

BANNER ELK PLANNING BOARD MEETING
MONDAY, JUNE 07, 2021
MINUTES

Members Participating to the Zoom Meeting: Melinda Eggers, Jacki Lecka, Meredith Olan, Joel Owen, Penny VonCanon. Aaron Barlow was absent.

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 June 2021 was conducted via Zoom audio and video. Chairman Joel Owen called the zoom meeting to order at 6:01 pm; noting that Melinda Eggers, Jacki Lecka, Meredith Olan, and Penny VonCanon were present for audio and video. A quorum was present, and the meeting was called to order.

Consideration of the April 2021 Minutes

Meredith Olan said she felt the minutes did reflect the true intent of the meeting and that she did not want to approve the minutes as submitted. Zoning Administrator Cheryl Buchanan said that after she received Mrs. Olan's edits, she went back and listened to the meeting a second time and made some adjustments, especially ensuring that the motions were verbatim. Ms. Buchanan said she had no intention of changing the minutes again to reflect only one board member's thoughts and tried to make the minutes fair and balanced. Ms. Buchanan said she had asked the Town's Attorney what happens if the minutes are not approved. Four Eggers said they would just remain in draft form.

With no further conversation, Jacki Lecka moved to approve the April 2021 minutes as submitted. Penny VonCanon seconded. Joel Owen asked Meredith Olan if she was alright with that. Mrs. Olan said she had already presented her edits and they were not accepted. Joel Owen asked that the minutes reflect this so the reflection of the vote would not be lost in the future so anyone interested would know what the idea was. Joel Owen asked for a roll call vote. The vote was Melinda Eggers, Joel Owen, and Penny VonCanon voted to approve. Meredith Olan voted to disapprove. Jacki Lecka said she thought she should abstain since she was not present at the meeting. The motion passed with 3 for, 1 against and 1 abstaining.

Consideration of the May 2021 Minutes

Joel Owen asked for thoughts on the May minutes. He stated he was not there and did not have any thoughts on them. Meredith Olan noted that in the discussion on parking she remembered a discussion on parking for Campgrounds at one space for every 2 people as an idea along with extra parking for amenities like an event barn, etc..... Additionally, she recalled that the timing of the Board of Adjustment meeting should be dependent on the Planning Board allowing time to approve their minutes before the BOA meets. Meredith Olan also noted that Penny VonCanon read a statement to the Board and asked her if she wanted to include that in the minutes. Penny VonCanon said she was not at home for this meeting and did not have that with her, but that the comment was the reason she abstained was because as long as she has been on the Planning Board she did not feel that April was a viable meeting, that she did not feel like she could vote one way or the other. She stated she was pretty much in shock from that meeting. Joel Owen said Meredith was asking if she wanted that in the minutes and Penny VonCanon responded that she wanted the

Board to know that. Joel Owen asked if there was a motion for the minutes. Town Manager Rick Owen said if the Planning Board is going to make changes, he would like for the Board to see them again with changes before approving them. Town Manager Rick Owen said there was enough being said about the minutes and he would like for the Board to see them again before approving. Cheryl Buchanan said that some of the comments will affect what the Board is going to be reviewing later in the meeting and at the time they were suggestions, not motions. Joel Owen asked Ms. Buchanan if this would be an issue for her if they were not approved. Ms. Buchanan responded it would not affect her at all.

New Business

Notice of Violation - Stonewalls

Zoning Administrator Cheryl Buchanan said that she encountered two (2) instances at around the same time where structures were built without the proper permitting. Ms. Buchanan decided to issue a notice of violation with the violation fees on hold and have both businesses appear before the Architectural Review Committee (Planning Board) for a review with the understanding that if they did not gain approval, the structures would have to be removed. Chairman Owen asked what kind of precedent this could set for those who want to ask for forgiveness instead of approval. Ms. Buchanan said that was why the review was important. If the Board does not approve these two additions, then they can be removed. Joel Owen said he thought this would have been approved but did not care enough to ask.

