

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 05/16/2016
MINUTES

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

Staff Present: Cheryl Buchanan, Town Attorney Austin Eggers, Esq., Town Manager Rick Owen

Others Present: Angelo Accetturo, Allen Bolick, David Burns, Dick Evans, Tony O'Harrow, Penny & Charlie B. VonCanon, John Wright

Chairman Fred Schmitt called the meeting to order at 6:00 pm. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag. Chairman Schmitt noted that there is a quorum present to hear the application.

Consideration of the February 2016 Minutes

With no changes to the minutes, Deka Tate moved to approve the minutes as submitted. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Amending the Agenda

Ted Silver moved to reverse the two items on the agenda due to time constraints. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Chairman Schmitt opened the quasi-judicial portion of the hearing with an introductory and opening statement. All BOA Members were seated with no

objections and the applicant, David Burns and Zoning Administrator Cheryl Buchanan were sworn in for testimony.

David Burns – Request for a Conditional Use Permit for an Accessory Apartment on a Commercial Property

Introduction for the CUP was given by Zoning Administrator Cheryl Buchanan. This property is located at 593 Main Street East between the Banner Elk Police Department and Little Main Street Inn and Suites. The property is zoned C1-P and sits between a G/O and C1-P zoning district. The PIN is 1859-1841-7536 and consists of .08 acres. The property is in the Town proper and is serviced by Town utilities. Mr. Burns built a construction office on this commercial site in 1987 and has maintained it as a construction office since that time. Mr. Burns is looking at downsizing his business and would still like to generate some income from this property. Mr. Burns believes there are enough empty office spaces in Banner Elk and would like to consider leasing the front space as an accessory apartment. The front portion is fully equipped to accommodate a residence and has served as both in the past from Mr. Burns personally. An accessory apartment is a conditional use in the C1-P. There are two and a half (2.5) parking spaces at the front of the property and three (3) spaces in the back. Trash will be removed by the tenant and no additional buffering is needed. The requested use is in harmony with the area.

Deka Tate asked what the setback from the road was. Ms. Buchanan did not have the plat with her but Mr. Burns said he could answer that when it is his turn to speak. Ms. Tate asked about sidewalks. Ms. Buchanan replied that none were required since he was no new construction. However, the entire front of the property is paved and could serve as a walking way if needed. Chairman Schmitt asked if the property would be for rent and was that acceptable for the zoning. Ms. Buchanan answered yes, this was acceptable.

Mr. Burns was given the opportunity to provide additional testimony. Mr. Burns answered Ms. Tate's question on setbacks, explaining that it was roughly 60 feet off the main road. Mr. Burns explained that he wanted to use the property for an apartment in order to generate enough income to maintain the property. Asked if he would live there he replied that he could if he needed to. Ted Silver asked if Mr. Burns could enclose the back portion and make another apartment. Ms. Buchanan replied that he could potentially but then his records would have to be located somewhere else and Mr. Burns did not want to do that. Additionally, Mr. Burns could not do that without the Town's approval, as he would need a zoning permit and the ordinance only allows for 40% of the property to be residential.

When asked for closing statements, Mr. Burns declined to make one. Ms. Buchanan stated that she believed the application was complete and that Mr.

Burns had met the requirements of the zoning ordinance and that this use would be in harmony with the neighborhood.

No other BOA members had any questions and Chairman Schmitt closed the hearing and asked Attorney Eggers what was the next procedural step in this process.

Mr. Eggers informed the Board that they would need to review the findings of fact and conclusions of law.

The first finding of fact was that the application was accepted as complete as moved by Ted Silver. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Ted Silver moved that Mr. Burns' application met all the requirements of the zoning ordinance and that an accessory apartment is an acceptable use and that it is compatible with the surrounding properties. Deka Tate seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Ted Silver moved to accept the application and grant the CUP for use as an accessory apartment for this property in the C1-P. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Attorney Eggers instructed that the conclusions based on the findings of fact is the next step.

Ted Silver moved that the application was accepted as complete based on the conclusions of law. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Next, the Board went into deliberations on the request. Ted Silver moved to accept the application as complete based on the requirements of the zoning ordinance and grant the conditional use permit. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Chairman Schmitt stated that this concluded the hearing of case # 51616B for a CUP for 593 Main Street East and that the Board would continue with the next hearing on the agenda.

