

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

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

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 July 2021 was conducted via Zoom audio and video. Chairman Joel Owen called the zoom meeting to order at 6:07 pm; noting that himself, Aaron Barlow, 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 May 2021 Minutes

Penny VonCanon said she remembered a conversation on different types of gravel and whether they were pervious or impervious. Zoning Administrator Cheryl Buchanan said she would look into putting together a list of pervious materials along with a definition of pervious materials. Motion by Penny VonCanon to approve the minutes with the addition of requesting research on pervious and impervious materials. Seconded by Meredith Olan. The vote was:

Aaron Barlow – Abstain

Melinda Eggers – Yea

Jacki Lecka – Yea

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Yea. The motion carried with 5 in favor and one abstention.

Consideration of the June 2021 Minutes

Penny VonCanon motioned to approve the June minutes as submitted. Second by Jacki Lecka. The vote was:

Aaron Barlow – Yea

Melinda Eggers – Yea

Jacki Lecka – Yea

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Yea. The motion carried with a 6 to 0 vote in favor.

New Business

Preliminary Plat – Red Fox Meadow

Zoning Administrator Cheryl Buchanan stated that the original approval was granted in March 2018 for 11 lots. Ms. Buchanan said that the 2-year vested right time ran out and with some modifications, the request is back before the Planning Board for a second Preliminary Plat

approval. The modifications were a shifting of the road in the curves and the addition of 3 more lots. Ms. Buchanan noted that the smallest lot is 1.248 acres and the roads do not exceed 15% grade and will be private. Joel Owen asked David Stern about the roads. Mr. Stern said the roads are being built to minimum NCDOT standards and are in line with approval standards for Avery County. David Stern said most of the roads are a 90% radius in the curves but there is one curve that is 70% radius. David Stern said that in the mountains it is sometimes impossible to make them all 90% radius.

Meredith Olan said she was having difficulty discussing changes from the first map when she does not have the first map to compare the changes to. Cheryl Buchanan said that this is a new request and whatever was on the old map is no longer valid, that this should be treated as a new request. Ms. Buchanan read the one paragraph from the March 2018 minutes on this same development for the Board's edification. Joel Owen said it is almost a 30% increase in homesites and should be of concern. Ms. Buchanan reminded them that the smallest lot size is 1.248 acres and that the first plat has expired, and this should be treated as a new request.

Aaron Barlow asked how the steep slope ordinance affects this request. Ms. Buchanan said it does not, that this is simply a subdividing of land into lots and is not a planned residential development. Aaron Barlow asked if the steep slope ordinance is part of the subdivision ordinance. Ms. Buchanan said no, it is not. Aaron Barlow said we need to change that. Joel Owen asked why they should allow an increase of 14 lots as opposed to the 17 lots they wanted to ask for. Ms. Buchanan said in her opinion the topography would not support it and that she told them not to get greedy when planning this preliminary plat. Aaron Barlow said that the Town needs to control growth. Ms. Buchanan reiterated that the smallest lot was 1.248 acres, which she considered a rather large lot size. Ms. Buchanan said this request passed her review per the subdivision ordinance and if the Board can find something in the ordinance to prevent them from being approved for 14 lots, then they should vote to do that. However, the Board should have a sound reason for doing so that can be supported by the ordinance to avoid a potential lawsuit. Joel Owen said he is not comfortable with 14 lots. Ms. Buchanan said that Joel Owen said the Town gave them 2 years to finish this development and they did not do it and now they are asking for an extension with there additional lots. Ms. Buchanan said no, this is not a request for an extension, but a brand-new application since the previous request expired.

Penny VonCanon observed that the larger lots appear to be steeper, and the smaller lots are situated at the top which is relatively flat. Mrs. VonCanon said she noticed that they have allowed for some extra space and that the smaller lots have some steep places on them but not where the building site will be. Mrs. VonCanon said that whether anyone has noticed it or not, every spec of land has been sold and the world is moving here. Mrs. VonCanon said it makes sense for a developer to responsibly plan something so that there are some steep lots and some not so steep lots and some of them are over 2 acres, and some are almost 2 acres. Mrs. VonCanon said that even the smallest one at over an acre are good-sized lots for a development. Joel Owen said he completely agrees, but that that is a good size for a lot in the Apple Orchard, but this is the pinnacle of a ridge, and he feels they are trying to get as many as they can without any thought for the land or the residents of Banner Elk. Meredith Olan said that the reason she joined this board is that the Planning Board needs to consider not only the development, but the impact on those around it. Mrs. Olan said that over an acre is a good size for a lot but is concerned about the topography of the property, the fact that they cannot review this architecturally and should take the neighbors into consideration. Mrs. Olan said she would like to see two different scenarios, like the first plan, in order to make a determination.

