

BANNER ELK PLANNING BOARD MEETING
MONDAY, APRIL 05, 2021
MINUTES

Members Participating to the Zoom Meeting: Aaron Barlow, Melinda Eggers, Meredith Olan, Joel Owen, Penny VonCanon

Others Participating: Valerie Cogdill, Gary Davis, Robert Grasso, Chad Carpenter, Johnny Connolly, Susan Brown, Trevor Brown, Carol Pierce, Chris Zecca, Kyle Silver

Staff Participating: Zoning Administrator Cheryl Buchanan, Town Manager Rick Owen

Due to the Covid-19 Pandemic and the restrictions placed on the State of North Carolina in conducting public meetings, the Planning Board meeting for April 2021 was conducted via Zoom audio and video. Chairman Joel Owen called the zoom meeting to order at 610 pm; noting that Aaron Barlow, Melinda Eggers, Meredith Olan, Joel Owen, and Penny VonCanon were present for audio and video. A quorum was present, and the meeting was called to order.

Consideration of the January 2021 Minutes

Penny VonCanon motioned to approve the minutes for the March 2021 meeting as submitted. Meredith Olan seconded the motion. The vote was:

Aaron Barlow – Yea
Melinda Eggers – Yea
Meredith Olan – Yea
Joel Owen – Yea
Penny VonCanon – Yea

The vote was unanimous, and the motion carried.

New Business

Chairman Joel Owen welcomed Melinda Eggers as the newest member of the Planning Board. Zoning Administrator Cheryl Buchanan noted that Miss Eggers has been sworn in and is ready to be a part of the Board.

Chairman Owen stated that he would like to rearrange the order of the cases before the Board that are to be heard. Chairman Owen asked if this was acceptable to the members, moving the Planned Residential Development for Notting Hill to the end of the agenda to allow for plenty of time for discussion. Everyone agreed.

Special Use Permit Request – Adding an Accessory Use – Banner Elk Consignment Shop

Zoning Administrator Cheryl Buchanan reviewed the Special Use Permit (SUP) application located at 414 Shawneehaw Avenue noting that there would be no structural change to the existing building, adequate ingress and egress, parking requirements were met and exceeded with adequate parking, proper refuse service, connected to town utilities, proper buffering in place, no change to lighting or require yards or open spaces, and one additional sign not exceeding the 32sf maximum allowed for that zoning district.

Meredith Olan asked about the percentage of square footage that would be set aside for the coffee use in relation to the primary use. Susan Brown, owner of the property, said she planned to use the garage area, that would be about 240sf, with the rest of the building being 1100sf. A discussion ensued on how much of a property should be allowed for an accessory use. Joel Owen suggested that it should not exceed 20 percent of the primary use.

The application was found to be in compatibility to the adjoining properties and in harmony with the intent of the ordinance. Meredith Olan motioned to recommend approval of the application for a Special Use Permit as an accessory use for a coffee bar and prepackaged bakery goods not to exceed 20 percent of the total square footage of the 414 Shawneehaw building, which was determined to be 1350sf, and as long as it does not require a grease trap or changes to any onsite baking activities and formally noted that Joel's comment was that this secondary permit does not require any changes to the building. Second by Penny VonCanon. The vote was:

Aaron Barlow – Yea

Melinda Eggers – Yea

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Yea

The vote was unanimous, and the motion carried.

Variance Request – Chris Zecca – Commercial Campground

Zoning Administrator Cheryl Buchanan reviewed the request for a variance submitted by Chris Zecca. Section 902, Commercial Campgrounds, which states that the maximum land allowed for a commercial campground is five (5) acres. Mr. Zecca owns two (2) parcels equating to 22 acres at the end of Old Farm Road. Mr. Zecca would like to develop the property for a “glamping” venture. The limitation of five (5) acres makes it impossible for Mr. Zecca to successfully use his property to its full potential.

