

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 11/16/2020
MINUTES

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

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

Chairman Fred Schmitt called the meeting to order at 6:00 p.m. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the October 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

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

SUP Request for TRAXX Recreational Park

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 Jim Frye, the applicant, was sworn in as well.

Zoning Administrator Cheryl Buchanan stated that this is a request for several recreational uses on one parcel zoned C-2. These uses are not specifically listed in the table of uses and therefore Section 307 applies. This section states that any use not listed in the Table of Uses would require a special use permit. Ms. Buchanan then followed through with a description of the property as zoned C-2, in the Extraterritorial Zoning Jurisdiction (ETJ) of Banner Elk existing of 1.930 acres. Some of the recreational opportunities being considered are electric remote-control car racetracks, one for smaller children and one for older kids and adults, “rock crawler” course along the creek and a gem mining operation. The review covered setback requirements,

no town utilities being requested, parking, lighting, and signage. There is an existing building on the property that will serve as an office for renting cars and associated parts. The building is outfitted with restroom facilities for the public. Ms. Buchanan noted that the parapet roof had recently been painted bright red and that this was not an acceptable color on the town's color chart. Ms. Buchanan asked for this to become a condition of the permit. In discussing lighting, Ms. Buchanan told the Board that the current lighting did not meet the ordinance requirements and she had asked the previous occupant to turn it off due to the brightness along a major thoroughfare and asked that bringing this into compliance be considered as a condition. Ms. Buchanan also told the Board that she had one other condition she would like to BOA to consider, to not allow the use of gas-powered cars as they make much more noise than the electric cars. Mr. Frye agreed that he did not want to use gas-powered cars at his track.

Chairman Fred Schmitt said he was concerned that the application would not be considered complete since there was no written authorization from the property owner. Chairman Schmitt said this would be required before the project could go forward.

Ted Silver commented on the traffic pattern this proposal could generate and said he felt NCDOT should weigh in on it from a safety standpoint. Mr. Silver said the zoning ordinance requires certain spacing and measurements for parking and traffic islands and since there was no scaled site plan, it was hard to tell if this requirement was being met. Mr. Silver said his primary concern was safety for the pedestrians and wondered how they get from the cars to the track, reiterating that a scaled plan would have provided the necessary information to form a sound decision. Mr. Silver stated he did not think the application was complete as it is now.

Mr. Frye responded that he understands that parking is a big concern, but he was not sure how to calculate the number of spaces he would need before he opens. Mr. Frye said that he has additional areas he can put parking if it turns out that he is going to need them, but since there is no specific number of spaces as a requirement in the ordinance, he planned for a maximum of 40 people at any given time. He said he would like to have the problem the Alpine Roller Coaster has had; but will not know if that is going to happen until he opens. Mr. Frye did point out that people who park at Walmart have to walk through the parking lot and are able to do it safely and he feels that they will be able to maneuver through his parking lot safely as well.

Ted Silver said he would still like to hear from NCDOT about a one-way traffic pattern through this property and how that will impact traffic on the Beech Mountain Parkway. Mr. Silver asked Mr. Frye how many people he thought the gem mining could handle at one time. Mr. Frye responded with 10 to 15 people and with the car and truck rental, he calculated approximately 40 people total. Ted Silver stated that 18 parking spaces may not be enough and asked if Mr. Frye was still interested in renting drones. Mr. Frye said he had

changed his mind and would not allow drones or boats. Mr. Silver asked about competitive race events and whether there was enough parking for that. Mr. Frye asked Mr. Silver exactly how many parking spaces he needed to see him provide.

Morgan Herdklotz asked Mr. Frye if there was any chance one of the cars could jump the track and hit one of the cars in the parking spaces beside the track. Mr. Frye said this was an easy fix and he could put up some orange construction fencing that would make a sufficient barrier to prevent any damage to cars. Morgan Herdklotz said she would like to see some walking room between the parked cars and the racetrack. Mr. Frye said if his project becomes successful and parking became an issue, he could go to a reservation system where groups would need to make a reservation to use the facilities. Mr. Frye also stated that there is plenty of room on the property to expand parking if he needs to.