Elk Creek Development Company of Banner Elk, LLC – CUP - PRD

Chairman Schmitt opened this quasi-judicial hearing with another introductory and opening statement. All BOA members were seated with no objection and the applicant, Angelo Accetturo, Zoning Administrator Cheryl Buchanan, and a Non-Party Witness, Dick Evans, were sworn in for testimony. Mr. Evans stated that he had some concerns that he wanted to express to the Board before any decisions were made. Since Mr. Evans did not want to be an Intervener, he was classified as a Non-Party Witness with standing since his property abuts Elk Creek Subdivision. Attorney Eggers referenced State Statute 160A.393 (d) as the official definition of an Intervener.

The Zoning Administrator gave an opening statement to introduce this application to the Board. The property is located off of Hardees Lane, a private drive, in a subdivision identified as Elk Creek. The PIN is 1858-1045-1205 and is zoned R-2 in the section pertaining to this application and R-1 in the upper portion. The property consists of 12.430 acres and received a CUP in 2006 for a subdivision but the project was abandoned by the developers and the Bank took possession of the property until it was purchased by Elk Creek Development Company of Banner Elk, LLC of which Mr. Accetturo is a partner. The previous developers built two (2) 2-unit townhomes. Mr. Accetturo's plans call for an additional 32 units, of which two (2) will be 2-unit townhomes. The remaining will be single-family units. Ms. Buchanan reviewed Exhibit's 2 and 4; as a summary of the project. Exhibit 2 is the CUP application and Exhibit 4 is the detailed review by the Zoning Administrator. The development has

existing water and sewer which has been dedicated to the Town. The road into Elk Creek, Elk Creek Drive, will remain a private road and will not be maintained by the Town. There is a 20' easement for Greenway and utilities along the northeast border with the Elk River. Ms. Buchanan noted that there are a few conditions that she would like the Board to consider when they get to this point in the proceedings.

When asked for an opening statement, Angelo Accetturo said that Ms. Buchanan had pretty much covered everything. With no further comments from Buchanan or Accetturo, Fred Schmitt asked if there were any questions for Ms. Buchanan. Joe H. Perry asked if there were fire hydrants in the development and Ms. Buchanan replied yes. Jimmy Ollis asked about the upkeep for the retention pond. Ms. Buchanan said it would be up to the developer until they are finished and then it would go to the POA to maintain.

Chairman Schmitt stated that he had several question for Ms. Buchanan and that review are listed below:

1. Mr. Schmitt questioned the Zoning Administrator about lighting. Ms. Buchanan said out of respect to the neighbors, she was asking that motion sensor lights not be used because any small thing can set them off in the middle of the night. Mr. Silver asked if an owner could put them up after they have lived there for several years. Ms. Buchanan said the POA agreement could require that they not be allowed perpetually.
2. One condition that Ms. Buchanan had mentioned dealt with a Geotechnical Engineer and the Town's right to choose an independent engineer to review plans for housing to be built on unstable ground. The Engineer for the project, Dave Ramsey, has made a notation on the plans that he reserves the right to be the Geotechnical Engineer. Ms. Buchanan said she is opposed to using Mr. Ramsey.
3. Building #12 is almost on top of a wetland on the plans and Ms. Buchanan has identified that it must be at least 25' from the wetland which will serve as a buffer for the wetland.
4. Building #14 will need a walkway from this unit to the parking area since they have no easy way to access the parking lot.
5. Buffering between Bear Run and Mariposa may be inadequate and there needs to be a line of communication between the Developer and the Zoning Administrator.
6. The permits for 401 and 404 issued by the State were reviewed by Blue Ridge Environmental but no formal issues were noted. Mr. Schmitt asked who monitors these permits issued by the State. Mr. Accetturo answered that the

Avery County Inspections Office would be in charge of that, but Ms. Buchanan said she would be keeping an eye on what happens there as well.

Ted Silver said he had a few questions for either the Zoning Administrator or the Developer and they are listed below:

1. Mr. Silver asked if the Greenway easement was permanent and where was it recorded. Angelo Accetturo said that it was permanent and it is deeded and recorded at the Register of Deeds office.

2. Mr. Silver said he is Chairman of the Bike Committee and he always asks for bike racks in any development. Angelo Accetturo said this was not a bad idea and he might install some.

3. Mr. Silver said he understands the roads are private but asked if there could be additional sidewalks besides those on the plan to get people safely through the development if they were walking. Angelo Accetturo said no, he had only planned to install those that are shown on the plans.

4. Jimmy Ollis asked Angelo Accetturo if he was planning to sell some units before he began building more. Mr. Accetturo responded that he was planning on doing that.

5. Fred Schmitt asked who was going to be paying for the trash service. Angelo Accetturo said it would be part of the POA dues and the POA would then pay the bill.

