

****DRAFT****

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 23 APRIL 2012
MINUTES

Members Present: Jimmy Ollis, Joe H. Perry, Dekka Tate, Bill Wilson, and in-town alternate Ted Silver

Staff Present: Cheryl Buchanan, Stacy C. Eggers, IV (Town Attorney), Rick Owen

Others Present: Allen and Rebecca Bolick, Tommy Burlison, Chris Quinn, Derrick Rowley, John and Susan Turchin, Charlie B & Penny VonCanon

Before the meeting started, Vice Chairman Joe H. Perry administered the oath of office to newest full-time members Dekka Tate and in-town alternate Ted Silver, who was present due to Jerome Clapp's absence.

Vice Chairman Joe H. Perry called the meeting to order at 7:00 pm as advertised. A quorum was present and the Chairman opened the meeting with the pledge of allegiance to the flag.

Election of New Chairman

Vice Chairman Joe H. Perry read a brief letter of resignation from Scott Woodward, which leaves the chairman's position vacant? There was a quorum present but the Board decided to wait on the arrival of another member. At this point Mr. Wilson arrived late and the meeting continued. Vice Chairman Perry opened the floor for nominations. Jimmy Ollis nominated Mr. Joe H. Perry as Chairman. Ted Silver seconded. The vote was recorded as:

Bill Wilson (yea),
Jimmy Ollis (yea),
Ted Silver (yea),
Joe H. Perry (yea), and
Dekka Tate (yea). The motion carried.

Consideration of the March 2012 Minutes

Newly elected Chairman Joe H. Perry entertained changes to the minutes. None were noted and he called for a motion. Dekka Tate moved to approve the minutes as submitted. Bill Wilson seconded the motion. The vote was:

Bill Wilson (yea),
Jimmy Ollis (yea),
Dekka Tate (yea),
Joe H. Perry (yea), and
Ted Silver (yea). The motion carried.

Opening of the Quasi-Judicial Portion of the Meeting

Chairman Perry explained the procedure for a quasi-judicial meeting. This reading addresses the statutory requirement to make those in attendance aware that an individual's rights are being determined. Chairman Perry opened the Public Hearing portion of the meeting identifying the applicant and inquiring among the board members if they could deliver a fair and unbiased decision and whether they had received any information prior to the meeting. There were no conflicting answers and the board indicated they were ready to hear the request. All parties that were present to give testimony were sworn in. (See attached witness form).

Appeal of the Zoning Administrator's Decision – T & A Investments, LLC

Testimonies:

Zoning Administrator Cheryl Buchanan began by describing the reason why the issue of the parapet roof was being reviewed. She gave a brief discussion of the reason she had issued the zoning violation. Her reasoning was this: in the December 2011 meeting, the Board of Adjustment (BOA) had directed Mr. Turchin to complete a previously partially erected parapet wall to the same height and appearance as to match the existing parapet wall in order to shield solar panels that were being mounted on the roof. Ms. Buchanan said she did not feel that the parapet roof that was being built was an exact match even if the same materials were being used. Ms. Buchanan testified she had discussed this with the Town Manager who agreed and they came to a mutual decision to contact the Town's Attorney for his opinion. Town Attorney Eggers suggested that Ms. Buchanan write a letter of warning that would put Mr. Turchin on notice. Ms. Buchanan testified that she did not have any plans for the roof other than a set dropped off by Mr. Quinn for electrical statistics and locations.

Ms. Buchanan called the Avery County Inspections office to verify that they had issued a building permit. She did not receive a direct answer and asked if there were any plans for the parapet roof Mr. Turchin was having built. Avery Inspections faxed over a pdf (8.5" x 11") computer generated drawing from Piedmont Components for the proposed roof components with wind data, but no copy of a building permit was received with the fax.

Ms. Buchanan testified that although Mr. Turchin used the same materials, she did not feel that it was an exact match and her concern was that it did not meet the intent expressed by the BOA in their December 2011 meeting.

