

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 05/20/2019
MINUTES

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, David Tate, Deka Tate

Staff Present: Town Manager Rick Owen, Zoning Administrator 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.

Consideration of the April 15, 2019 Minutes

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

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

Chairman Schmitt read from a short script that indicated that this meeting is a quasi-judicial proceeding, much like a court proceeding, in which one's individual's rights are being determined. Witness will be sworn in for testimony. The Chairman asked if there were any board members present that could not be impartial or who had received information outside of this hearing. None were noted and the hearing proceeded.

Request for a Permit Extension – Louisiana Purchase

Zoning Administrator Cheryl Buchanan, Patrick and Laurie Bagbey were sworn in by Chairman Schmitt.

Zoning Administrator Cheryl Buchanan told the Board that the Louisiana Purchase had received a Conditional Use Permit (CUP) in the fall, but due to the weather and other considerations, they had not been able to begin work on their new project. Ms. Buchanan referenced Section 1110 of the Zoning Ordinance that requires a zoning permit be obtained within six (6) months of approval. The Zoning Administrator is asking for an extension of that time limit to allow for an additional six (6) months. Fred Schmitt asked if six (6) months would be enough and was that reasonable. Both parties agreed that this would be good.

Ted Silver moved to extend the permit time for an additional six (6) months with a second by Deka Tate. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

McManus Hardscapes – CUP Request

Zoning Administrator Cheryl Buchanan introduced Dave and Marsha McManus as the applicants for the CUP. Ms. Buchanan stated that since this specific use was not listed in the table of uses, the ordinance holds a statement that if the use is not specifically stated in the table of uses, then it would be considered a conditional use. That is the case here. Ms. Buchanan reviewed the information provided in the packet as:

- Minutes from the Planning Board meeting on May 6, 2019 regarding this request;
- The CUP applications with letters from the current property owners;
- A survey of the three parcels;
- The Zoning Administrator’s review of the project;
- A GIS map indicating the location and surrounding properties;
- A site plan with the proposed stormwater measures on it; and
- A permit for driveway access from the NCDOT.

Ms. Buchanan continued with naming some items that she had requested as conditions with this permit. At the time the packets were sent out, Ms. Buchanan did not have some of the information. She noted that the NCDOT permit came in as the packets were going out and she had included a copy of it in the packet. Also, the stormwater and site plan were a last minute add in as well. Ms. Buchanan noted that the CUP request involves three separate parcels with the PIN’s: 1859-1701-7169 and 1859-1701-8394 owned by Ira (deceased) and Jacqueline Fender of Montana and 1859-1711-0318 owned by Patrick and Linda Hodges of Banner Elk. The first condition that Ms. Buchanan would like the board to consider is a recombination plat that would eliminate the worry of setback lines through the middle of the project. The property is under contract and the McManus’ are in their due diligence period, thus the written permission from the current property owners, as the Board is aware that a CUP goes with the land and not the owners.

Ms. Buchanan told the Board that the site will support a retail business of selling hardscape materials and that the McManus’ plan to build several of the projects they offer while displaying the materials at the same time. Ms. Buchanan noted that the property is flanked by commercial zoning on both sides and by a very short distance of residential development in the back, which is the Rockmoor Apartments. A buffer will be required for that portion of

the boundary.

Ms. Buchanan also noted that another condition requested was to address stormwater. On the site plan prepared by Municipal Engineering, a storm drain and pipe are shown on the southern perimeter of the property with the pipe emptying out to a drainage ditch that runs along the back of the Rockmoor properties and into a storm drain which runs under the Beech Haven Road.

The last condition requested was approval by North Carolina Department of Transportation (NCDOT) to allow an access driveway off of US Highway 184, also known as the Beech Mountain Parkway. There is an existing driveway that has been shared by the adjoining properties but the McManus' feel this will alleviate any potential problems with their neighbor, Holly Ogle. Dave McManus also asked the Town Manager Rick Owen to consider allowing the moving of the second ingress and egress onto Beech Haven Street. Currently it runs beside the building, but Mr. McManus would like to locate it a little farther up the Beech Haven Street to allow for a tractor and trailer to be able to pull into the property off of Highway 184 and into the retail center to unload materials and then continue out of the area onto Beech Haven Street, allowing for the truck to pull straight through instead of trying to turn around in such a small area. The Town Manager had the Town's Engineer come out and look at the road to make sure it could support that type of traffic. The Engineer reported that it should not be a problem and the Town Manager was agreeable to the proposal.

