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BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 19 MARCH 2012
MINUTES

Members Present: Jerome Clapp, Joe H. Perry, Deka Tate, Bill Wilson

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

Others Present: Sid Eibl von Rospeunt, Ted Silver

Chairman Scott Woodward was absent from the meeting and Vice-Chairman Joe H. Perry served as acting Chairman. Mr. Perry called the meeting to order at 7:00 pm as advertised. The Chairman opened the meeting with the pledge of allegiance to the flag.

Mr. Perry noted that some administrative duties needed to be handled before the hearing started. Mr. Woodward had verbally tendered his resignation due to moving outside the Town's jurisdiction and Mr. Perry proceeded to swear in alternate Deka Tate as a full-time member.

Consideration of the December 2011 Minutes

With no changes recommended for the December 2011 minutes, Bill Wilson moved to approve as submitted. Jerome Clapp seconded. The vote:

Bill Wilson (yea),

Deka Tate (yea),

Joe H. Perry (yea), and

Jerome Clapp (yea). The motion carried.

Before the public hearing opened, Town's Attorney, Stacey C. Eggers, IV, explained that a case before the Board of Adjustment requires a 4/5 vote and because there were only four members present this night, it would require a unanimous decision to decide in favor of the applicant. Mr. von Rospeunt was given the choice of waiting until there was a full board or allowing the four that were present to hear his case. Mr. von Rospeunt chose to proceed with only four members present.

Opening of the Quasi-Judicial Portion of the Meeting

Acting Chairman Perry explained the procedure for a quasi-judicial meeting. He addressed the statutory requirement to make those in attendance aware that an individual's rights are being determined. Acting 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).

Request to Amend a CUP – Banner Manor Mini Storage/George Meyer & Sid Eibl von Rospeunt

Testimonies:

Zoning Officer Cheryl Buchanan began by giving a brief history of the property from the time the original order granting a special exception that was issued in November 1993. Item 15 of that special exception permit states: "That the current uses of the property,

DRAFT

as represented by Mr. Hilley, are uses permitted within a planned commercial development in a C-2 district. All future uses must be uses permitted within a planned commercial development in a C-2 district.” Ms. Buchanan told the Board that the reason this request is before them this night is that this use is conditional in the C-2. There is a further concern because the official zoning map reflects that the property is zoned R-2, not C-2. Auto sales are not a permitted or conditional use in the R-2 and it will be up to the Board to decide if this is a conforming or nonconforming use in that zoning district.

Mr. von Rospeunt’s request is for an auto sales brokerage office. Most of the time the automobiles will have already been sold and he’ll use this office as an exchange point. Ms. Buchanan drew attention to Mr. Meyer’s letter and the conditions that Mr. Meyer placed to this request.

Ms. Buchanan tendered and explained each exhibit included in the Board’s packet: Exhibit 1, a review of the request compared to each section of the ordinance, Exhibit 2 shows the proposed parking scheme for this particular office, Exhibit 3 is the original special exception permit, Exhibit 4 is a floor plan of the building, Exhibit 5 is a calculation of the original parking plan, Exhibit 6 is the original parking plan, Exhibit 7 is Mr. von Rospeunt’s application, and Exhibit 8 is a letter from the owner, Mr. Meyer, granting Mr. von Rospeunt permission to speak on his behalf.

Deka Tate said that it was mentioned that he might want to sell a few cars. Ms. Buchanan said that Mr. von Rospeunt had mentioned this at the Planning Board meeting. Deka Tate asked if it there might be over two at any given time and Ms. Buchanan stated that the letter from Mr. Meyer said he was allotted only three spaces.

Jerome Clapp said it might not be unusual for his employee to park somewhere else on the property since there seems to be adequate parking, especially if there are three cars for sale. Ms. Buchanan said that she could say that there is ample parking on the site for an employee to park but she is not suggesting that this should be the case. Attorney Eggers said that it would be up to the Board whether to limit such use or place any conditions on the approval.

Mr. Perry then indicated that it was Mr. von Rospeunt’s turn to testify. Attorney Eggers said that he could ask questions of staff if he wished.

Mr. von Rospeunt introduced himself and told the Board that auto sales are turning to on-line sales and this is the way he is heading. Mr. von Rospeunt told the Board that he is the CEO of South East Automotive Group and he’s done a lot of research. He said that he spends a lot of time up here in the summer and has a lot of time on his hands. Mr. von Rospeunt said he would also like to bring up some four-wheel drive trucks that could cater to the local market. Mr. von Rospeunt testified that he brings the cars up on a nine-car carrier and has them delivered at Elk River and that he parks the extra cars in his hangar.

