

BANNER ELK BOARD OF ADJUSTMENT  
MONDAY, 12/16/2019  
MINUTES

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, Deka 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 6:19 p.m. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the August 2019 Minutes

With no changes noted, Ted Silver moved to approve the minutes as corrected. 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.

Request Approval for a CUP for Phase III, The Vistas Properties of Banner Elk

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 that this is a request for Phase III of the Planned Residential Development known as The Vistas located on Penny Lane off the Beech Mountain Parkway. The property is zoned R-2 and consist of 18.33 acres. The property is in the town limits of Banner Elk and is served by town water and sewer. This third phase is being proposed of seven (7) quad-plexes and is located between Phase I and Phase II.

Ted Silver asked about the grades of the road. Ms. Buchanan said they have been certified as no greater than 18% and that the fire department had written a letter approving the accessibility of the roads by emergency vehicles.

Fred Schmitt stated that this was a new CUP but that there was time left on the previous CUP. Ms. Buchanan said this application would not affect the previously approved phases and Town Attorney Eggers agreed. The statutory vesting period of 2 to 5 years was discussed. Mr. Schmitt also asked about the percentage of impervious surface. Ms. Buchanan testified that it was well within the requirements of the ordinance and was printed on the approved site plan when the building were reconfigured.

JP Cogdill was sworn in and said that he appreciated being allowed to speak to the Board on behalf of Kent Smith. Mr. Smith had appointed Mr. Cogdill as his representative. Following no other questions, the public hearing was closed at 6:43 pm.

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 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 the application is in compliance with the ordinances of Banner Elk and in harmony with the R-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.

There was some discussion about the time for this permit. Attorney Eggers stated that if a building inspection was performed at least every six (6) months at the end of the two year vested right period, then this would keep the permit active and it would not expire. No conditions were added to this request.

Motion by Ted Silver that along with the Findings of Fact and the Conclusions of Law, the CUP is approved for Phase III. 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 the hearing. A second by Fred Schmitt. 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, the hearing adjourned at 6:54 pm.

Respectfully submitted,

Cheryl Buchanan, Secretary to the Board of Adjustment