Penny VonCanon spoke about her experience with travelling and staying in campgrounds and she did not remember why the ordinance set the requirements at no more than five (5) acres and did not see any reason why it would not be better to be able to spread it out over the 22 acres, that it makes perfect sense. Mr. Zecca was asked to describe what is involved with glamping as opposed to camping. Mr. Zecca stated that the tents are more elaborate, affixed permanently and provide amenities such as a wood stove and running water and bathrooms for each tent, making the experience much more glamorous than primitive. Mr. Zecca said he had already received approval from the Avery County Health Department and was working with Avery County Inspections on the logistics of what would be required from a building code standpoint.

Joel Owen said he would like to see this request come through with the SUP at the same time and asked Mr. Zecca how quickly he wanted to get this up and running. Mr. Zecca answered that he had owned the property for five (5) years and could wait another couple of months. Meredith Olan said she felt this falls between the Commercial Campground and a Bed and Breakfast accommodation and she would like to see more details before she gives an approval. The Board tabled a vote on the variance until the SUP can accompany the request. The Board also asked the Zoning Administrator to investigate the possibility of glamping ordinances in other towns in North Carolina.

Special Use Permit – Blind Elk Taproom – Kyle Silver

Chairman Owen questioned entertaining an item that is not defined in the Ordinance. Cheryl Buchanan reviewed Section 307 and how it came to be part of the Ordinance. Ms. Buchanan explained that there is no way to list every use that could possibly come up, therefore, Town Attorney Eggers came up with the wording for Section 307 covering uses not specifically outlined in the ordinance taking into consideration several items that should be considered in reviewing a Special Use Permit.

Zoning Administrator Buchanan reviewed this application beginning with the location at 397 Shawneehaw Avenue, the previous location of the Louisiana Purchase Restaurant. The site is equipped to handle the use of food on the premises. Mr. Silver is proposing to feature local and craft beers and plans to sell prepackaged foods. Joel Owen asked if the site had already set a precedent since it was previously a restaurant. Ms. Buchanan said there would not be a lot to consider since it had functioned that way previously. Ms. Buchanan said the site plans indicate a total of 40 seats, requiring 16.3 parking spaces, with 18 spaces shown provided. Mr. Silver has already been in discussion with the Von Canons to lease some property along the back of the property to fulfill the parking requirement. This was the same arrangement Louisianan Purchase had for years. Discussion of refuse storage and a bear problem that has existed for years ensued. Mr. Silver enclosed a picture of what the enclosure for the roll off carts would look like, a site plan for parking, and the locations he would like to put signage.

Joel Owen asked what percentage of food was required to be sold along with the alcohol. Mr. Silver said that he is required to offer it; but does not have to meet a percentage per the ABC Board. Meredith Olan asked if the patrons would be allowed to bring their own food. Mr. Silver replied that yes, they could.

Aaron Barlow motioned to recommend approval to the Board of Adjustment for the Blind Elk Tap Room and Bottle Shop. Second by Meredith Olan with the comment that the requirements are similar to the previous business in that location and that the requirements have been readily met. The vote was:

Aaron Barlow – Yea

Melinda Eggers – Yea

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Yea

The vote was unanimous, and the motion carried.

Old Business

The Board took a small break for eight (8) minutes.

Special Use Permit Request – Angelo Accetturo – Notting Hill Planned Residential Development

Zoning Administrator Cheryl Buchanan noted that this project was discussed in the March Planning Board Meeting. The Board felt that they had not been given enough time to review the project completely and had tabled the request until the next Planning Board Meeting.

The project has been resurveyed to convey a small sliver in question to Chad Carpenter, bringing the total acreage to 4.099 acres in the Corporate Limits of Banner Elk. The property is also located within the Heritage Overlay District where special guidelines apply. The property has some steep slopes, but the portion planned for residential housing is not considered very steep by ordinance definition. There is a large concentration of existing vegetation that the developer would like to preserve as much as possible for a natural buffer. The proposed Planned Residential Development (PRD) is for ten (10) single family townhomes with a street, sidewalks, and streetlights to be dedicated to the Town. The ordinance is very specific about the type of design and materials the sidewalks and lights should be.