Joel Owen questioned the maximum profit of the project and at what cost to the surrounding properties and the viewshed. Mr. Owen asked if three (3) more lots were worth the view and stated that there is a reason this comes before the Planning Board. Joel Owen said that if the project meets the checklist, Cheryl has done her job and this project is done and he wondered what the role of the Planning Board is. Joel Owen argued that there are several developments that still have lots for building to allow people to come to Banner Elk and he questioned why the Board should allow a 30% increase in lots for this particular development just to allow the developer to increase his financial profitability. Joel Owen said he is not preventing a family from coming to the mountains but feels the role of the Planning Board is to protect the land and if this is not the role of the board, then do away with subdivision regulations altogether, there is no need for the Planning Board. David Stern stated that he designed the project to meet the requirements of the ordinance. If this is not what Banner Elk wants to see, then perhaps the Town needs to change their ordinance. Aaron Barlow agreed and asked if the Planning Board could have a special meeting to change the ordinance.

Meredith Olan said that she was not on the Board when the previous development was approved and without seeing the previous plan, she was not sure she could decide. Mrs. Olan asked what the grade was on the properties. David Stern replied that the slope of the property is indicated by the topography lines on the map. Ms. Buchanan said that whatever was on the previous map did not matter, this is a new request and needs to be considered based on its own merits. David Stern said lots 13 & 14 have about 30% to 40% average slope, lots 1 through 9 have about 10% average slope. Meredith Olan said that if this meets the ordinance, she has no specific objections other than she would rather have 11 lots as opposed to 14 lots that she is concerned with erosion. Ms. Buchanan said the soil and erosion control plan has been approved by Avery County.

Joel Owen asked about the roads. Avery County has already approved the roads and the soil and erosion plan. Rick Owen asked if the 70% radius on these roads would hamper emergency services. David Stern compared them to the switchbacks on the Beech Mountain Parkway which are 45% and an emergency vehicle can navigate them easily enough. Rick Owen asked about the compaction of the roads in this development and if Mr. Stern had any information about that. David Stern said there was minimal fill on the site and none of that is under the roads, there may be someone the shoulder. Rick Owen was questioning the legal obligation to the Town as to whether the roads were constructed to NCDOT minimum standards and said he would take it up with the Town's Attorney.

Bill Wakeman, who is part owner and developer of the property said that the delay of the project was based on problems with taking the proper steps with environmental agencies for proper permitting. Mr. Bill Wakeman said that his uncle, Warren Wakeman has had several small strokes and Mr. Bill Wakeman had to take over the project. Bill Wakeman said that COVID played a part in delaying the project and he had problems getting people to work. Bill Wakeman said that now the roads are done, and he is just putting some extra finishing touches beyond the minimum requirements on the roads to make David Stern happy, that the design has been approved by Avery County. Bill Wakeman said that the costs were higher than anticipated and this led them to request additional lots. Bill Wakeman told the Board that he asked for 17 lots and Ms. Buchanan said she did not think that 17 lots would work well with the topography on that property and asked them not to be too greedy. Bill Wakeman said the new layout is good, the cul-de-sac at the top is wider to accommodate a gazebo in the center for the subdivision's use. Joel Owen said this is still a lot of homes when there are no existing trees on the property, that it makes the property highly visible.

Penny VonCanon said that a few trees in each lot would be good while maintaining the view for the residents. Joel Owen asked if Bill Wakeman would consider reducing the plat to 11 lots. Bill Wakeman answered that with all the added expense he needed to keep the 14 lots.

Todd Hudson asked to speak. Mr. Hudson told the Board that he is the President of the Grey Fox Ridge's POA, the adjoining development to Red Fox Meadow. Mr. Hanson asked if the roads were going to be paved along with those in Grey Fox Ridge? Joel Owen said the Planning Board could not require that, it would be up to Avery County.

