

**BANNER ELK BOARD OF ADJUSTMENT  
MONDAY MARCH 20, 2023  
MINUTES**

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

Staff Present: Zoning Administrator Riley Pudney, Town Attorney Four Eggers

Others Present: Tyler Moffatt, Alfredo Alvarez

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.

Ted Silver motioned to change the order of the agenda to discuss the previous meeting's draft order. The motion was seconded by Morgan Herdklotz.

*Consideration of the January and February 2023 Minutes*

The minutes for the January 16, 2023, meeting was approved unanimously as presented with a motion by Ted Silver and Seconded by David Tate. The minutes for the February 7<sup>th</sup> meeting were approved unanimously as presented with a motion by David Tate and seconded by Morgan Herdklotz.

*Consideration of the Stacy Lane Subdivision Appeal Order*

Town Attorney Four Eggers stated to the Board that they are being asked to review the draft order for the hearing and approve as presented, approve with changes, or send back for further review. Ted Silver stated he had three editorial changes.

Finding 17- Ted Silver motioned to add "their predecessors in title" and "made by or to". The finding would read: "No subdivision approval was requested by an applicant or ***their predecessors in title or made by or to*** the Town of Banner Elk for the four-lot plat." The motion was seconded by Chairman Fred Schmitt and unanimously approved.

Finding 27- Ted Silver motioned to make the following addition: "The Town of Banner Elk Zoning Map pulls parcel lines from the Avery County GIS mapping, but the purpose of the Zoning map is to display zoning districts in areas of the Town's jurisdiction and ***does not show subdivisions or subdivision approvals***, nor a survey of individual lot lines." The motion was seconded by Chairman Fred Schmitt and passed unanimously.

Finding 28- Ted Silver motioned to make the following addition: "The Town of Banner Elk does not assess ad valorem real property taxes to properties located within the Extra-Territorial Jurisdiction and did not ***and does not currently*** bill the subject property as four lots for taxation purposes." The motion was seconded by Chairman Fred Schmitt and passed unanimously.

With no further discussions, Ted Silver motioned to approve the order with the approved changes. The motion was seconded by Chairman Fred Schmitt and passed unanimously with the following votes:

Morgan Herdklotz: yea  
Fred Schmitt: yea  
David Tate: yea  
Ted Silver: yea

**SUP REQUEST- ACCESSORY USE LAS NUBES**

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. Before opening the hearing, Chairman Schmitt reviewed the requirements for the board members to be seated. 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.

The following individuals were sworn in by Chairman Schmitt:  
Zoning Administrator Riley Pudney  
Alfredo Alvarez

Zoning Administrator Riley Pudney stated that this is a request for an accessory use for a take-out restaurant at an existing store at 431 Beech Mountain Parkway. She informed the Board that nothing on the exterior will be different, and the parking requirements have been met. The request is for a take-out restaurant so there will be no additional parking needed. Zoning Administrator Riley Pudney informed the Board that she is working with the property owner to bring their parking lot and grease trap into compliance.

Fred Schmitt asked if any of the Board had questions for the Zoning Administrator. Ted Silver asked if the parking lot and grease trap would need to be conditions for approval. She stated that those requirements are already needed for a permit and would have to be met without conditions.

The Applicant, Alfredo Alvarez stated to the Board that the location was previously a restaurant, and he just wants to be able to provide take-out food. There were no questions from the Board.

With no further questions, Chairman Fred Schmitt closed the evidentiary portion and asked Attorney Four Eggers to go through the questions needing review.

Attorney Four Eggers said there were four questions the Board must address: 1. Is the application complete? 2. Does the application and project substantially meet the requirements of the ordinance? 3. Are there any conditions the Board would like to impose on the permit? And lastly, 4. Does the Board approve the permit?

Chairman Fred Schmitt opened the Board to discuss question one, as to whether the application was complete. Ted Silver motioned that the application was complete and was seconded by David Tate, and it was passed unanimously.

The vote was:

Chairman Fred Schmitt-yea  
Ted Silver- yea

David Tate- yea  
Morgan Herdklotz- yea

The second question as to whether the application substantially complies with the ordinance was motioned for approval by Morgan Herdklotz and was seconded by Ted Silver. The vote was:

Chairman Fred Schmitt-yea  
Ted Silver- yea  
David Tate- yea  
Morgan Herdklotz- yea  
The motion passed unanimously.

The third question was whether the Board was going to implement any conditions on the project. There were no conditions placed on the permit.

The last question considered was whether the Board approved the permit. David Tate motioned to approve and was seconded by Chairman Fred Schmitt. The vote was:

Chairman Fred Schmitt-yea  
Ted Silver- yea  
David Tate- yea  
Morgan Herdklotz- yea  
The motion passed unanimously.

Chairman Fred Schmitt motioned to close the hearing for the special use request. The motion was seconded by Ted Silver.

With no other business, Ted Silver motioned to adjourn the meeting and was seconded by Chairman Fred Schmitt. The motion passed and the meeting adjourned at 6:30 p.m.

Respectfully Submitted,

Riley Pudney, Zoning Administrator

Approved: \_\_\_\_\_

Attested: \_\_\_\_\_

Fred Schmitt, Chairman to the Board

