

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 01/18/2021
MINUTES

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

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

Others Present: Matt Bagley, Mike Trew

Chairman Fred Schmitt called the meeting to order at 6:01 p.m. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the November 2020 Minutes

With no changes noted, 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 4-0 vote.

SUP Request for Grandfather View Miniature Golf

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. Witnesses 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 and Matt Bagley, the applicant, was sworn in as well.

Zoning Administrator Cheryl Buchanan stated that this is a request for a miniature golf course to be located at 1944 Tynecastle Highway on one parcel zoned C-2. The property is inside the town limits and consists of .830 acres. This is a secondary use as the Banner Elk Car Wash is already located on the same parcel. This use also has special use Section 920, that regulates to the

operation of a miniature golf course. Section 920 does not directly provide for parking requirements as this use is not stated in the parking requirements table. Ms. Buchanan stated that the property is flanked in back by a flood plain zone and if any of the course were located in that zone, it would be acceptable as long as what was put there did not impede the flow of water.

Fred Schmitt asked the Zoning Administrator if she had a recommendation on this project and she replied that she did not. The floor was opened to Matt Bagley, who explained that his family are avid players of miniature golf and he wanted to provide that type of entertainment to those visiting Banner Elk. Matt Bagley said that he hired Mike Trew of Municipal Engineering Services to address runoff issue to the back of the property. Chairman Fred Schmitt administered the oath to Mike Trew and Mr. Trew proceeded to tell the Board how they plan to mitigate the runoff to the back of the property.

The floor was opened to questions from the Board and Ted Silver said he had questions. First Mr. Silver noted that they had several pieces of a plan but would like to see all these components put together on one site plan, the components being landscaping, parking, course layout, etc..... Ted Silver also noted that one plan shows a number of bays; but another plan does not show the same number and he felt there were some discrepancies between all the different plans prepared by different people. Matt Bagley said he had no plans to reduce the number of bays for the car wash. Ted Silver asked about the back entrance/exit and how wide that would be. Matt Bagley answered that he was planning to widen it and it appeared to be about 20 feet in width, explaining that the crosshatch section of the island would now become part of an entrance/exit. Mr. Silver asked if there would be signage directing traffic to the parking area in the back of the lot. Mr. Bagley said he planned to use arrows painted on the pavement as an indicator. Ted Silver then asked about how Mr. Bagley planned to direct foot traffic from the five (5) parking spaces in front of the sign. Mr. Bagley said he is planning to paint a crosswalk across the parking lot to the office that will sell tickets, issue equipment for playing and house public restrooms. Ted Silver questioned if this would be effective in getting people to where they need to go. Mr. Bagley said that people often do what they want to regardless of signs or painted crosswalks. Ted Silver asked if there would be a sidewalk in front of the parking spaces. Mr. Bagley answered no.

Ted Silver stated that he felt the plans are not a clear depiction of what will be on site. Fred Schmitt stated that he was concerned about parking for the vacuum area in the back and how they would differentiate them from the other parking spaces. Ted Silver also noted that he did not see how the public was supposed to access the other parking spaces in the back, whether they would be directed to drive around to the back or through the washing bays. Mr.

Silver also asked if there would be signage like stop, yield, or additional parking. Mr. Silver asked Mr. Bagley who he consulted with for the traffic flow on the site plan. Mr. Bagley said he used Adrian Tate from Watauga County, but gave no reference to his qualifications. Ted Silver asked what criteria was used to design the flow of traffic and the parking spaces. Mr. Bagley said he used the zoning ordinance for this. Mr. Silver commented that the scale was not measurable and asked for the measurements for the line of sight and turning radius for the parking spaces. Mr. Silver said that Mr. Bagley's insurance and risk management might be concerned about the design of this parking area, because of the concerns related to pedestrian and traffic flow. Mr. Silver also said that the plans were not large enough to be able to clearly read all parts of them.

Fred Schmitt began a review of Section 920 that regulates miniature golf courses. Chairman Schmitt asked about the fencing mentioned in criteria item number 1. Matt Bagley said he planned to use split rail fencing with landscaping to keep any balls from going out into traffic. Mr. Schmitt said the essence of number 1 is to keep the traffic from being distracted as they drive by. Mr. Bagley said he wanted people to be able to see the waterfall from the road and that he wanted the passing traffic to consider stopping and playing. There were no questions for section numbers 2-4. Number 5 deals with parking and there are unresolved issues with this point. Number 6 will be taken care of by the additional ticket booth being added to the end of the last bay. Number 7 was addressed in the Engineer's report. Number 8 allows for the Town to require a bond in case the course is abandoned within a year and the money from the bond would be used to return the property to its natural state.

Questioning continued as to what would be needed for the Town Manager and Town Council to come up with the amount for the bond. Mr. Bagley was requested to acquire a quote from a licensed contractor for what it would take to remove all concrete and put the property back as it was. During the discussion, Town Attorney Four Eggers was allowed to question Mr. Mike Trew for his credentials. Mr. Trew testified that he graduated from NC State in 1985 as a Registered Engineer and received his Civil Engineering certification in 1993. Mr. Trew said he has worked for Municipal Engineering for 29 years. When asked, Mr. Trew said that he works on site design, stormwater, and other related engineering projects. Mr. Eggers asked Mr. Trew to explain for the Board what distinguishes pervious concrete from other types of concrete. Mr. Trew stated that it uses a lot more aggregate and is not allowed to settle like regular concrete to allow for holes in the concrete so that water can trickle down through the concrete to the ground. Mr. Trew also noted that the concrete used would not be reinforced with steel since it would not be bearing heavy loads. Mr. Eggers asked about the thickness of the concrete and Mr.