Mr. Turchin testified that he had received an interpretation from Mr. Joe Pavelchak, his architect and therefore began construction. Mr. Turchin stated that this was a matter of interpretation and he believed the new wall is the same material and appearance as the existing wall. Mr. Turchin said there are two or three different types of design along the parapet wall on the building, with some round and some straight. Mr. Turchin said he was in a rush to build it and did not get any plans signed off on. He said that Chris Quinn brought

the plans by the Banner Elk Town Hall and got a verbal OK and there were no objections made, but did not leave a copy. Mr. Turchin stated that while they were building the wall, he recognized that it did not exactly match the wall around the side of the building and that the pitch was different, but felt sure it was fine. Mr. Turchin stated that this project cost him \$75,000 and had he built it like Ms. Buchanan suggested it should be; it would have cost him \$350,000 and he felt it was unreasonable to ask him to spend. Mr. Turchin expressed concern that he could be making Glove Factory Lane inaccessible due to the extension of the roof and supports into/near the road.

Mr. Turchin offered additional exhibits. Exhibit 6 was a letter from Mr. Joe Pavelchak that was addressed to the Banner Elk BOA explaining his interpretation, and Exhibit 7 was additional pictures of the completed project. The Town had already submitted pictures as Exhibit 5 in the member's packets. Mr. Pavelchak's letter states that in his opinion everything matches with the exception of the pitch, which would not be functional any other way.

Deka Tate asked Cheryl Buchanan to point out to her why she had a problem with what Mr. Turchin had done. Ms. Buchanan stated that in order to match, it was her understanding that it was the Board's intention to have the roof come out at the same pitch. Deka Tate said she did not think that what was built was offensive. Ms. Buchanan clarified that her position was that it was about her understanding of the Board's intent, not what she personally thought about the appearance.

Mr. Tommy Burleson of Avery County Inspections testified that the wall the BOA was talking about is a curtain wall and not a parapet wall and that a parapet wall is for adjoining properties. Mr. Burleson remarked that he remembered a discussion about moving a brick wall in the December 2011 meeting. Mr. Burleson testified that he had been given a design from an architect with wind studies and he said it had cedar shingles. Mr. Burleson said this design was well within the State's building code so he accepted the submittal as is. Ted Silver asked Mr. Burleson if he disagreed with the zoning administrator's interpretation of the design. Mr. Burleson answered that it was a matter of zoning and aesthetics and that wasn't his department. Mr. Burleson said he understood that Banner Elk had accepted the design and that they had issued a zoning permit.

At this point Chris Quinn and Rick Owen were sworn in to give additional testimony.

Mr. Chris Quinn testified that he had made five or six trips back and forth to the architect's office for rolls of plans on the parapet wall and that he had made several trips to town hall but did not leave any plans. Mr. Quinn said that he was focused on the parking and internal layout and that he had received permission to start construction after the fact.

Town Manager Rick Owen confirmed that the set of plans he had looked at were electrical in nature and that he had discussed with Ms. Buchanan whether the

Town had a set of plans for the construction of the parapet wall. Mr. Owen testified that in his opinion he agreed with Ms. Buchanan that the parapet wall did not meet the BOA's original intent and that he had received a call from someone questioning whether the parapet wall was being built like it was supposed to be. Mr. Owen said that he and Ms. Buchanan had agreed on a course of action the town should take.

Closing Remarks:

Having received the testimony of all sworn witnesses, the Chairman recognized that the testimony portion of the meeting had come to an end and said that final remarks would be entertained starting with staff.