The first was Stonewalls. The business removed a smaller canvas awning and installed a metal awning that was much larger. Scott Garland asked if he could claim ignorance. Scott said his thought process was that they were going to have to replace the canvas awning and really did not increase their seating; but increased the coverage by 4 feet on one side and 9 feet on the other with a more permanent material. Scott said it was difficult to scramble when it started raining to seat the customers. Joel Owen asked if there was any thought to the choice of color? Scott said that he tried to keep it the same colors as before. Penny VonCanon said that she understood the reasoning with social distancing and trying to provide covering for the customers, she felt he was considering them first and that Scott was a get-it-done kind of guy.

Chairman Owen posed a hypothetical question to Mr. Garland about his current business and whether he could just change the siding and not ask anyone. Ms. Buchanan said the question should be posed to her that she is the one who would be responsible for it. Chairman Owen said that was his point, people should ask before they start any project, and he was trying to make a point in case this ever comes up again. Chairman Owen said the Board should have had some reports on how wind speeds would affect the two structures before the Board tonight. Ms. Buchanan asked if the Board would be willing to accept Avery County Building Inspections Director Tommy Burleson's inspection of the two structures. Chairman Owen said no, not for wind stability. Chairman Owen said he would like to see a report from an Engineer stating that the structures can handle the wind load for our area. Ms. Buchanan asked if that report would satisfy the Board. Chairman Owen said he would be fine with whatever the Board decides, but the bigger problem is that this sort of thing keeps happening, should we adjust the ordinance, or give forgiveness. It end up making the Board the meanest people in Town. Ms. Buchanan said that puts her in a really difficult position when you make it sound like we cannot do anything about this. She said that the two situations happened, and she felt this was the best way to handle them. If the Board wants an engineers' report, it can be produced, if the Board does not approve them,

then they can be removed. Either way it would have had to come before the Board for approval, whether before or after, it was still destined to come before the Board.

Meredith Olan said she agrees on the concern for verifying wind resistance, and she would like to see this answered. Mrs. Olan said that her other question was probably answered in the paperwork presented to the Board, but is this awning the same size, shape, and angle as the previous awning if it was using the old structure? Scott Garland said that they extended the frame out on both sides, and the posts have been concreted in. Meredith Olan said she thinks this answers her questions about how these fits into the Heritage Overlay and the Pedestrian Plan. Mrs. Olan's next questions was the metal awning an approved material in the Heritage Overlay District (HOD)? Mrs. Olan said she thought it was an approved material; but she was not sure.

Penny VonCanon said this was a good example as to why it is important to start with the Zoning Officer. Mrs. VonCanon said the visual is good, but she would like to see the wind resistance report too. Chairman Owen said that the company he used might be able to provide that information. Scott Garland said he had a 10-year guarantee and Chairman Owen said he felt better about this product.

Meredith Olan motioned to approve the new metal awning as it fits within the parameters previously approved within the Heritage Overlay District provided that sufficient wind resistance is proven in paperwork/documented. Second by Penny VonCanon. The vote was unanimous, and the motion carried.

Notice of Violation (NOV) – Village Shoppes


Cheryl Buchanan said she wanted to preface this NOV by stating that when Town Manager Rick Owen brought it to her attention, she thought he was talking about the covering and enclosure of an area next to Phase V along Elementary Way. Ms. Buchanan told the Board that she rarely ever comes through the stop light and cuts across Elementary Way. So, she had not observed the construction that was going on next to the Corner on Main, where this violation pertains to. Ms. Buchanan said she gave them a zoning permit and thought it was for the section that she could see. Several days later she went through the red light and saw the cover over the stage and realized this was what the Town Manager had been referring to. Ms. Buchanan met with Angelo Accetturo and asked him to stop construction until the matter was resolved. When asked how she was going to handle this, she felt that since both instances happened at the same time, she would treat them both the same. Chairman Owen asked if they were both the same? Ms. Buchanan said they both built something without a permit. Chairman Owen said one existed and one did not. Ms. Buchanan responded that the one that existed actually expanded it by 4 feet on one side and 9 feet on the other. Ms. Buchanan said she wanted to treat them both fairly.