6. Fred Schmitt asked Attorney Eggers if questions about pricing were appropriate to ask in considering compatibility of surrounding properties. Mr. Eggers answered that yes, if it was a matter of compatibility. Angelo Accetturo answered from the mid 200's to the mid 300's.

7. Ted Silver asked about the buffering requirements in the zoning ordinance. Ms. Buchanan read from 704 Buffer Yards. Buffers are used to separate different uses and different zoning. Since Bear Run and Elk Creek share the same zoning, the existing buffering should be ample. As for Mariposa, both are subdivisions and Elk Creek will consist of more single family homes than multifamily. Angelo Accetturo said that the buffering is on his side of the property line and that Bear Run built very close to their property line. Therefore, there is no room for buffering except on his property, which will take up more space he intended to use for building. Mr. Accetturo said the current buffering looks nice and mature and there is a mixture of plants there now and he really did not want to disturb it. Mr. Silver asked if it could be supplemented and not destroy what is currently there but make it better. Mr. Accetturo said he would be willing to work with the Town's Zoning Administrator.

With no more questions for the Zoning Administrator or the Developer, Dick Evans was allowed to speak. Mr. Evans said more buffers would be better but their main concern is stormwater drainage. Mr. Evans said he knows how hard the water comes down that mountain when there is a heavy downpour and the ditches fill up with mud until eventually they become full and do not work. Mr. Evans asked if the retention pond is adequate and if the second catch basin will be remaining. Angelo Accetturo said he understands Bear Run's concern for how they were treated before he bought the property but he intends to make sure this will not be a repeat of that experience.

The Zoning Administrator was asked if she had a closing statement. She answered yes and then began to tell the Board that she felt the application was complete and that Mr. Accetturo had been willing to work with the Town and do anything they asked. She understands everyone's worries over stormwater runoff and plans to make frequent visits to the development to ensure no one is impacted negatively. Ms. Buchanan said she feels this development is in harmony with the surrounding properties and that Mr. Accetturo is doing everything he can to produce a good product.

Mr. Accetturo said he did not have a closing statement, that Ms. Buchanan had covered everything.

Joe H. Perry moved to tender Exhibits 1-8 as evidence. Deka Tate seconded. Ted Silver said that Exhibit 3, the plans, that it is noted on the plans that Mr. Ramsey is the Geotechnical Engineer and that this notation is not rendering anything, that in fact, the Town may seek their own engineer. Mr. Silver said that with that proviso he would submit Exhibits 1-8 into evidence. Deka Tate moved to tender the Exhibits 1-8 with Exhibit 3 being proviso. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried unanimously.

At this point Chairman Schmitt closed the evidentiary section of the Public Hearing and invited the Board to go into deliberations.

Ted Silver moved to accept the application as complete with all necessary information has been provided to consider the application. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Ted Silver moved that the application meets all the requirements under the zoning ordinance for the conditional use request. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Ted Silver moved to make it a condition that no motion sensor lights will be used in the development. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Aye
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Aye. The motion carried unanimously.

Ted Silver moved to have the Zoning Administrator and the Developer, Angelo Accetturo, review the current buffering between Bear Run and Mariposa to ensure that they meet the requirements of the ordinance within 15 feet of the property line. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Nay
Ted Silver - Aye
Deka Tate - Aye
Fred Schmitt - Nay. The motion carried by majority vote.

Ted Silver moved to have the Developer, Angelo Accetturo, add a sidewalk from the upper parking lot to unit #15. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye
Joe H. Perry - Nay
Ted Silver - Aye

Deka Tate - Nay

Fred Schmitt - Aye. The motion carried by majority vote.

Fred Schmitt moved to require unit #12 be moved to 25' off of the wetlands located at the corner of the building. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried unanimously.

Fred Schmitt moved to have the Town of Banner Elk retain the rights to appoint an independent Geotechnical Engineer is needed. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Abstain

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried by majority vote.

Ted Silver moved to approve the application with the conditions listed above, that the application meets the requirements of the zoning ordinance, that the exhibits provided are an adequate basis to approve the conditional use permit. Jimmy Ollis seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried unanimously.

Deka Tate moved to close the public hearing for 51616A. Joe H. Perry seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried unanimously.

With no further business before the Board, Joe H. Perry moved to adjourn. Deka Tate seconded. The vote was:

Jimmy Ollis - Aye

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried unanimously and the meeting came to a close at 8:21 p.m.

With no further business, Deka Tate moved to adjourn. Joe H. Perry seconded.
The vote was:

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The meeting adjourned at 7:12 pm.

Respectfully submitted,

Cheryl Buchanan,
Zoning Administrator, Town of Banner Elk