You will find a master site plan and landscaping plan prepared by Bob Grasso of Land Planning Collaborative from Asheville. There are also a complete set of grading, utilities, and stormwater plans by Gary Davis of Davis Civil Solutions from Asheville as well. Derek Goddard reviewed the project for stormwater measures and has asked for two (2) conditions. They are: First, prior to construction the owner shall provide a PE sealed Geotechnical report that indicates the elevation of the seasonal high-water table and adjustment of the treatment design on site if necessary. The report and changes must be approved by the Town. Second, the engineer shall certify that the stormwater treatment system meets the requirements to reduce thermal pollution. Additionally, David Poore of West Consultants in Morganton has reviewed the plans for utility and street connections and the plans met with his approval.

The property has requested access off Old Hotel Drive and has petitioned the town for approval for that access. The access crosses a parcel belonging to Downtown Development and the Zoning Administrator has asked that they deed a portion of this parcel to the Notting Hill Development to prevent any problems with ingress and egress in the future. Board member Aaron Barlow noted that the NCDOT requires certification of any retaining walls connecting to their roads. Town Manager stated that the plans had been reviewed by David Poore of West Consultants on behalf of the Town for road connections. Since the new street is connecting to a Town Street, the NCDOT requirement would not be applicable. In looking at the calculations for impervious surface in the Cottages, where Downtown Development was the developer, the percentage of impervious surface will be reduced by 9% keeping The Cottages within the require percentage of 40% impervious surface as required by the Zoning Ordinance.

Regarding the Steep Slope ordinance, the Zoning Administrator also reviewed the Banner Elk Land Use Plan for soil types in that area and found that the types of soil are acceptable for development allowing that most of the current vegetation remains with some additional landscaping being added for good measure. During the construction process, a Geotechnical Engineer will be hired to also check the soil types and the site in general for development. The townhomes being proposed are high end homes beginning at \$500,000 and upwards. They are being referred to as “townhomes” allowing for the purchaser to own around the drip line of the house and the front yard only. The residences are proposed to have garages as well. There will be a Property Owners Association (POA) in place to care for the maintenance of the remaining property. Trash pick-up will be made available through Republic Services.

The following discussions ensued among the board members and adjoining property owners:

Aaron Barlow said that he had several items he wished to bring to the Board's attention. Mr. Barlow questioned the timeframe allowed to the Planning Board stating that he had only had 37 days and the ordinance said he could have 45. The following statement is in the Zoning Ordinance under Section 311: *"For all subdivisions and special uses that require site plan approvals, if extension of public water and/or sewer is proposed, three (3) paper copies and one digital copy of utility plans shall be submitted to the Public Works Director for review at least 45 days prior to consideration of the plans by the appropriate board. For all subdivisions and special uses that require site plan approvals, if extension of public water and/or sewer is proposed, three (3) paper copies and one digital copy of utility plans shall be submitted to the Public Works Director for review at least 45 days prior to consideration of the plans by the appropriate board."* This is the only statement that could be found that referred to 45 days.

Mr. Barlow asked if sidewalks were supposed to be on both sides of the street. Ms. Buchanan said they were not required to be and are not part of the Pedestrian Plan since this is a new street. Mr. Barlow then questioned if the property had been deeded to Notting Hill of Banner Elk, LLC. Ms. Buchanan said that it shows up in Avery's GIS as that and that the Corporation name has been verified with the North Carolina Secretary of State.

Meredith Olan questioned the revisions to the new set of plans. Ms. Buchanan noted that the small triangle next to Chad Carpenter's house is gone and is to be deeded to Mr. Carpenter. Additionally, the need for a variance has been eliminated. Ms. Buchanan also indicated that there is now an option to connect the end of High Lowe Lane to this new street to improve safety for ingress and egress of High Lowe Lane for the residents who live there. This option was provided at the request of the Town Manager.

Aaron Barlow said the NCDOT does not allow retaining walls in connection with their roads. Manager Rick Owen said that David Poore had reviewed the plans and recommended approval. These are not NCDOT streets; but would be town streets.