Meredith Olan said she was looking at the stage and that he now has added wood in front of it. Ms. Buchanan said she was not aware of it, that it was not there when she issued the notice of violation. Mrs. Olan asked if the Board was discussing the roof or the stage extension or both? Mrs. Buchanan said it was not there when she was there when she issued the NOV and asked if the applicant could clarify it. Angelo Accetturo told the Board that yes, he had added some plywood to a section to the stage in front to hold speakers. Chairman Owen asked if this was designed by an Engineer and who built it. Angelo Accetturo responded that he designed it and an Engineer looked at it. They were Elsewhere Engineering, and his contractor is Paul Joseph Construction. Tommy Bureson came out and inspected the structure and said it looked fine.

Meredith Olan asked what the height was on both ends, the lowest and highest points. Angelo Accetturo said it was 8 feet at the lowest and 16 feet at the highest. Penny VonCanon asked Meredith Olan what the center point of the HOD was. Mrs. Olan answered that it was either the elk sculpture or the Corner on Main/stop light area. Penny VonCanon asked if there are design guidelines in meeting the historic buildings that are already there? Meredith Olan said she was going to go get her zoning ordinance and would be right back. Meredith Olan read from Section 504 on Viewshed and Section 503 on Heritage Overlay District. Penny VonCanon said there is such stark contrast in this and the surrounding buildings and that she likes the access inside the development connecting them to each other and to Main Street and Shawneehaw Avenue. Mrs. VonCanon said that if Angelo had worked with someone on the Board, then it would have fit better. Meredith Olan read from Section 504 on Viewshed Development Guidelines and Section 503 on Heritage Overlay District Supplemental Regulations, stating that the review should go to Section 500 Architectural Design Standards. Mrs. Olan read from Section 501 Site Aspect, specifically the relation of this structure to the structure the Town built. Penny VonCanon said that the two should complement each other not compete. Angelo Accetturo mentioned that the Town's structure was built so that the overhang crosses over the property line and that the Town Manager said he is looking into fixing it and that it does not tie into what Angelo's doing. Mr. Accetturo's complaint is that the Town's structure blocks his development and is not complimentary to surrounding property either. Chairman Owen said it is better than the backside of the Corner Palate. Mr. Accetturo said yes, but what they are looking at is now he sees the back of the park shelter, it matters what point of view your looking at it from. Chairman Owen said he did not bring that up for the record. Mrs. Olan said she brought up roof line not the wall line. Mr. Accetturo said the Town's structure is over his property line and the only way you can see it is standing on the property line.

Angelo Accetturo said that he built the roof over the stage because of the summer rain storms. Meredith said that her question was the height of the structure compared to most of the surrounding structures. Angelo Accetturo said that his structure was not taller than the other structures built there. Penny VonCanon asked if there was an open pathway between the two structures. Angelo Accetturo said that was what the sidewalks were for, there between the Corner on Main and his property there never was a passageway there. Angelo Accetturo said the gravel through there was for drainage purposes. Penny VonCanon said she thought it was being prepared to be one. Angelo Accetturo said that it was not for that, but to repair drainage issues. Meredith Olan asked if he plans to paint this band stage cover. Mr. Accetturo said yes. Meredith asked about the overhang in front. Angelo said it was not finished but it was to stop the wind and rain from coming in on the band. Penny VonCanon asked if there was a wind tunnel through there. Mr. Accetturo said that not since the Town built the Corner on Main Park structure, that seemed to be a windbreaker.