Meredith Olan motioned to recommend approval of the preliminary plat for Red Fox Meadows as proposed to Town Council since it falls within the guidelines of the subdivision ordinance, the lots sizes are over an acre, and the steep slopes seem to be mitigated with larger lots. Seconded by Joel Owen. The vote was:

Aaron Barlow – Yea

Melinda Eggers – Yea

Jacki Lecka – Yea

Meredith Olan – Yea

Joel Owen – Yea

Penny VonCanon – Yea. The motion carried with a 6 to 0 vote in favor.

Ordinance Discussion on Commercial Campgrounds

Joel Owen opened the discussion stating that this was not about a specific project, that the discussion was about the potential for a commercial campground in general in the zoning limits of Banner Elk. This specific scenario includes tents and pop-up tents, but no RV's.

Mr. Owen started with saying that in his opinion, five (5) acres was generous for a commercial campground. Mr. Owen said that if the site is more than five acres, it becomes a recreation area, especially if people are staying for 30 days.

Penny VonCanon said that if anyone wanted to see an example of glamping, they can visit Eagles Nest, that they have sites there. Meredith Olan asked if the Board thought that glamping fell under a Tourist Court or a Bed and Breakfast more than a campground considering there would be more permanent structures.

Marsha McManus complained about the status of Old Farm Loop Road and how that road would be able to accommodate the traffic. A discussion on public access ensued and Cheryl Buchanan said that this should be the determination of the NCDOT unless it is a town-maintained road. Terry Painter-Moore said she was concerned about the size of the property for a campground and number of campfires allowed and the nuisance to the neighborhood. Penny VonCanon said that you can get a burn permit off the internet for a 30-day period. Mrs. VonCanon said they wait for the right conditions to burn, such as the barometric pressure and wind and if there has been enough rain to prevent the fire from spreading. Joel Owen expressed concern for the amount of smoke campfires that could be generated, and this is an important issue he feels needs to be addressed in consideration for neighboring properties.

Aaron Barlow said that the size is hard to determine. Joel Owen asked if the members thought it should be higher or lower. Joel Owen said someone needs to explain why 5 acres works. Aaron

Barlow said lower works for him. Penny VonCanon said that the buildings listed in the ordinance like a bathhouse and laundry facilities take up a lot of room, so maybe five acres is not enough. Jacki Lecka said looking at the wording, if you had five acres, and 30% could be used for campsites, how many would that be? It was determined that there could be 22.5 camp sites on a five-acre tract. Joel Owen said that would be a lot for campers in one spot. He also said he thought a 30-day stay was too long. Penny VonCanon suggested one communal fire pit for all the campers. Marsha McManus said they had done a lot of camping and that these sites usually have a fire ring, with a metal or rock rind that is built up so high where the fires is to be kept and it is usually not that big of a problem.

Joel Owen said that everyone is concerned about the project that Chris Zecca has been working on and that project would fall under the special use guidelines and not those the Board was considering tonight. Joel Owen said he thought the burden of proof on mitigating the dangers and nuisances be placed on the applicant. Penny VonCanon said there are lots of woods here and that a fire is not the only thing to do here. The Board decided to look at the ordinance with the proposed changes in red and go through a review to give it some consideration and to ponder on it for the next meeting. The Board agreed. The following sections were highlighted for future consideration:

- (a). Size requirement for property and number of camp sites.
- (c). Buffering should also provide for views.
- (f). Board would like input.
- (i). Unusable area could affect calculations for sites.
- (l). Length of stay in question.
- (m). Bearproof containers.
- (n). Does not want an event barn in a campground.
- (o). Bear proof food storage.
- (p). If no campsite fire pits, no wood is needed.
- (q). Meredith had a problem with physical restraints.
- (r). Add no hammocks.

Meredith Olan motioned to table this discussion until the next meeting. Seconded by Jacki Lecka. The vote was:

Aaron Barlow – Yea
 Melinda Eggers – Yea
 Jacki Lecka – Yea
 Meredith Olan – Yea
 Joel Owen – Yea
 Penny VonCanon – Yea. The motion carried with a 6 to 0 vote in favor.

Motion by Meredith Olan to request a workshop to work on ordinances. Seconded by Aaron Barlow. The vote was:

Aaron Barlow – Yea
 Melinda Eggers – Yea
 Jacki Lecka – Yea
 Meredith Olan – Yea
 Joel Owen – Yea

Penny VonCanon – Yea. The motion carried with a 6 to 0 vote in favor.

With no further business, Penny VonCanon moved to adjourn. Second by Aaron Barlow. All agreed and the meeting came to an end at 8:47 pm.

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