Bill Wilson asked if the cars are new? Mr. von Rospeunt said that the cars that come from Florida are new and are for second homeowners in the area. He also plans to bring some used autos that he will advertise on autotrader.com or cars.com.

Jerome Clapp asked about signs on the car. Mr. von Rospeunt said that by law you are required to have some signs on the car – the buyer’s guide disclosure. Mr. Clapp asked

DRAFT

about security and Mr. von Rospeunt said he didn't need an alarm and that the inventory is insured.

Attorney Eggers asked Mr. von Rospeunt where the cars would be unloaded. Mr. von Rospeunt's answer was at Elk River.

Acting Chairman Joe H. Perry asked staff if they had any questions. Ms. Buchanan asked Mr. von Rospeunt if he was clear on the conditions placed on him by Mr. Meyer for parking spaces and signage. Mr. von Rospeunt said he understood these stipulations.

Acting Chairman Perry asked if there were any closing statements from the participants. Ms. Buchanan covered again the zoning discrepancy she had found and how it might impact this request. At this point, Acting Chairman Perry closed the public hearing and testimony portion of the hearing.

Attorney Eggers advised the Board that as they deliberate, there are two issues before them. First, before you can consider the merits of the application and whether it meets with your zoning ordinance, you will need to determine if this request extends or introduce a non-conforming activity under the CUP. Because it is currently zoned R-2 under the official zoning map, it would not be a permitted use on its own right, and it would have to be grand-fathered in a way under the existing CUP. If you find unanimously that it does not extend or introduce a non-conforming activity, then you would proceed to consider the application based on its own merits under that conditional use framework.

Acting Chairman Perry said the first item they should discuss is whether the property is zoned R-2 or C-2, or a combination as the Attorney described. Attorney Eggers said that unless you have information to the contrary, you should deem your zoning map to be the official zoning of the property. Deka Tate said that it appears he is applying under the prior CUP and he has all the exhibits and such that are required that he will fall under that original CUP, the only thing she saw was for them to vote and spell out the stipulations. Jerome Clapp stated that the Board should go by the letter from Mr. Meyer. Deka Tate said the original CUP is still under affect and that this falls under that. Deka Tate said that if the zoning was to be changed she thought it would probably be commercial.

The Attorney reiterated that the first matter they should consider is if this request extends a nonconforming activity beyond the activity of the original CUP. The Attorney said that he has no opinion, that he informed the Board that they should consider only the information before them and anything he says is not to be considered the opinion for himself or the Town on the merits of the application.

Acting Chairman Perry called for a motion. Jerome Clapp said that as long as they are operating under the existing Cup, this use to be allowed. Bill Wilson seconded. The vote was:

Bill Wilson (yea),
Deka Tate (yea),
Joe H. Perry (yea), and
Jerome Clapp (yea). The motion carried.

Now the Acting Chairman Perry read the definition of the C-2 zoning district and then asked that the Board consider the actual application while reviewing the exhibits.

DRAFT

Bill Wilson asked about signs on the car. Mr. Perry said Mr. von Rospeunt has stated that he will have a sale sign but not his business sign in the window of the car. Mr. Perry said that they have studied the facts and called for a motion for the application. Dekka Tate moved to approve with the stipulations that he comply with all the requirements per Mr. Meyers letter. Bill Wilson seconded. The vote was:

Bill Wilson (yea),
Deka Tate (yea),
Joe H. Perry (yea), and
Jerome Clapp (yea). The motion carried.

Attorney Eggers stated that the Board could consider additional conditions if they saw fit to do so and could make an additional motion for this reason. Dekka Tate said that there shouldn't be more than one sign on the car. Acting Chairman Perry asked if staff had any additional conditions. Cheryl Buchanan said she would like it stated that all the conditions of the ordinance apply to this request, not just the few that have been discussed by the Board.

Deka Tate moved to enlist these additional conditions as - signs in the window of the car cannot exceed 18" x 6", plus the legally required buyers guide, and the applicant must comply with all the regulations of the zoning ordinance. Bill Wilson seconded.

The vote was:
Bill Wilson (yea),
Deka Tate (yea),
Joe H. Perry (yea), and
Jerome Clapp (yea). The motion carried.

With no further discussion, Dekka Tate moved to adjourn. Bill Wilson seconded. All were in agreement and the meeting came to a close at 8:01 pm.

Respectfully submitted,
Cheryl Buchanan, Zoning Officer