the owners for the Conditional Use Permit (CUP). Ms. Buchanan also introduced Valerie Cogdill, who is Vice President to Angelo Accetturo and informed the Board that she was there to represent Angelo Accetturo who could not attend. Ms. Buchanan reviewed the following exhibits for the meeting:

- Exhibit 1 – CUP application
- Exhibit 2 – CUP ordinance review
- Exhibit 3 – Authorization for tenant to speak to CUP
- Exhibit 4 – GIS Map of location
- Exhibit 5 – Parking Plan for 45 spaces
- Exhibit 6 – Planning Board minutes in relation to this request

Ms. Buchanan stated that the four light poles, one at each corner of the property were not in compliance with the Lighting Ordinance and would need to be refitted before use. Ms. Buchanan asked the Board to consider this a condition of the permit. Ms. Buchanan also noted that Mr. Accetturo had not made a final decision on signage, but that any signage he might want would have to come before her for a permit before it was approved and that this has also happened in other CUP reviews.

With no further testimony from Ms. Buchanan, Chairman Schmitt asked if any of the members had any questions for Ms. Buchanan. Ted Silver asked if auto repair would be conducted at this location. Ms. Buchanan answered no, it is not part of the CUP request. Mr. Silver asked about the use of the property for a potential sales office for Elk Creek. Ms. Buchanan stated that this use is permitted by right and did not need to be covered by this CUP. Ted Silver asked about the authorization by Mr. Schlosberg and its validity. Ms. Buchanan said that Mr. Schlosberg is related to and works for the Suchmans, who make up Beech Boys, LLC, and is entitled to speak on their behalf. Ted Silver stated that he felt the application was not complete. He stated that there are blank spaces left under Section B on parking requirements and that it could be rectified if Ms. Cogdill would cross out the blanks for the number of employees and parking spaces that will be used and initialed. Ms. Cogdill did perform that action before the Board.

Jimmy Ollis asked about the bridge on Hardees Lane and mentioned the fact that it had to be repaired several years ago. Ms. Buchanan testified that she found notation in the old file for Hardees on the materials and procedure used to repair the bridge and stated she felt it would be safe for traffic since Elk Creek had heavy machinery crossing that bridge on a regular basis during this building phase of the development with no marked problems. Mr. Ollis asked if the other bridge could be used by patrons. Ms. Buchanan said she had not researched an easement on that bridge but noted that when Hardees was in operation, that particular bridge was used by their traffic. Considering that the bridge was on the Beech Boys, LLC land, she assumed it could be used by the traffic generated by the car lot.

Chairman Schmitt administered the oath to Valerie Cogdill and asked if she would like to ask Ms. Buchanan any questions. Ms. Cogdill answered no, that she felt like Ms. Buchanan had pretty much covered everything. Ms. Cogdill noted that she lives close to the property and that she had no problem with the proposed use as a neighbor and that she and Mr. Accetturo has spoken about the lighting and agreed that the light poles would have to be refitted.

Chairman Schmitt asked if the Zoning Administrator had any questions for Ms. Cogdill, to which she replied, no. Chairman Schmitt asked if the Board had any questions for Ms. Cogdill. Ted Silver said he wasn't sure who to ask this question of, but if the property sells, what happens to the CUP. Ms. Buchanan answered that the CUP goes with the land and that the new owners could continue to operate the car lot, or not.

Chairman Schmitt asked if Ms. Buchanan had any closing statements. Ms. Buchanan said no. Chairman Schmitt asked if Ms. Cogdill had a closing statement, to which she replied no.

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 as amended. Ted Silver moved that the application is complete. Dekka Tate seconded. The vote was:

Jimmy Ollis – Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt – Aye
Dekka Tate - Aye. The motion carried with a unanimous vote.

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. Joe H. Perry moved to approve that the requirements had been satisfied, and that it is in harmony with the Zoning District C-2. Ted Silver seconded. The vote was:

Jimmy Ollis – Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt – Aye
Dekka Tate - Aye. The motion carried with a unanimous vote.

Chairman Schmitt said it would be appropriate to consider any conditions that may be necessary at this point in the hearing. Joe H. Perry motioned that the four light poles would need to be brought into compliance with the Lighting Ordinance. Dekka Tate seconded. The vote was:

Jimmy Ollis – Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt – Aye
Dekka Tate - Aye. The motion carried with a unanimous vote.

Joe H. Perry motioned for an additional condition to have the landscaping brought up to the standards set by the Zoning Ordinance, Section 700 and the Town. 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 with a unanimous vote.

Ted Silver moved to issue the CUP based on the two (2) conditions listed above. 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 with a unanimous vote.

A motion by Deka Tate to close hearing #1015-18 was seconded by Joe H Perry. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Fred Schmitt – Aye
Deka Tate - Aye. The motion carried with a unanimous vote.

Public hearing #1015-18 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 6:41 pm.

Respectfully submitted,

Cheryl Buchanan,
Zoning Administrator, Town of Banner Elk