Aaron Barlow questioned the steep slopes and how it relates to the ordinance. Ms. Buchanan had asked Mr. Grasso to provide the slopes where the actual building would be located. They range from 0 to 40% at the steepest point of house # 5. The average slope of the property was calculated at 33.16% as required by the ordinance. Meredith Olan asked if the calculation had changed since the survey work had been done. Bob Grasso, land planner for the project, responded that it was so minute it did not affect the project.

Meredith Olan stated that this project is in the Viewshed and she strongly disagrees and feels it will be highly visible from Highway 184 and will negatively impact Banner Elk. She stated that she would like the BOA to pay special attention to this matter. Mrs. Olan said she felt that 10 homes on that site is too many which makes the density too much and should be reduced. Mrs. Olan stated that as long as the house stay in the knoll area they would not be as visible, but with 10 homes, it pushes it beyond the knoll and then they would be seen. Aaron Barlow said that he agrees with Mrs. Olan about the density and the viewshed considerations and read Section 504.5. Mr. Grasso responded that they were below the allowable limit of density and are not trying to put the maximum amount allowed to get as much as they could from the property. Referencing Mill Pond Manor, this development has less density than that development does. Mr. Grasso said that the viewshed driving into town would generally be seen at a 45° angle, not a 90° angle and that more than likely people would not be looking up at the development considering the speed they drive through town. Joel Owen said people come here to look at the mountains and viewshed is more than the drive-by look. Meredith Olan said density is different than the viewshed consideration. Aaron Barlow said lighting would be a factor, especially at night. Cheryl Buchanan

said they would match the streetlights within the Town's Streetscape Plan and are visible throughout Town.

Meredith Olan questioned the setback for building #10. Bob Grasso answered that with the building being 10 foot from the property line. Mrs. Olan noted that one of the lines crosses over the setback line. Ms. Buchanan said it was the drip line and that this was allowed per the ordinance. Aaron Barlow questioned Section 907.6 and asked if this had been reviewed by the Architectural Review Board, that this should be done before it goes to the BOA. Ms. Buchanan responded that the Planning Board was the Architectural Review Board, that they had been combined a few years back since they were both performing the same function and it had ended up being a duplicate process. Manager Owen said he was not aware of anything that could prevent this project from going to the BOA. Mr. Barlow asked about the sliver of property being conveyed to Mr. Carpenter and if a quit claim deed had been executed yet. Manager Owen said that if it is a legal question, it is not something the Town staff can answer. Manager Owen said that he is able to speak to the Town Attorney if he needed and Aaron said he would like to have that looked at. Manager Owen said this would be looked at with the Board of Adjustment and the Town's Attorney at the BOA meeting.

Meredith Olan said she was worried that the development would topple over into High Lowe Lane. Bob Grasso said that he would follow the required protocol for soil and erosion set by the State and that the Geotechnical Engineer would be looking at the property to make sure that it does not negatively impact any adjoining properties.

Aaron Barlow said that houses # 8, # 9 and # 10 look over on another house and would like to petition the BOA for a 15' setback as per Section 907.4. Ms. Buchanan said that it reads if the BOA deems it necessary and asked Aaron to give the BOA a reason why he feels it is necessary. Mr. Barlow said they would be looking at the existing house as well as the existing house looking at them. Meredith Olan said that the proposed house would be significantly larger than the existing house and would like to request a larger buffer only where buildings #8, #9, and #10 due to the proportion difference. Bob Grasso said that the actual setbacks for building # 8 is 12 feet, building #9 is 14 feet and #10 is 11 feet off the property line.

