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BANNER ELK BOARD OF ADJUSTMENT  
MONDAY, 18 JUNE 2012  
MINUTES

Members Present: Jerome Clapp, Jimmy Ollis, Joe H. Perry, Ted Silver (Alternate), Bill Wilson

Staff Present: Cheryl Buchanan, Four Eggers (Town Attorney)

Others Present: Robbie Brinkley

Chairman Joe H. Perry called the meeting to order at 7:05 pm, recognizing that there was not a full board present, but there was a quorum. Chairman Perry asked everyone present to stand and join in the pledge of allegiance to the flag. Ted Silver arrived at 7:07 pm.

**Consideration of the May 2012 Minutes**

With no changes noted, Jimmy Ollis moved to approve the minutes as submitted. Bill Wilson seconded. The vote was:

Bill Wilson (yea),  
Jimmy Ollis (yea),  
Jerome Clapp (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).

Chairman Perry called the hearing portion of the meeting to order at 7:08 pm. Chairman Perry administered the oath for those that were giving testimony at the hearing. (See attached testimony sign-up sheet)

**Conditional Use Permit for Anna Greer/Templeton Properties/Robbie Brinkley Daniels for an Accessory Use**

**Testimonies:**

Chairman Perry called for an overview by the staff. Cheryl Buchanan, zoning Administrator began by reviewing the exhibits for the hearing. They are listed here:

- Exhibit #1: Application for a conditional use permit
- Exhibit #2: Site Plan
- Exhibit #3: Vicinity Plan
- Exhibit #4: Copy of the lease by Templeton Properties and Anna Greer and a copy of the sublease by Robbie Brinkley and Templeton Properties.
- Exhibit #5: Written permission by property owner, Anna Greer
- Exhibit #6: Written permission by Templeton Properties to park on unleased portion of property.
- Exhibit #7: Photo of U-Haul trucks and trailers on the property

Ms. Buchanan told the board that Mr. Brinkley had started a second business at 2009 Tynecastle Highway, his primary business being Peak Fitness. Accessory uses are conditional in the C-2 zoning district and require a conditional use permit. Mr. Brinkley subleases a portion of property from Templeton Properties, who in turn leases a portion of property from Anna Greer. Mrs. Greer owns 31.09 acres and Templeton Properties leases 4.13 acres of this that was annexed into the town and additional property that is in the ETJ. The subleased portion is .97 acres. Exhibit 4 is a copy of the sublease and included in the sublease is a map labeled "Exhibit A" that illustrates the portion of the property subleased by Robbie Brinkley.

The building subleased by Robbie Brinkley is 15,740sf. 9,940sf is heated floor space and is currently in use. 5,800sf is unused and unheated floor space. Per the Banner Elk Zoning Ordinance, the minimum number of parking spaces required for the used portion of the building is 33. There are 19 marked spaces in front of the building. Although there is a NCDOT right of way on the property, it does not affect the parking or the building. According to Mr. Brinkley's lease, he has access to 30 feet of property to the right of the building. Currently he has rental U-Haul vehicles and trailers at least 75 feet on the right side of the property. Templeton Properties was contacted and have granted written permission for Mr. Brinkley to park these vehicles beyond the leased space shown on Map A and Exhibit 2 as well.

Ms. Buchanan said she had reviewed the ordinance and felt that Mr. Brinkley had met all the requirements for a conditional use permit.

Chairman Perry then asked Mr. Brinkley if he had any testimony he would like to give. He said that Ms. Buchanan had pretty much covered everything but that he felt this business is a good asset for Banner Elk and it was a good location.

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Chairman Perry then asked if the board had any questions of Ms. Buchanan and Mr. Brinkley.

Mr. Clapp asked if Mr. Brinkley could be required to clean up the weeds on the property as a consideration to enhancing the entrance into Banner Elk. Ms. Buchanan said that it might be a condition of the CUP for the area that he is responsible for but probably not for the entire tract since he doesn't lease all of the property, just a portion. Ms. Buchanan also noted that the Town Code is used to reinforce the noxious weed ordinance, but this applies to properties in the town limits only.

Ted Silver asked Ms. Buchanan to explain how she calculated the number of parking spaces. Ms. Buchanan testified that she had taken the square footage of heated floor space that was currently being used at a calculation of 1 space per 300sf of heated floor space as per the ordinance. This calculation makes the minimum requirement of 33 and the maximum requirement as 50 per the ordinance. Ms. Buchanan also testified that it would be difficult to put a firm number on the rental units because the inventory fluctuates depending on demand.

Joe H. Perry asked to whom the CUP would be granted? Town Attorney Four Eggers stated that a CUP goes with the property; therefore it would be Anna Greer.

Chairman Perry asked for closing remarks from the two persons giving testimony. Ms. Buchanan said she had no additional remarks, that she felt this was a fairly simple request and that Mr. Brinkley had met the requirements of the ordinance. Mr. Brinkley said he had no additional comments.

Attorney Eggers reviewed the process the board would follow during the remainder of the meeting. Chairman Perry closed the public comment section of the meeting at 7:34 pm and opened the portion for deliberation among the board members.

Jerome Clapp stated that he had nothing to add. Jimmy Ollis said he was fine and had nothing to add. Bill Wilson stated that he had nothing to add.

Ted Silver made a motion to approve the conditional use permit for an accessory use with the following conditions:

1. Should Templeton Properties withdraw their permission allowing Mr. Brinkley to park beyond his leased area, then the CUP would be revoked if Mr. Brinkley could not park within his leased area.
2. To whatever extent the trailers are parked; the area where the trucks and trailers are parked should be maintained for weed control. The board understands that this is subject to the fluctuation of inventory and does not include the entire gravel lot in this condition.

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Bill Wilson seconded the motion. The vote was:

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

Chairman Perry called for a motion to close the hearing portion of the meeting. Ted Silver moved to close the hearing portion of the meeting. Bill Wilson seconded. The vote was:

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

To take care of an oversight when the Chairman was appointed, the board recognized that it needed to appoint a Vice Chairman to fill in should the Chairman be unavailable. Chairman Perry opened the floor for nominations. Jimmy Ollis nominated Jerome Clapp. Jimmy Ollis was nominated by Jerome Clapp. Bill Wilson seconded the nomination for Jerome Clapp. Being no second for Jimmy Ollis, the nomination for Jerome Clapp was voted on. The vote was:

Bill Wilson (yea),  
Jimmy Ollis (yea),  
Ted Silver (yea),  
Joe H. Perry (yea)

Jerome Clapp voted (nay). The motion carried and Jerome Clapp became the Vice Chairman.

With no further business, Bill Wilson made a motion to adjourn at 7:51 pm. Jimmy Ollis seconded. The vote was:

Bill Wilson (yea),  
Jimmy Ollis (yea),  
Ted Silver (yea),  
Joe H. Perry (yea), and  
Jerome Clapp (yea). The meeting came to a close.

Respectfully submitted,  
Cheryl Buchanan, Zoning Administrator

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