

BANNER ELK BOARD OF ADJUSTMENT  
MONDAY, 02/16/2016  
MINUTES

Members Present: Joe H. Perry, Deka Tate, Fred Schmitt, Ted Silver

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

Others Present: Boe Barinowski, Allen and Rebecca Bolick

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 although one member was absent, there is a quorum present to hear the application.

Consideration of the March 2015 Minutes

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

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried by majority.

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, Robert "Boe" Barinowski and Zoning Administrator Cheryl Buchanan were sworn in for testimony.

**Robert "Boe" Barinowski - Request to Amend a Conditional Use Permit for Mountain Rooster**

Introduction for the amendment was given by Zoning Administrator Cheryl Buchanan. The original Conditional Use Permit (CUP) was issued in 2000 to Steve and Robin Clemmons for an open air Produce Stand. The owners, James P. and Carolyn McLean, annexed the .045 acres into the Town Limits as part of this request. The parcel number is 1858-11-53-6962 and the physical address is 1947 Tynecastle Highway. The subject property has two ingress and egress openings onto Highway 184. The property is zoned C-2, General Commercial Zoning District.

The request before the Board of Adjustment is to amend the current CUP to add an accessory use and an accessory structure. Mr. Robert “Boe” Barinowski is the current lessee and operates the produce stand as Mountain Rooster Produce. Boe Barinowski would like to add an 80sf wooden building to be located in front of the white office building and operate a coffee drive-thru window during the early morning hours before the produce stand opens. Mr. Barinowski feels this is a need in Banner Elk and the closest drive-thru is McDonalds in Invershiel. The use and the structure are both considered conditional, thence the necessity for an amendment to the existing CUP.

While presenting his application to the Planning Board, Boe Barinowski noted that this is a temporary venture but could become permanent depending on how well it is received. Mr. Barinowski told the Planning Board that if it works out then he would be willing to remove the metal carport and put this structure on a more permanent foundation. Boe Barinowski said that the permanent decision will be made within two (2) years. The Planning Board was in favor of this request and voted to recommend approval.

Ms. Buchanan told the BOA that Boe Barinowski is not requesting any utility hook-ups from the Town and that he will only be operating this before the produce stand opens. The coffee is to be made offsite and put in thermal containers for serving. The ordinance allows for an additional sign to be placed on the structure stating the cost of the product and Mr. Barinowski plans to designate a one-way entrance and exit to help with traffic control. More than adequate parking is available for the produce stand after this building has been placed on the property and there is sufficient parking for the employees of this venture as well.

A proper refuse container is on site and screened. No additional screening is required as the property is surrounded by commercial zoning. The temporary structure is 80sf and should not produce a substantial amount of additional run-off enabling the site to continue to manage its stormwater run-off.

Chairman Schmitt asked Mr. Barinowski if he had any additional testimony he would like to give the Board. Mr. Barinowski responded that the Zoning Administrator had pretty much covered everything.

Chairman Schmitt closed the public comment section of the hearing and asked if either party would like to give a closing remark. Both declined.

Chairman Schmitt closed the public comment section and BOA began discussing the application.

Ted Silver said he had several points that he would like to bring up. First, he noted that the ordinance allows for a temporary use structure for a limit of one (1) year with six (6) month extensions and would this cover the request.

Second, Mr. Silver pointed out that no utilities could not cover electricity because surely this would be needed. Mr. Barinowski said that he was planning on running a drop cord for a lamp but felt that with the existing lighting already on site, no more was needed. Third, Mr. Silver asked if the thermal carafes would be hot enough. Fourth, Mr. Silver was not sure that NC DOT would approve of Mr. Barinowski's plan for a dedicated entrance and exit and questioned exactly which would be the entrance and which would be the exit. Mr. Silver told Mr. Barinowski that he would need to look at NCDOT regulations. The last item was the question of whether the BOA could limit the hours of operation to those listed on his application and what would happen if someone came in the wrong way. Mr. Barinowski said he had looked at this and knew that someone could turn around if they came in the wrong way.

Mr. Silver said he would like to make conditions of the exit and entrance signs as well as the times of operation with Banner Elk's approval for the signage. Additionally Mr. Silver said he was not sure that a drop cord would be appropriate and would like that addressed as well.

No other BOA members had any comments and Chairman Schmitt closed the hearing and asked the BOA for their deliberations and a vote.

Ted Silver moved to approve the amendment to the CUP with the following conditions:

1. The entrance sign would be placed on the Banner Elk side of the property and the exit on the Tynecastle side as well as posting the time of operation for the public's edification; and
2. Any utilities be in compliance with the Banner Elk Ordinances.

Joe H. Perry seconded. The vote was:

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried with a majority.

Chairman Schmitt stated that this concluded the hearing for the amendment to the CUP and that the Board could have a short recess before going into the work session.

Deka Tate moved to close the hearing for an amendment to the CUP at 6:43pm. Joe H. Perry seconded the motion. The vote was:

Joe H. Perry - Aye

Ted Silver - Aye

Deka Tate - Aye

Fred Schmitt - Aye. The motion carried with a majority.

At this point, Ted Silver asked to be excused due to medical reasons. The Board was in agreement and the Chairman excused Mr. Silver from the remainder of the meeting.

**Workshop – Legislative Changes affecting the Town of Banner Elk in 2015**

Zoning Administrator Cheryl Buchanan reviewed the handout listing (see attached) the Legislative changes made in 2015 and commented on how that would affect Banner Elk and future planning in Banner Elk. This was an informative session with no action being taken by the Board.

**Update on the Mossy Oak Cell Tower Case**

Attorney Austin Eggers advised the Board that the case had been remanded back to the Board of Adjustment by the presiding Judge and that no substantive discussion of the matter could take place at this time.

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