

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 15 FEBRUARY 2010
MINUTES

Members Present: Jerome Clapp, Candace Lewis, Joe H. Perry, Bill Wilson, Scott Woodward

Staff Present: Cheryl Buchanan, John Mejaski

Others Present: James C. Carli, Justin Church, Baxter Crane, Steve Gilliam, Derek Goddard, Joe Rhayer, Scott Schaaf, Shane Shuler, Wes Terrell, Robert Tufts, Charlie B and Penny VonCanon, Chris Wottell

Chairman Scott Woodward called the meeting to order at 7:00 PM. He opened the meeting with the pledge of allegiance to the flag. A quorum was present for the meeting.

Consideration of the October 2009 Minutes

With no changes noted, Joe H. Perry moved to approve the minutes as submitted. Bill Wilson seconded. The vote was unanimous and the motion carried.

Chairman Woodward asked those present that would be giving testimony to come forward, sign the witness form (attached) and be sworn in.

Conditional Use Permit – Mill Pond Manor, Highland Partners of Banner Elk LLC & BB&T

Cheryl Buchanan gave a brief summary of the history of this development bringing the Board up to the request for this evening. She informed the Board that the Planning Board made a recommendation for approval with conditions, but recognized that they were working off of a set of old plans. Ms. Buchanan spoke with legal representative, Scott Schaaf, about the need for better information for the BOA. Mr. Schaaf agreed and hired a new engineering firm, Blue Ridge Environmentals, who have provided the documentation the Town required.

Derek Goddard and Justin Church were both present to speak to the Board about the new plans for stormwater mitigation. Mr. Goddard reviewed a slide show presentation (attached) outlining the measures that would be required to handle stormwater runoff from the site. Candace Lewis asked if there was an administrative detail that was missed since the Planning Board had not had the chance to review the new information. Ms. Buchanan said she was comfortable with the new information, that the Town could require additional information as they see fit to cover what would be needed to present an acceptable case to the Board. Ms. Buchanan said that she had reviewed the information carefully and was confident that what the BOA was seeing is the best product available.

Mr. Goddard reviewed the following items of the new plan as follows:

1. Addition of three (3) rain garden bio-retention stormwater treatment devices,
2. Addition of rainwater harvesting and stormwater treatment devices through an underground cistern and six (6) 150 gallon rain barrels,
3. permeable concrete pavers in parking areas,
4. safety railings around the retaining wall, and guardrails along the entrance driveway and High Lowe Lane,
5. elimination of the previously proposed retaining wall along the front of the property and a proposed plant list for that bank to stabilize future erosion,

6. Banner Road ditch line will be reinforced and re-vegetated with a Turf Reinforcement Mat (TRM), wattles and turf grass,
7. repairs to the ditch line with Class "B" stone materials.

Mr. Goddard presented some additional information on determining the construction cost estimate of infrastructure and amenity items and some model studies on thermal pollution.

Scott Woodward asked the engineer's if note #1's calculation for total acreage included Banner Road? Mr. Goddard answered it did. Mr. Woodward then asked if this was included in the impervious surface calculations also. Mr. Goddard said it was left out because it was an existing road. Mr. Woodward stated that he did not think they could use Banner Road both ways. Joe H. Perry asked Ms. Buchanan if Section 907 as a conditional use for Planned Residential Development's percentage of impervious surface calculation been changed. Ms. Buchanan replied no, it had not been changed, that the 45% comes from the steep slope maximum density table 308-3. Section 907 paragraph 4 requires 40% impervious surface calculations.

In view of this consideration, Ms. Buchanan asked if BB&T would consider eliminating unit #4 to meet this 40% requirement on planned residential developments. Mr. Shane Shuler stated some concern over the constant changes that have been made to the ordinance since the project began in 2005. This greatly affects the money needed to complete the project. Town Manager John Mejaski suggested that BB&T might want to consider expanding the pervious concrete pavers into the asphalt areas to help meet the 40% impervious surface requirement. Mr. Shuler said that he would want to discuss that with his clients. Mr. Perry said the Board did not need to decide exactly how it was to be done, that would be up to them and the engineers.

Scott Woodward said this is a brand new CUP, even though we have a partially completed project, and he is trying to look at this from that perspective. Ms. Buchanan asked the Board to make the Letter of Credit a part of the CUP requirements. Mr. Shuler said that he has a letter from the engineer stating the estimated cost of completion of the infrastructure and amenities listed hereafter: Stormwater BMP's, sidewalk and lighting, paving, curb and guttering and markings, landscaping, and utilities. The estimated cost is \$152,500 and Mr. Shuler said he was confident that the he could have a letter for 125% of that amount, \$196,000, in about a week. Manager Mejaski said he was happy with that but would like to see an additional amount to cover the landscaping and the bio-retention areas to make sure that the plantings become established. Manager Mejaski said he thought we could work it out on a staff level and he would ask that it cover a three year period.

Ms. Buchanan asked the Board to consider a timeframe for the completion of the infrastructure and amenities. Mr. Shuler said that he once thought the end of March would work, but that was before all the snow. Ms. Buchanan said she thought the infrastructure and amenities need to be finished before any additional construction is started. He asked the Board to consider four months after the opening of the asphalt plant. Mr. Perry noted that the CUP carried a two year approval for completion for new construction.

Jerome Clapp asked about the agreement with Mr. Robinson. Mr. Schaaf said that Mr. Crane had spoken to Mr. Robinson and his family and that they are working on an agreement.

Penny VonCanon asked Mr. Goddard who would be responsible for the overflow of the rain barrels. Mr. Goddard said they would drain into vegetated beds and that the owners would have an operator's manual. Mr. Crane said the POA would be in charge of these.

Ms. Buchanan also mentioned that the responsibilities of the POA would need to clearly defined. Mr. Shuler said that with the nature of the project the POA would be a given.

With no further information, Chairman Woodward asked for the Board's consideration on the CUP request. Joe H. Perry made a motion to approve the conditional use permit with the following conditions:

1. the 40% impervious surface requirement per Section 907 be met,
2. a copy of the agreement between Highland Partners and Mr. Jack Robinson be submitted to the Town,
3. that completion of the infrastructure and amenities been finished four (4) months after the opening of the asphalt plant on Highway 105 in Boone, and
4. a copy of the POA agreement, and
5. the letter of credit for \$196,000 to expire one year from the completion date, and an additional \$5,000 for landscaping to expire three years after the completion date.

Jerome Clapp asked the Board to address the issue of trash containers. Mr. Crane had proposed to build a wooden deck along the sidewalk with a fence and a vegetative barrier. Manager Mejaski suggested that they might want to schedule door service. Mr. Crane said he agreed, that most of the residents would be elderly and he thought this was a good idea, which would eliminate the need for the site across Banner Road.

Mr. Perry revisited his motion to add an additional item to the four items listed above, being a requirement of the POA agreement. Candace Lewis seconded. The vote was unanimous and the motion carried.

With no further business, Chairman Scott Woodward called the meeting adjourned.

Respectfully Submitted,
Cheryl Buchanan