Ms. Buchanan reviewed that she could not recall or locate a set of blueprints from Mr. Pavelchak's office but she did confirm that she had a set of electrical plans she received from Mr. Quinn before the project started. Ms. Buchanan did not remember any conversation in the December 2011 meeting about moving a brick wall. Ms. Buchanan said that she was concerned that the construction of the parapet wall did not meet the BOA's original intent and felt she was exercising her duties by issuing the violation. Ms. Buchanan confirmed that she did call Avery County Inspections to see if they had a building permit and received a fax of a spec drawing not from Mr. Pavelchak's office, but from Piedmont Components. Ms. Buchanan pointed out that the black frames, although not part of this violation were a condition in the conclusions of law and that it did matter whether they were black or aluminum. Ms. Buchanan said that she issued the violation due to her concern that Mr. Turchin may not be in conformance with his Conditional Use Permit.

Mr. Turchin's closing remarks centered around his interpretation that the extension of the parapet wall looks great and that he had recently experienced some financial hardships and could not afford the \$350,000 version.

Board Deliberation:

Chairman Perry declared the evidentiary section at an end and directed the Board into the deliberation portion of the meeting. Ted Silver asked the Attorney if it was possible to modify the original CUP to allow for the extended portion of the parapet wall as it was built? Attorney Eggers answered no, the board's decision would need to be an affirmation or a reversal of the zoning administrator's decision.

Attorney Eggers, by way of background information, reiterated the issue before the board as an appeal of the zoning administrator's decision to issue a zoning violation, the board should consider only the evidence that has been presented and the material in the agenda packets in terms of the ordinance before them. As the Attorney, Mr. Eggers reviewed that the Board would need to either affirm Ms. Buchanan's decision to issue the violation or reverse it. These are the items for discussion and consideration. If the board decides to affirm the zoning administrator's decision, it would need to be by a 2/5 vote. However, in order

to reverse her decision, it would require the majority 4/5's vote to pass as per statutory authority granted to the BOA. As the Town's Attorney, Mr. Eggers stated that he does not have any position on the application and any questions or guidance he has offered should not be misconstrued as a "for" or "against" to the appeal before the board.

Chairman Joe H. Perry asked Bill Wilson for his thoughts on the matter before the Board. Mr. Wilson responded that there are sections on the front of the building that are different and he felt they were in compliance.

Jimmy Ollis stated that when Mr. Turchin received approval, he thought they would extend all the way out on the side that had the electrical boxes mounted to the wall, but not on the Glove Factory side. Mr. Ollis said he agreed that it does not match exactly.

Deka Tate said that she observed that the roof had many angles and that it was her interpretation – whether in whole or in part – that she would not have interpreted it to be out of compliance.

Ted Silver commented that without pictures or plans, each side could have a different opinion and that according to the minutes from the December 2011 meeting, he understood that the intent was uniformity and that the natural assumption would be to extend out the pitch of the roof, especially over the electrical boxes. Mr. Silver stated that administratively this could have all been avoided if properly addressed and that his thoughts are that the zoning code or aesthetics could be at risk due to a difference of opinion.

Chairman Joe H. Perry stated that it is against his better judgment to go against the zoning administrator, but in this case he would have to vote in favor of the applicant.

Deka Tate moved to reverse the zoning administrator's decision to issue the violation. Attorney Eggers addressed the Chairman and said there is a motion before the board that would require a second and discussion, if desired. For the motion to be approved it requires a 4/5ths vote to approve. Bill Wilson seconded the motion. No discussion was forthcoming and the vote of the board was:

Bill Wilson (yea),
Jimmy Ollis (yea),
Deka Tate (yea),
Joe H. Perry (yea), and
Ted Silver (yea). The motion carried with a unanimous in the affirmative.

Attorney Eggers also stated that he and Ms. Buchanan would work on an order and have it ready as soon as possible and send a copy of Mr. Turchin.

Closure of the Quasi-Judicial Portion of the Meeting

Chairman Perry called the quasi-judicial portion of the meeting to a close.

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Adjournment

With no further business, Jimmy Ollis moved to adjourn. Ted Silver seconded. The vote was unanimous and the meeting came to a close at 9:02pm.

Respectfully submitted,
Cheryl Buchanan, Zoning Administrator and Secretary to the Banner Elk Board of Adjustment