Meredith Olan asked if it was going to be electrified. Mr. Accetturo said yes, there will be power and lighting. Meredith Olan said it appears to dwarf all the surrounding buildings leaving the Town's structure out of the calculation. Meredith Olan said her concern is that the height of it compared to all the directly surrounding properties and the fact that it is an open structure and may have an umbrella effect. Angelo Accetturo said that at the lowest point, it is the same and the highest plate height of the Chiropractor's office and the Bayou. Angelo Accetturo described the use of hurricane straps and said that if the Town's structure is going to hold, he is sure his will. Meredith Olan asked if Mr. Accetturo is using the straps currently. He answered yes. Mrs. Olan asked if they were attached to the beams or the metal. He stated that they do not attach to metal, they are attaching the rafters to the beams. Meredith Olan asked what was attaching the metal to



the roof. Mr. Accetturo said that he used a screw pattern to attach the metal to the roof. To answer Chairman Owen's question, Angelo confirmed that the use of straps and screw patterns are designed to meet the wind code. Chairman Owen asked if the engineer had told him where to put them and how many to use. Angelo Accetturo said that he did not have a completed engineer's report. Meredith Olan said that like the previous project, she would like to see a report on wind resistance related to this structure. Meredith Olan also said she would like to make a point that it not being permitted and not looking significantly like anything there is frustrating. Meredith Olan said that one of the reasons why they approved Stonewall's structure is because what was put back there was like what had been there previously. Mr. Accetturo said this is a new structure and was not replacing anything.

Chairman Owen asked if there were any more questions for Mr. Accetturo. With none being said, Chairman Owen asked if anyone would like to make a motion on this request. Meredith Olan said before she would make a motion; she would like to see the engineer's report. Angelo Accetturo said he could definitely provide it if it is a contingency of the motion. Chairman Owen said that it is the least Mr. Accetturo could do, that he was going to keep using it and no one is going to make him tear it down, nobody is going to be in trouble, and everyone is going to forget it and go on like nothing ever happened, that the least we can do is get some documentation that it is not an unsafe structure for people to be around. Chairman Owen said that the Board should at least make a motion since that is what they did for Stonewalls and that case set the groundwork for this one and it is not going to matter. Meredith Olan motioned to allow the structure to continue in its use contingent on Mr. Accetturo providing strict documentation on wind resistance to the Zoning Administrator. Also, she would like to include in writing from the contractor that whatever wind resistance measures are recommended by the Engineer are currently in place or will be put in place. Seconded by Jacki Lecka. The vote was unanimous, and the motion carried. Joel Owen stated that from now on he will start abstaining from projects like this due to the comment by Mr. Accetturo that he is down there all the time.

Ordinance Review – Table 308-2 Dimensional Requirements by District

Cheryl Buchanan said that at the May meeting a discussion was held about the meaning of pervious surfaces and whether this meant green space or other materials. Recommendation by the Board was that of the pervious calculation, 30 percent could be other materials that are pervious, but that 70 percent would need to be green.

Meredith Olan asked if she could go back to the previous conversation and asked if she could get impervious surface calculations on that development as an amended motion. Seconded by Penny VonCanon. The vote was unanimous, and the motion carried.

Back to the ordinance amendment, Ms. Buchanan said she made the changes to the ordinance based on the last meeting. Penny VonCanon said she remembered that Derek Goddard had told theTown that aggregate or crushed gravel is not pervious.

Motion by Penny VonCanon to recommend an ordinance amendment to Table 308-2 to reflect 30% of pervious surface can be pervious materials such as permeable pavers, turf block, artificial turf. The remaining 70% must be natural green plantings, i.e., grass, flower beds. Second by Melinda Eggers. The vote was unanimous, and the motion carried.