Fred Schmitt asked Mr. Frye if he had received any more information from the Division of Water Quality with regards to the mining operation and its impact on the creek that runs through the property. Mr. Frye said the mining operation would not impact the creek because the water he plans to use will be recycled. Chairman Schmitt asked about the mention of serving prepackaged food in the Planning Board minutes. Mr. Frye said he had spoken with the Avery County Health Department and that he had been told he could do this as long as he wasn't preparing it on site. Chairman Schmitt said he would like something in writing acknowledging that Avery County Health Department would consider this in compliance with their requirements. Mr. Frye said he had also considered using a food truck occasionally.

Ted Silver said there are a lot of incomplete issues and is concerned that there are too many unanswered questions to continue. Mr. Silver asked Attorney Eggers how the BOA can make a determination if there is not even a site plan. Attorney Eggers said that the first item the BOA votes on is whether the application is complete. Mr. Frye stated that he did not want to spend a lot of money upfront if he was going to be turned down; but he can think of a million ways he can accommodate the Board's concerns.

Ms. Buchanan reiterated in her closing statement that she believed that Mr. Frye had met the requirements of the ordinance as they are outlined in her review without knowing what kind of additional information the Board would require. Mr. Frye said he would be happy to provide any additional information the Board feels they need to make an informed determination.

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 to be more complete and needs to speak to the ordinance requirements in Section 307, siting criteria to determine if the use is in harmony with the keeping of the public health, safety, and welfare of the citizens of Banner Elk as are the impacts of anticipated amounts of traffic,

noise, light, density, vibration, odor, and the bearing these may have on adjoining neighbors and the community. The other members of the BOA agreed that there was not enough information to support a decision on a project that will impact the community. Attorney Eggers advised the Board that they can convene this meeting to another date and allow Mr. Frye time to gather the requested information after finding the application incomplete. Motion by Ted Silver that the application is incomplete with a second by David Tate. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

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

Mr. Eggers suggested they allow ample time in listing a date for the next hearing and if Mr. Frye can prepare what is needed earlier, then the Board can reconvene at an earlier date. Mr. Eggers was asked to review the items listed by the Board as being incomplete and in need of being addressed before the next BOA meeting. The following were listed:

1. Provide input from NCDOT, either by guidance or as a driveway connection permit, on the affect of this project on traffic patterns on the Beech Mountain Parkway, including ingress and egress locations.
2. Provide a detailed site plan drawn to scale, including location of buildings, walkways, the track, gem mining, parking, greenspace, and stream.
3. Provide a signed letter from the owner designating Mr. Frye as an agent to speak on his behalf.
4. Provide details as to disposal of trash and any food service available, including any requirements from Avery County Health Department on food service options for this site.
5. Address lighting fixtures in accordance with the Banner Elk Zoning Code.
6. Address color of parapet roof and any other aesthetic changes to be undertaken on the property.
7. Provide information specifying the use of electric cars, not gas-powered cars, only, as well as days and hours of proposed operation.
8. Provide information as to any noise generated by the site, including but not limited to any Public Address System or amplification.

A motion by Ted Silver that the application is incomplete, and that Mr. Frye must address the listed items generated from the meeting within the next four (4) months if not sooner. Seconded by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

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

A motion by Ted Silver to convene this meeting until March 15, 2021 and possibly sooner, if Mr. Frye can get the requested information together quicker. The motion was seconded by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

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

A motion by David Tate to adjourn the meeting until the appointed date of March 15, 2021 if not sooner. Seconded by Fred Schmitt. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

David Tate - Aye. The motion carried and the hearing adjourned at 7:40 pm.

Respectfully submitted,

Cheryl Buchanan, Secretary to the Board of Adjustment