

BANNER ELK BOARD OF ADJUSTMENT  
MONDAY, 05/19/2014  
MINUTES

Members Present: Jimmy Ollis, Joe H. Perry, Deka Tate, Fred Schmitt, Ted Silver and Alternate Art Neuberger

Staff Present: Cheryl Buchanan, Town Attorney Representative Austin Eggers, Esq.

Others Present: Allen Bolick, Larry Pfaff, Charlie B VonCanon

Chairman Joe H. Perry called the meeting to order at 6:00 pm. Chairman Perry asked everyone present to stand and join in the pledge of allegiance to the flag.

Chairman Perry welcomed newest member Fred Schmitt, who is replacing Bill Wilson as an in-town representative. Mr. Wilson resigned after February's meeting due to health concerns. Mr. Perry administered the oath of office to Fred Schmitt.

Consideration of the February 2014 Minutes

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

Jimmy Ollis (yea),  
Joe H. Perry (yea),  
Ted Silver (yea),  
Deka Tate (yea ), and  
Fred Schmitt (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 Conditional Use Permit. 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).

**Conditional Use Permit for Larry Pfaff**

Testimonies:

Zoning Administrator Cheryl Buchanan testified to her overview of the application. Ms. Buchanan told the Board that Mr. Pfaff owns a property in the C-1 zoning district and that he would like to make a portion of the second floor his residence. Ms.

Buchanan testified that this property has been a commercial operation as well as an upstairs apartment during the history of uses of that building and that there is also another property in close proximity to this property that has the same scenario. Ms. Buchanan pulled the file for the other property and is following the same process for this request. Ms. Buchanan said that the building at 130 Banner Road has 1,266sf of floor space upstairs and the same amount downstairs. A restaurant currently operates in the bottom and Mr. Pfaff has his law offices upstairs. Clearly Mr. Pfaff meets the rule of no more than 40% of the total square footage for a residential use. Ms. Buchanan also testified that she considered the residential use an accessory use to the primary use of commercial since the majority of the property is being used for commercial in a commercial zoned district.

Ms. Buchanan stated that Mr. Pfaff meets all the requirements of the ordinance and that his request is in harmony with the area and the intent of the Zoning Ordinance. Ms. Buchanan then reviewed the application and stated that she believed it to be complete.

Chairman Perry asked if anyone had any questions of Ms. Buchanan. Ted Silver read the definition for Accessory Dwelling which defines this as a separate structure. Ms. Buchanan said she used the definition for Accessory Use which defines a use located on the same lot as the principal use. Ms. Buchanan said she felt this was a better definition since the principal use is commercial and the residential would be secondary and there was no separate structure. Mr. Silver said he didn't want the town to set a precedence, however Ms. Buchanan cited two different scenarios where this had been done in the C-1 zoning district. Ms. Buchanan said she feels this is still in harmony with the C-1 zoning district due to the fact that there are no parking requirements and this allows anyone who lives there to be able to walk to many locations in town.

Chairman Perry asked if Mr. Pfaff had any additional testimony he would like to provide. Mr. Pfaff thanked the Board for allowing him the time to come and speak to them and thought that Ms. Buchanan had covered everything.

Mr. Fred Schmitt asked if Mr. Pfaff sells the property would the CUP still apply. Ms. Buchanan answered that a CUP goes with the land and that the Board's consideration is for the use and not the persons occupying the space. Mr. Pfaff could very well rent the space out; but the Board's consideration is if the use is approvable as per the ordinance, not who Mr. Pfaff plans to allow to occupy the space.

Ted Silver stated that should Mr. Pfaff receive a favorable vote from the Board, it does not preclude him from obeying County or State requirements for a residence in that building. Mr. Pfaff replied that he was aware of that.

Attorney Eggers asked Mr. Pfaff if he had received a copy of the application and was he in agreement with Ms. Buchanan's representation of his request. Mr. Pfaff said he had and was in agreement.

Chairman Perry asked for closing remarks from staff and Mr. Pfaff. Ms. Buchanan stated that she had nothing more to add and that she felt the application was

complete and the request was in harmony with the Zoning Ordinance and the Land Use Plan. Mr. Pfaff thanked the Board for their time.

Chairman Perry closed the public hearing portion of this hearing and called the Board members into deliberations. No comments were forthcoming and Ted Silvers made a motion that the application was complete. Dekka Tate seconded. The vote was:

Jimmy Ollis – Yea  
Joe H. Perry – Yea  
Fred Schmitt – Yea  
Ted Silver – Yea  
Deka Tate – Yea. The motion carried.

Deka Tate made a motion that the Board approves the application. Fred Schmitt seconded. The vote was:

Jimmy Ollis – Yea  
Joe H. Perry – Yea  
Fred Schmitt – Yea  
Ted Silver – Yea  
Deka Tate – Yea. The motion carried.

Jimmy Ollis made a motion to adjourn. Dekka Tate seconded. Before they could vote Attorney Austin Eggers asked the Board to go back into session because they had forgotten to vote on one item. Joe H. Perry moved to go back into session. Dekka Tate seconded. The vote was:

Jimmy Ollis – Yea  
Joe H. Perry – Yea  
Fred Schmitt – Yea  
Ted Silver – Yea  
Deka Tate – Yea. The motion carried.

Jimmy Olli made a motion that the request for a CUP complies with the Zoning Ordinance and is in harmony with the intent and the neighborhood. Dekka Tate seconded. The vote was:

Jimmy Ollis – Yea  
Joe H. Perry – Yea  
Fred Schmitt – Yea  
Ted Silver – Yea  
Deka Tate – Yea. The motion carried.

With no further business, Jimmy Ollis moved to adjourn. Dekka Tate seconded. The vote was unanimous and the meeting came to a close at 6:29.

Respectfully Submitted,

Cheryl L. Buchanan, Town of Banner Elk Zoning Administrator