Aaron Barlow asked about the slope to the Carpenters and what they would be looking at. Mr. Grasso said that the retaining wall behind building #9 would drop down 4 feet and does not go up and they would basically be looking at the same thing they are looking at now. Mr. Grasso reiterated that they would be removing about 8 feet of topsoil off the top of the knoll. Aaron Barlow questioned the soil types and what would happen if they discovered an underground spring. Mr. Grasso said that a Geotechnical Engineer would be on site performing soil sample tests as well as boring tests and if they come upon an underground spring there are measures that could mitigate to manage such circumstances. Aaron Barlow asked if the Geotechnical Engineer should be on site and evaluate the soils and spring before they start digging. Ms. Buchanan said he could ask that this be made a condition and the BOA could decide if it was reasonable.

Penny VonCanon asked if there would be a bond required for the utilities. Ms. Buchanan said yes, it would be up to the developer to come up with an amount to ensure that the infrastructure and roads were finished according to town standards and then it would be presented to Town Council for approval. Penny VonCanon asked about the color of the houses and were the rendering true to the color of white. Ms. Buchanan said she has been told that they would be browns and grey to help them blend into the surroundings and Bob Grasso asked that he is having it put in the minutes that the houses will be shades of brown and grey for the record.

Aaron Barlow said he had some questions relating to the subdivision ordinance. Cheryl Buchanan said that it would not apply to this project, that this was an application for a Planned Residential Development and not a subdivision, where individual lots are subdivided and sold off without consideration to an overall unity of development with a Property Owners Association. Mr. Barlow asked if the underground stormwater vault located in the middle of the cul-de-sac was part of the impervious surface calculation. Mr. Grasso said no since it is underground.

At this point in the meeting, the adjoining property owners spoke. First was Chad Carpenter. Mr. Carpenter said that retaining walls require an engineer's certification once they reach 5 feet. *Actually the Zoning Ordinance references to retaining walls in Section 501 (h): " Use of retaining walls over eight (8) feet in height require design and certification by a NC registered engineer."* Mr. Carpenter said he was concerned about the buffer, asked when he could expect the quit claim deed for the sliver of property given to him by the development owners, felt the development is evasive and is concerned about fire protection.

Johnny Connolly said his concerns were the retaining walls, wants to keep High Lowe Lane with no tie in to this new street, not happy that the ordinance does not address how big these houses could be, his calculations are for lot sizes in relation to the property and that his calculations show only 6.9 homes could be allowed and that number would have to be rounded down to 6, and he feels that the homes do not fit in at 40' tall.

Susan Brown asked if the survey was current to which Mr. Grasso responded yes. Her concerns were that the renderings, if they were factual, was that each townhome would be conveying different acreage due to their configurations, felt this should not fall under a Planned Residential Development referring to Table 308-2, note 3 and the calculation of 10,000sf lots. Mr. Grasso said this development falls under the Community Development Act allowing for these units to be sold with some dirt and allows for townhomes if they meet the fire code. Ms. Buchanan said that the issue of the development falling under the Community Development Act was one of a legal nature and that the Town's Attorney can weigh in on this at the BOA meeting.

Chad Carpenter spoke on Carol Pierce's behalf and talked about the use of the underground springs to keep milk cold from the cows that used to pasture on the property.

Meredith Olan moved to send this to the BOA with disapproval based on the effect of this project on the viewshed as defined for the Heritage Overlay District, concerns for the density with a recommendation for significantly fewer houses, concern for the impact of the development on High Lowe Lane, recommend a 15-foot buffer between new houses and the existing ones based on the sight lines, requiring a Geotechnical Engineer's to look at soil types and springs, requirement of a bond for the completion of the improvements, and asks for a classification of the use of the terminology of townhomes in a Planned Residential Development. Aaron Barlow seconded. The vote was:

Aaron Barlow – Yea

Melinda Eggers – Abstain

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Abstain

The vote was 3 for and 2 abstained, and the motion carried not to make a favorable recommendation to the Board of Adjustment.

With no further discussion, Meredith Olan motioned to adjourn. Melinda Eggers seconded.
The vote was:

Aaron Barlow - Yea

Melinda Eggers – Yea

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Yea

The vote was 5 to 0, and the meeting ended at 9:54 pm.

Respectfully submitted,

Cheryl Buchanan, Zoning Administrator, Town of Banner Elk