

****DRAFT****

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 05/21/2012
MINUTES

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

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

Others Present: David Bixby, Allen Bolick, Charlie B & Penny VonCanon

Chairman Joe H. Perry called the meeting to order at 7:00 pm. Chairman Perry asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the April 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),
Deka Tate (yea),
Joe H. Perry (yea), and
Deka Tate (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).

Variance and Conditional Use Permit for RD and Patricia Daniels on behalf of David Bixby/Wraps

Testimonies:

Zoning Administrator Cheryl Buchanan testified about an overview of the application. Mr. David Bixby is purchasing the business, not the property from RD and Patricia

Daniels known as WRAPS. The property is located at 2331 Tynecastle Highway with a Parcel Identification of 1858-19-62-9389. The property consists of .430 acres and is located in the ExtraTerritorial Jurisdiction (ETJ) of Banner Elk's zoning authority along Highway 184. Mr. Bixby is requesting permission to place a second accessory use on the property, an auto sales office. This is conditional by nature and requires a CUP. When Mr. Bixby submitted the plat, it reflected a right-of-way of 60 feet, 30 feet on each side of the centerline. In researching this request, Ms. Buchanan stated that she found a different plat in an old file for WRAPS that indicated there is a NCDOT right-of-way (r-o-w) of 100 feet, 50 feet on each side of the centerline. NCDOT was contacted and confirmed that the 100-foot r-o-w is correct. Measuring 50 feet from the centerline puts the r-o-w within 4 feet of the building. In considering the parking requirements of the zoning ordinance, there are restrictions to parking in the r-o-w which makes it virtually impossible to be able to park anywhere on the property; rendering the property useless as a business. In order for Mr. Bixby to be able to park in the r-o-w, he would need to obtain a variance of the ordinance from the BOA. Mr. Bixby was contacted and filled out the paperwork for a variance request. Ms. Buchanan noted that there is no area on the property suitable for parking other than the front of the property.

Deka Tate asked if there were a specified number of parking spaces for this request. Ms. Buchanan answered that per the requirements of the ordinance; Mr. Bixby would need a total of 14 spaces for both businesses.

Mr. Bixby also testified. Mr. Bixby told the board that he does not plan to change too much on the property but just clean it up. He is anticipating painting the building with colors from the approved color chart and that he would like to replace the decking with new materials while keeping them the same size. Mr. Bixby is planning to bring the sign into conformance and to improve the landscaping.

Mr. Clapp asked about the new signage. Mr. Bixby told him that the DMV would require him to have a sign above the auto sales office and that the freestanding sign would probably include both businesses.

Chairman Perry stated that whatever r-o-w the state has would supercede anything the town could require. Mr. Bixby said that he had this written into the lease to protect himself should NCDOT decide to widen the road and he has to vacate the property suddenly. Jimmy Ollis cautioned Mr. Bixby that he might want to have all the utility lines marked before he starts driving stakes into the ground for the parking dividers. Jimmy Ollis asked Mr. Bixby to consider restoring the handicap signage for the one space that is designated for handicap parking. Mr. Bixby said he would look into it. Bill Wilson asked if these cars were used or new? Mr. Bixby answered that they will be used.

Chairman Perry asked if there were any closing remarks? None were offered and 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 and opened the portion for deliberation among the board members. Chairman Perry noted that the board would start with the variance request and then consider the CUP.

Chairman Perry stated that the Banner Elk BOA could not take away the NCDOT r-o-w, that should they decide to widen Highway 184, Mr. Bixby would just have to move his business. Attorney Eggers informed the board that they would need to vote on each factor of the variance individually and that every one of the seven would need a 4/5's majority vote in order for a variance to be granted. If the variance passes, then the board can consider the CUP and it would require a 4/5's vote to pass as well. Attorney Eggers also reiterated that the board should consider the ordinance as a whole along with the Planning Board's recommendation, but that the Board of Adjustment was not bound by the Planning Board's recommendations.

Jerome Clapp asked about the mailboxes and if there would be enough spaces for parking for them as well. The board discussed this subject and then decided to consider the variance request. There are seven factors and each factor has its own motion, second and vote. They are recorded as thus:

1). Dekka Tate made a motion that there exists practical difficulties and unnecessary hardship due to NCDOT's designated r-o-w and the parking restrictions of the zoning ordinance. Bill Wilson seconded. The vote was:

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

2). Jimmy Ollis made a motion that the hardship is a result of the application of the ordinance rather than deed restrictions and/or other hardships. Dekka Tate seconded. The vote was:

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

3). Jimmy Ollis made a motion that the hardship is due to the physical location of the property, its size and topography, which is different from the neighboring properties. Dekka Tate seconded. The vote was:

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

4). Dekka Tate made a motion to recognize that the hardship is not the result of the actions of the applicant, who knowingly or unknowingly considered

violating the ordinance where parking is concerned. Bill Wilson seconded. The vote was:

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

5). Jimmy Ollis made a motion stating that the hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. The neighboring properties have additional property for parking, however this applicant has no additional property available and is unable to use the property as neighboring properties do. Deka Tate seconded. The vote was:

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

6). Deka Tate made a motion to confirm that the variance would be in harmony with the general purpose and intent of the ordinance and preserves its "spirit" in allowing Mr. Bixby the same use for the property that the zoning ordinance intended. Jerome Clapp seconded. The vote was:

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

7). Joe H. Perry made a motion that in granting the variance, public safety and welfare had been assured and substantial justice had been done. Bill Wilson seconded. The vote was:

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

Deka Tate made a motion that all the variance requirements had been met and that the board approves the variance. Bill Wilson seconded. The vote was:

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

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At this point Chairman Perry directed the board to a consideration of the CUP for an auto sales office and car lot. This use is conditional by virtue of the zoning ordinance. Jimmy Ollis reviewed each item as follows:

1. Signage,
2. Lighting,
3. Parking designation,
4. Color of paint used to paint the building,
5. Additional landscaping.

Jimmy Ollis then moved to approve the CUP with the following conditions:

1. Signage will be in conformance with the ordinance,
2. Lighting will meet the requirements of the ordinance,
3. Designated parking will be defined as per the ordinance and a handicap parking space will have the proper labeling to identify it as different from the other parking spaces,
4. All aspects of the project will be in compliance with the zoning ordinance,
5. No excessive props or gimmicks are to be used.

Deka Tate seconded the motion. The vote was:

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

Jerome Clapp made a motion to close the hearing of cases portion of the meeting. Bill Wilson seconded. The vote was:

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

With no further business before the board, Joe H. Perry moved to adjourn. Bill Wilson seconded. The vote was:

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

Respectfully submitted,
Cheryl Buchanan, Zoning Administrator