Chairman Schmitt called Dave and Marsha McManus to the front to be sworn in for testimony. Ted Silver asked about the driveway. Marsha McManus said that the current driveway was mostly on their property, but needed to be enlarged to support the large trucks that would be making deliveries. To avoid any future confrontation about entry into the property, they had applied to NCDOT to ensure that they could access their property off of Highway 184. The approved permit allows for 30 linear feet of driveway off of Highway 184. Ted Silver also asked about the ingress and egress off of Beech Haven Street. Ms. Silver suggested that it may not be best to have that access point straight, but curved. Marsha McManus affirmed that this was what they intended to do. A laugh was shared when Mr. Silver mentioned the pay phone that is on their property along the Beech Haven Street. Ms. Buchanan told the Board that this section of Beech Haven Street was actually deeded to the Town; that the owner had traded it for goods in kind. Dave McManus said that some of the slope would be taken out when he graded the property to correct the stormwater runoff.

Ted Silver noted the buffer requirement between the C-2 and the R-2 should be addressed in the permit. Ms. Buchanan assured them it would be. Fred Schmitt asked about the modifications and construction that was indicated in the CUP application. Dave McManus answered that he would be putting new siding on the building, trimming some of the trees, building bins to store some

of the materials he will be required to use on site, building retaining walls for display purposes as well as fire pits and outdoor chimneys and grill stations and adding a split rail fence around the whole property. Ms. Buchanan mentioned that the McManus' had inquired about the possibility of putting an apartment in the top of the structure. Ms. Buchanan said that this is allowed in that zoning district as a conditional use and that it can be no more than 40% of the building's use. Chairman Schmitt stated that the Board would need to consider this as an amended application with the addition of a potential apartment in the upper portion of the building. Mr. Schmitt asked about the disposal of refuse on site. Dave McManus answered that he would not have enough to require a dumpster, but would haul it to his personal property where he had a dumpster.

Deka Tate asked about lighting. Dave McManus said they had no plans to be open at night and did not anticipate needing any. Ms. Tate asked about security at night. Mr. McManus said if they needed any lighting, they would probably install a motion sensor light that would be directed down toward the ground.

With no further discussion, Chairman Schmitt asked if the Zoning Administrator had a closing statement. Ms. Buchanan said she felt that all of the points had been covered by testimony and she had nothing additional to add.

Chairman Schmitt concluded this portion of the hearing closed and the Board should consider themselves in deliberation status. Chairman Schmitt asked if any member had additional questions or comments. None were noted.

Ted Silver motioned that the application as amended to include an apartment in the future if needed, was complete. The motion was seconded by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

Ted Silver motioned that the application is in compliance with the ordinances of Banner Elk and in harmony with the C-2 zoning district. Deka Tate seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

The conditions mentioned during the hearing were addressed as:

Ted Silver motioned that a recombination plat be prepared in which all three lots would become one lot. Fred Schmitt seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

Fred Schmitt motioned that the stormwater plan be constructed as per the plan prepared by Municipal Engineering. Ted Silver seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

Ted Silver motioned to accept and enforce the NCDOT approval of a 30 foot linear entrance off of Highway 184. Morgan Herdklotz seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

Ted Silver motioned that the additional access off of Beech Haven Street be in compliance with the Town of Banner Elk. Deka Tate seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

In reference to the amended application to include an accessory apartment above the main building, Fred Schmitt motioned that the accessory apartment be in accordance with the ordinances of the Town of Banner Elk. The motion was seconded by Ted Silver. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

Motion by Ted Silver that along with the Findings of Fact and the Conclusions of Law, the CUP is approved with conditions. Seconded by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a majority vote.

With no further business, Deka Tate motioned to adjourn with a second by Morgan Herdklotz. All were in agreement and the meeting was adjourned at 6:52 pm.

Respectfully submitted,

Cheryl Buchanan, Secretary to the Board of Adjustment

Respectfully submitted,

Cheryl Buchanan

Zoning Administrator, Town of Banner Elk