Trew replied it would be about four (4) inches thick. Mr. Eggers asked how much they planned to use of the pervious concrete. Mr. Trew said approximately 1,000sf. Mr. Eggers asked how much of regular concrete would be used for the course. Mr. Trew said about 3,720sf. Mr. Eggers asked Mr. Trew to describe the process for the removal of the concrete. Mr. Trew said it could be busted up with a track hoe and then loaded onto a dump truck; that it could conceivably take two (2) dump trucks to remove it all in one day. Mr. Bagley was requested to provide an estimate from a licensed contractor for the removal and restoration to allow the Town Council to have that in the record to determine the amount of the bond.

Chairman Schmitt stated that number 9 addresses the course design. Ted Silver asked Matt Bagley where he got his information about only half of the course being required to be ADA accessible. Mr. Bagley said he could not remember, but that someone had told him that during his investigations. Mr. Silver noted that the course designer "Harris" gives some information on this on their website. Mr. Silver also noted that even though the plans are hard to see because the print is so small, some of the holes do have a picture of a wheelchair, denoting that they are ADA accessible. Town Attorney Eggers said that ADA compliance is a federal mandate and that it would be addressed during the building code permitting process and it was not necessary for the Town to make findings as to the correctness of ADA compliance. Ted Silver said he would like to see one of the conditions be the installation of three bicycle racks. Fred Schmitt asked about the waterfall and how it will operate. Mr. Bagley said the water would be recycled.

Morgan Herdklotz stated that in the Planning Board minutes that after looking at the conceptual photos, she did not know exactly what the course would look like and asked Mr. Bagley to explain. Mr. Bagley said he wants to keep with a natural theme and planned to use a lot of landscaping to accomplish that. Mr. Bagley commented that the level of detail the Board was looking for would have cost him \$25,000 and he did not want to spend that amount of money on a plan that might not be approved. Morgan Herdklotz asked what material the waterfall would be made of. Mr. Bagley responded with resin made to look like rocks. Ted Silver noted that in exhibit 7, the concrete is said to be made with fiber mesh for added strength. Mike Trew said this would make it stronger and harder to remove. There were no additional questions for number 10 – 12 of Section 920. Chairman Schmitt noted that there is a NCDOT right-of-way (r-o-w) at the front of the property. Zoning Administrator Cheryl Buchanan said that she had made Mr. Bagley aware of the NCDOT r-o-w and that other CUP's have been granted with the understanding that the NCDOT r-o-w exists.

Matt Bagley made his closing statement by stating that he wanted a safe, orderly entertainment attraction but if he had to reduce one or two of his car

wash bays or lose some parking, this venture would not be economically feasible for him. Mr. Bagley said he was willing to get a professional person to help with the design of his parking lot if he can keep his bays and parking spaces.

Chairman Schmitt closed the evidentiary portion of the meeting and opened the floor for discussion. Chairman Schmitt's first concern is that the application needs additional information with regards to the flow of traffic on the site and parking related to safe and proper traffic flow, as well as additional information from a reliable source on ADA requirements. The other members of the BOA agreed that there was not enough information to support a decision on a project like this that will impact the community. Attorney Eggers advised the Board that they can consider a motion as to whether the application is incomplete and reconvene this meeting to another date to allow Mr. Bagley more time to gather the requested information.

Chairman Schmitt asked for a motion that the application was complete. Hearing none, Chairman Schmitt asked for a motion that the application is incomplete. Motion by Ted Silver that the application is incomplete, finding that the Board needed a traffic/pedestrian flow study design based on the existing facility and the added activity that Mr. Bagley is suggesting showing that it meets all the appropriate traffic, safety, & design requirements as presented by Mr. Bagley, and allow 60 days for the applicant to gather the requested information and appear back before the Board. Second 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.

The next motion by Chairman Schmitt was for the applicant to gather the requested additional information on the bonding issue to present to Town Council. Second 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 made a motion to amend the original action to ask that delivery trucks be considered as part of the traffic flow study. 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.

Mr. Eggers was asked to summarize the items listed by the Board as being incomplete and in need of being addressed before the BOA meeting within the 60-day time frame. The summary of the incomplete items is as follows:

1. Provide a traffic flow study for the existing and proposed uses, including large delivery trucks.
2. Provide an estimate for removing any materials used in the building of the miniature golf course and restoring the property back to its natural state.

Upon the call of the case for Jim Frye/Traxx Remote Control Park, no party appeared or answered on their behalf. Attorney Eggers advised the Board that it could either continue the case on Mr. Frye's or proceed with consideration of the matter. However, without testimony or evidence from Mr. Frye the Board would be compelled to deny the application if it proceeded to hearing.

A motion by Deka Tate to table the first agenda item (Mr. Jim Frye/Traxx Remote Control Park) due to a no-show of the applicant until the next meeting date. Seconded by Fred Schmitt. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Nay

Fred Schmitt – Aye

David Tate - Aye. The motion carried with a 3-1 vote.

A motion by Fred Schmitt to adjourn the meeting. Seconded by Deka Tate. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

David Tate - Aye. The motion carried and the hearing adjourned at 8:24 pm.

Respectfully submitted,

Cheryl Buchanan, Secretary to the Board of Adjustment