Ordinance Review – Section 316 Mobile Food Trucks

The Zoning Administrator was approached by the Town Manager to ask the Planning Board to allow food trucks to use generators on Town Property for special events. Additionally, #2 has a strike through since the State Legislature removed the authority to use business licenses by municipalities. Town Manager Rick Owen spoke to this request. Chairman Owen asked if this would be viewed as favoritism towards the Town. Rick Owen said the Town owns the largest tracts making them more eligible to host special events and it gives the Town control on their property and he is sure that Town Council would not want to use generators if they disturbed other properties.

Motion by Penny VonCanon to recommend amendments to Section 316 to Town Council. Seconded by Jacki Lecka. The vote was unanimous, and the motion carried.

Ordinance Review – Section 400 Parking Regulations

Zoning Administrator Buchanan reminded the Board that they had talked about how to handle various event parking and how these could potentially be too numerous to list in our table for parking requirements. Ms. Buchanan said that this is similar to the caveat the Town included in Section 307 to allow for any uses not listed in the Table of Uses to be considered as a special use. Ms. Buchanan had suggested that perhaps uses requiring a special use permit could have their parking determination based on the use, topography, size of the parcel, and other various considerations.


Penny VonCanon asked about some parking problems in Town and what could be done about it. The mention of a particular business that has patrons who park excessively large vehicles that jut out into traffic and what could the Town do about it. Ms. Buchanan said she had reported the specific instances Mrs. VonCanon had mentioned to the Police Department and asked them to be on the lookout for this. Mrs. VonCanon asked how the Police Department handles this. Ms. Buchanan said she was not sure and deferred to the Town Manager for his input on this topic. Manager Rick Owen said that it was more of a NCDOT and Highway Patrol issue since it is a state-maintained road and not a town street.

Motion by Meredith Olan to recommend amendments to Table 4-1 Required Parking to Town Council. Seconded by Penny VonCanon. The vote was unanimous, and the motion carried.

Ordinance Review – Section 708.1.3 Screening

Zoning Administrator Cheryl Buchanan said that this became an issue when The Blind Elk came to the Town for a special use permit and the location is conducive to frequent visits by nonpaying patrons - bears. Ms. Buchanan asked the BOA to consider adding the requirement for a metal screening to protect the area where the roll off carts will be located. Ms. Buchanan said that she added an item that reads: “Metal may be used when bear proofing is needed. Metal shall be painted a color that blends into the environment, black, brown, or dark green.”

Penny VonCanon said she would like to remove the word may and replace it with to. Joel Owen suggested that the word “shall” would be better wording.



Motion by Penny VonCanon to recommend amendments to Section 708.1.3 (e) Screening to Town Council. Seconded by Melinda Eggers. The vote was unanimous, and the motion carried.

Ordinance Review – Section 311 Procedures for Review of Plans and Applications

Zoning Administrator Cheryl Buchanan said she wanted to add some wording to allow for the Board of Adjustment meeting to be held in the following month of the Planning Board meeting for a special use or variance permit. For instance, if the Planning Board reviews a SUP in June, the BOA would not entertain the same topic until July. This also allows the BOA to determine what date best works for them in the following month.

Motion by Penny VonCanon to recommend amendment to Section 311 Procedures for Review of Plans and Applications to Town Council. Seconded by Jacki Lecka. The vote was unanimous, and the motion carried.

Joel Owen asked if there was a need for a discussion on the camping issue tonight. Joel Owen stated that he has an issue with increasing the size of the parcel needed for a campground. Motion by Meredith Olan to table the review of Section 911 Commercial Campgrounds until July. Second by Penny VonCanon. The vote was unanimous, and the motion carried.

Zoning Administrator Cheryl Buchanan asked that Jacki Lecka be recognized as a new/returning board member, and she apologized for not doing this at the beginning of the meeting. Jacki Lecka received a warm welcome from everyone present.

With no further business, Jacki Lecka moved to adjourn. Second by Penny VonCanon. All agreed and the meeting came to an end at 8:22 pm.

Respectfully submitted,
Cheryl Buchanan, Zoning Administrator, Town of Banner Elk