

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 08/19/2019
MINUTES

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, Dekka Tate, and David Tate, in-town alternate

Staff Present: Town Manager Rick Owen, Zoning Administrator Cheryl Buchanan, Town Attorney Stacy Eggers, IV

Chairman Fred Schmitt called the meeting to order at 6:23 p.m. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the June 2019 Minutes

Fred Schmitt identified a typo, the word intended to be used was “use” not “sue” and asked that be corrected for the record. With the change noted, Ted Silver moved to approve the minutes as corrected. Fred Schmitt seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Request to Amend the CUP for High Country Square

Chairman Schmitt stated 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.

Zoning Administrator Cheryl Buchanan was affirmed by Chairman Schmitt.

Zoning Administrator Cheryl Buchanan stated High Country Square is located along Highway 184 was approved for a Conditional Use Permit (CUP) in July 1985. The permit allowed for a Planned Commercial Development, with three (3) retail buildings, one of which has a second story. John and Pat Miller are selling the complex to Faison and Shaw Kuester and the Kuesters are wanting to take the building with the second floor and convert the top floor to six (6) apartments. This is allowed in the C-2 as a conditional use as long as the residential portion does not exceed 40% of the commercial development. Ms.

Buchanan indicated that the six (6) apartments would be within the 40% residential use in a commercial development.

Following a hearing on June 18, 2019 wherein the Board of Adjustment approved this request, the applicant and his architect discovered that in order to comply with the Americans with Disabilities Act the property would require a handicap accessible unit.

The applicant proposed to meet this requirement by converting one of the ground floor commercial units to a residential unit, for seven total residential units. The residential density upon this conversion would be 38.5%, which is below the 40% maximum set forth in the Zoning Ordinance.

Instead of building a wheelchair ramp that would be 120 feet long to access the apartments upstairs, the applicant is asking to amend the previously issued CUP to add a seventh apartment to the bottom of the same building. Bill Dixon of Appalachian Architecture was present to speak to the request.

Mr. Dixon was sworn and was asked by Ms. Deka Tate if the apartments were required to have two entrance/exits in case of fire. Mr. Dixon answered that the building would be required to have a sprinkler system for fire suppression. Mr. Silver showed Mr. Dixon a picture and asked if this was where the unit would go. Mr. Dixon confirmed that this was the unit. Mr. Silver expressed concern that there was a heating/air conditioning unit and electric meters by the door that he felt might block accessibility. Mr. Dixon said this was the unit that was coming open for lease and that was the reason it was chosen. Mr. Eggers stated that enforcement of the Building Code is the function of the Avery County Inspection office.

Fred Schmitt asked about the timeframe for the work to begin. Mr. Dixon said the work would probably start in September. Town Attorney Eggers said that the definite location of the seventh apartment did not have to be determined by the Board and that there could be some flexibility to the location if the Board found such flexibility would not have a negative impact on meeting the requirements of the zoning ordinance.

There were no closing remarks. Chairman Schmitt closed this portion of the hearing and told the Board they should consider themselves in the deliberation phase of the hearing. Chairman Schmitt asked if any member had additional questions or comments. None were noted.

Ted Silver motioned that the application was complete. The motion was seconded by Morgan Kerdklotz. The vote was:

Morgan Herdklotz – Aye
Ted Silver - Aye
Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

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

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

The conditions required of the project, in addition to those representations made by the developer as part of the hearing are as follows:

Ted Silver motioned that the applicant be allowed flexibility as to the location of the seventh apartment as long as it meets the ordinance requirement not to exceed 40% with residential use. Deka Tate seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Motion by Ted Silver that along with the Findings of Fact and the Conclusions of Law, the amendment to the amended CUP is approved with the conditions set forth above and those previously required by the Board. Seconded by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Deka Tate moved to close this portion of the hearing. A second by Ted Silver. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

CUP Request – Banner Elk Mini Storage

Chairman Fred Schmitt opened the second hearing of the night.

