

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 04/26/2021
MINUTES

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, Deka Tate, and in-town alternate David Tate

Staff Present: Zoning Administrator Cheryl Buchanan, Town Attorney Stacy Eggers, IV, Town Manager Rick Owen, Police Chief Kevin Hodges

Others Present: Angelo Accetturo, Angelo Accetturo Jr., Aaron Barlow, Susan and Mike Brown, Chad Carpenter, Valerie Cogdill, Johnny Connolly, Gary Davis, Bob Grasso, Meredith Olan, Gray Wilson, John Wright

Chairman Fred Schmitt called the meeting to order at 6:00 p.m. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag.

Consideration of the March 2021 Minutes

With no changes noted, Deka Tate moved to approve the minutes as submitted. Fred Schmitt seconded. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

SUP Request for Accessory Use – Susan Brown

Chairman Schmitt stated that this meeting is a quasi-judicial proceeding, much like a court proceeding, in which one's individual's rights are being determined. Case Number 032621-1 is being heard and witnesses will be sworn in for testimony. The Chairman asked if there were any board members present that could not be impartial or who had received information outside of this hearing. None were noted. All was in order and the hearing began. Zoning Administrator Cheryl Buchanan and the applicant Susan Brown were both affirmed before testifying.

Chairman Schmitt asked the Zoning Administrator Cheryl Buchanan to present the evidence. Ms. Buchanan stated that this is an accessory use to the primary use of retail sales. An accessory use requires a Special Use Permit (SUP) per the Town of Banner Elk's Zoning Ordinance's Table of Uses. Mrs.

Brown has a space that is not being utilized to its full potential that measures 240sf. Mrs. Brown would like to add a coffee bar with prepackaged baked goods. Ms. Buchanan reviewed the SUP application as it relates to the zoning ordinance section by section giving a complete review. Parking requirements for both uses equates to 5.5 spaces and Mrs. Brown illustrated that she has 12 marked spaces. No changes are being made to the exterior of the building and Mrs. Brown has made a request to put up an additional sign. Ms. Buchanan calculated the remaining square footage she can use to meet the maximum allowable signage area as 26sf. Ms. Buchanan asked that the approval of the sign be made a condition of the SUP. Ted Silver asked if there was a clearly marked handicap parking space. Ms. Buchanan said she was not aware of one. Mr. Silver noted that this floor space was level with the ground and could be handicap accessible.

Susan Brown testified that she has a handicap ramp at the back of the building. Mrs. Brown also said she had spoken to the Avery County Health Department and they do not require any additional permits for Mrs. Brown to sell prepackaged baked goods. Mrs. Brown said she felt like this added venture would enhance her business. Morgan Herdklotz asked if the hours would change. Mrs. Brown responded no; they would not change.

Chairman Schmitt asked for closing statements. Ms. Buchanan stated that the applicant met the requirements of the ordinance, the application is complete and that this proposed use is in harmony with the zoning uses in the neighborhood. Chairman Schmitt closed the evidentiary portion of the hearing and opened the deliberation phase of the hearing. Chairman Schmitt asked Attorney Eggers to review the steps needed for the Board to be able to vote on this request.

Chairman Schmitt asked for a motion that the application was complete. Motion by Morgan Herdklotz that the application is complete. Second by Deka Tate. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Ted Silver moved that the application meets the requirements of the Banner Elk Zoning Ordinance. Second by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye



Deka Tate - Aye. The motion carried with a 4-0 vote.

Fred Schmitt moved to make the approval of the appropriate handicap parking sign as a condition. Second by Deka Tate. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

Deka Tate moved to approve the application with the condition that any additional signage must first be approved by the Banner Elk Zoning Administrator. Second by Fred Schmitt. The vote was:

Morgan Herdklotz – Aye

Ted Silver – Aye

Fred Schmitt – Aye

Deka Tate – Aye. The motion carried with 4-0 vote.

Deka Tate moved that the application is in compliance with the Zoning Ordinances for the Town of Banner Elk and should be approved with conditions. Seconded by Fred Schmitt. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate - Aye. The motion carried with a 4-0 vote.

SUP Request for Planned Residential Development (PRD) – Notting Hill, LLC

Chairman Schmitt read the script for a quasi-judicial proceeding, stating that the process is much like a court proceeding, in which one's individual's rights are being determined. Witnesses will be sworn in for testimony. The Chairman asked if there were any board members present that could not be impartial. None were noted. The Chairman then asked if any board members had received information or interacted with anyone outside the board or outside of this hearing. Deka Tate stated that she had gone to the proposed site off High Lowe Lane to look at the property. While there Ms. Tate was approached by Brenna Carpenter, an adjoining property owner. Mrs. Tate said that while there the property owner, the applicant Angelo Accetturo also showed up. Ms. Tate stated that it would be difficult not to know everyone in this Town considering her involvement in Town government for over forty years.

Attorney Eggers asked Ms. Tate to walk the Board through how this happened and what the conversation was. Ms. Tate said she was walking the property for about 15 minutes when the adjoining property owner, Brenna Carpenter, approached her. Attorney Eggers asked Ms. Tate if she knew Mrs. Carpenter outside of this case. Ms. Tate said it was hard for her not to know anyone in this Town. Attorney Eggers asked how long Ms. Tate had lived in Banner Elk. Ms. Tate answered she had been involved in local government for over 40 years. Attorney Eggers asked Ms. Tate how she knew Mrs. Carpenter. Ms. Tate said that she hired her to work at the Banner Elk Chamber of Commerce when she was on the Chamber Board. Attorney Eggers asked what they talked about. Ms. Tate said they talked about where the road was going to go. When asked how long she spoke to Mrs. Carpenter before the property owner arrived, Ms. Tate said she spoke to her about 15 to 20 minutes.

Attorney Eggers asked Ms. Tate who was next to arrive. Ms. Tate answered it was the property owner, Angelo Accetturo. