

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 02/17/2014
MINUTES

Members Present: Jimmy Ollis, Joe H. Perry, Deka Tate, Ted Silver , Bill Wilson

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

Others Present: Allen & Rebecca Bolick, Bill Dicks, Brent Simmons, Charlie B & Penny VonCanon

Chairman Joe H. Perry called the meeting to order at 6:01 pm. Chairman Perry asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the November 18th and 22nd 2013 Minutes

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

Jimmy Ollis (yea),
Joe H. Perry (yea),
Ted Silver (yea),
Deka Tate (yea), and
Bill Wilson (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 advised those in attendance that this hearing was for a Variance and a Conditional Use Permit for the same applicant. 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 Rough Ridge Properties/Brent Simmons

Testimonies:

Zoning Administrator Cheryl Buchanan testified to her overview of the application. Mr. Sid Eibl vonRospeunt is renting the property at 2059 Tynecastle Highway from Brent Simmons and Rough Ridge Properties. The

Parcel Identification is 1858-00-63-0319. The property consists of .490 acres and is located in the ExtraTerritorial Jurisdiction (ETJ) of Banner Elk's zoning authority along Highway 184. Mr. vonRospeunt is requesting permission to place an auto and ATV sales at this location. This is conditional by nature of the auto sales and requires a CUP. Although the GEM electric cars are very small, they are road worthy and can be tagged and licensed to drive on the road. Two other properties along Highway 184 have come before the BOA for a CUP and the town's zoning department was aware there was an existing NCDOT right-of-way (r-o-w) that affects numerous properties along Highway 184, therefore requiring a variance as well. The r-o-w is significant and is 50 feet on either side of the yellow line. In considering the parking requirements of the zoning ordinance, there are restrictions to parking in a r-o-w and this makes it virtually impossible to be able to park anywhere on the property; rendering the property useless as a business. In order for Mr. vonRospeunt to be able to park in the r-o-w, he would need to obtain a variance of the ordinance from the BOA. Mr. Simmons, the owner, was contacted and filled out the paperwork for a variance request. Ms. Buchanan noted that there is some very limited parking in the back of the building and perhaps one or two cars along side the building, but nothing in excess in the front unless a variance is obtained.

Ms. Buchanan reviewed the Exhibits; which are included in these minutes as part of the record. The exhibits are as follows:

- Exhibit 1: Banner Elk Zoning Administrator's review of the Variance request;
- Exhibit 2: Application for a Variance;
- Exhibit 3: Banner Elk Zoning Administrator's review of the CUP request;
- Exhibit 4: Application of the CUP;
- Exhibit 5: Letter from High Country Polaris, Inc explaining the need for the variance and the CUP;
- Exhibit 6: Proposal for signage;
- Exhibit 7: Survey of the property;
- Exhibit 8: Site Plan;
- Exhibit 9: Main floor plan;
- Exhibit 10: GIS rendering showing the location of the building in relation to the surrounding properties and the NCDOT.

Ms. Buchanan told the BOA that there are two areas where this request cannot meet the ordinance. One is in the area of impervious surfaces and building materials and the other is in providing parking outside of the NCDOT r-o-w. The building is a metal building with metal siding and a roof that does not meet our ordinance for pitch, and secondly the property does not meet our calculations for impervious surfaces in the C-2 zoning district. Having spoken to Attorney Eggers before the meeting, Ms. Buchanan learned that the building had been there before these requirements were added to the ordinance and until a substantial change is made to the property or the building, the town couldn't require the owners to change it. Ted Silver asked if this rule goes to the physical structure instead of the use. Attorney Eggers answered that it goes with the property, not the use.

Attorney Eggers then asked Mr. Simmons if he agreed with Ms. Buchanan's representation of the request. Mr. Simmons said he was fine with it.

Ted Silver asked if the BOA could place conditions on the property. Attorney Eggers answered that the BOA could place any conditions as long as they were reasonable, but there is no use to add conditions that are enforcement issues as these were part of Ms. Buchanan's job and did not need to be addressed twice.

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. vonRospuent 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 four would need a 4/5's 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 simple majority vote to pass as well. Attorney Eggers also reiterated that the Board should consider the ordinance as a whole.

The four factors have their own motion, second and vote. They are recorded as thus:

1). Deka Tate made a motion that per Section 1109 (3) (a) there is an unnecessary hardship that results from the strict application of the requirements of the ordinance that would reduce the parking to the point that the business could not function. Ted Silver seconded. The vote was:

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

2). Ted Silver made a motion that per Section 1109 (3) (b) the resulting hardship is a result of the location and size of the property and its relationship to Highway 184 and could result in additional hardships. Deka Tate seconded. The vote was:

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

3). Deka Tate made a motion that per Section 1109 (3) (c) the property owner and applicant have taken no action to cause a hardship. Jimmy Ollis seconded. The vote was:

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

4). Ted Silver made a motion that per Section 1109 (3) (d) that the requested variance is not inconsistent with the ordinance, that it doesn't harm public safety and that it allows the owner and applicant to have fair use of the property. Jimmy Ollis seconded. The vote was:

Jimmy Ollis (yea),
Joe H. Perry (yea),
Ted Silver (yea),
Deka Tate (yea), and
Bill Wilson (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:

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

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

Deka Tate then moved to approve the variance request. Jimmy Ollis seconded the motion. The vote was:

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

Deka Tate moved that the CUP application, factoring in the variance, complies with the requirements of the zoning ordinance. Jimmy Ollis seconded. The vote was:

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

Deka Tate (yea), and
Bill Wilson (yea). The motion carried.

Attorney Eggers informed the Board that now would be the appropriate time to consider any changes to the ordinance.

Ted Silver asked Cheryl Buchanan if there was anything in the ordinance that could prompt the owners to go to extremes in advertising their product, such as props or displays. Ms. Buchanan explained that the sight triangle must be kept clear of everything and that would not leave much room for props. Additionally, the inventory that they have will not remain out all night long. Ms. Buchanan reiterated that there was nothing she could recall that could be enforced as a condition. Attorney Eggers said that any conditions that affect the aesthetics of the Town can be added even if this is not specifically written in the ordinance, as long as they are within reason.

Ted Silver made a motion to approve the CUP permit with the variance. Deka Tate seconded. The vote was:

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

With no further business before the board, Deka Tate moved to adjourn. Bill Wilson seconded. The vote was:

Jimmy Ollis (yea),
Joe H. Perry (yea),
Ted Silver (yea),
Deka Tate (yea), and
Bill Wilson (yea). The meeting came to a close at 7:00 pm.

Respectfully submitted,
Cheryl Buchanan, Zoning Administrator