Zoning Administrator Cheryl Buchanan was affirmed and stated that Ethan Anderson had filed an application for storage units on a parcel next to the

Dollar General. Ms. Buchanan testified that the property is zoned C-1P and consists of 2.80 acres. Road frontage is provided by State Highway 194 and Mr. Anderson has NCDOT approval to access the property from that road as per the NCDOT permit in your packets. The property is located in a flood plain and Mr. Anderson has been made aware of the requirements of working in a flood plain. Mr. Anderson has been working with Ralph Daughtery surveying to determine the base flood elevation. Ms. Buchanan reviewed the sections of the zoning ordinance that applies to this request and pointed out that the packet also has a copy of the brochure of the type of building Mr. Anderson plans to use along with the colors and the type of lighting he plans to use. Ms. Buchanan reviewed the site plan and the stormwater plan and stated that they meet the requirements of the ordinance. She noted that the stormwater also mitigates runoff from the Dollar General property as well. Parking spaces are 24 calculated from the square footage of the buildings and Ms. Buchanan indicated that there will be three (3) buildings, two (2) that can be accessed from the outside and one that will be climate controlled with inside access. Ms. Buchanan said the requirements for setbacks have been met and a landscaping plan is also include in the packets. Ms. Buchanan noted that although the buildings will be metal, they will have hardy board siding and some faux stone to give it some relief. The proposed colors are sandstone and dark green. The roofs of the two (2) outside accessible buildings will be flat with a parapet wall around the roof and the center climate controlled building will have a pitch roof.

Ms. Buchanan said that Mr. Anderson is out of Town, but that his partner Mike Boone was present to answer any questions the Board might have. Mr. Boone was sworn but said he had no further evidence, and that Ms. Buchanan covered everything.

Ted Silver asked how many units were in this project. Mr. Boone said he did not know. Ted Silver stated that per Section 708.1 all property owners shall be responsible for providing trash receptacles and it is the responsibility of the owner not the tenants. Mr. Silver added that the type of solid waste receptacle could be determined by the owner with the Zoning Administrator's approval and that this could be made a condition. Mr. Boone said that they will take the responsibility and are willing to amend the application to reflect that they are going to add a trash receptacle.

Adjoining property owner Ed Hardin was recognized and sworn. Mr. Hardin said that the project looks pretty well thought out and he appreciated the Town looking out for their best interests, but he is concerned that the roof may be reflective and asked that this be addressed. Mr. Boone stated that they would be willing to do whatever was needed to make sure this did not happen. Mr. Hardin asked that the roof be green and not white. There were no additional questions and no closing remarks from either party.

Chairman Schmitt closed the evidentiary portion of the hearing and opened the deliberation portion of the hearing. No further remarks were made.

Ted Silver motioned that the application was complete with the amendment that a solid waste receptacle was being added. 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 4-0 vote.

Deka Tate motioned that Per Section 307, the intent of the zoning ordinance indicates that should an applicant petition the Town for approval of a use not covered specifically in the ordinance, the application may be considered as a conditional use. In considering the factors related to whether the use is in harmony with the public health, safety, and welfare of the citizens of Banner Elk, the impacts of anticipated amounts of traffic, noise, light, density, vibration, odor, and the bearing these may have on adjoining neighbors and the community are consistent with other similar uses in this zoning district. The proposed use of the property is, in fact, in harmony with the surrounding properties and will not have a substantial negative impact upon them and the application is in compliance with the zoning ordinance and the C-1P zoning district. Fred Schmitt seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Fred Schmitt motioned that the following conditions are required for this application: 1) the roof be painted with a non-reflective green color; 2) the sign meet the requirements of the Zoning Ordinance and the approval of the Zoning Administrator; and 3) solid waste receptacles be provided which meet the approval of the Zoning Administrator. Ted Silver seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Motion by Deka Tate 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 4-0 vote.

With no further business, Deka Tate motioned to close the hearing and adjourn with a second by Fred Schmitt. All were in agreement and the meeting was adjourned at 7:43 pm.

Respectfully submitted,

Cheryl Buchanan, Secretary to the Board of Adjustment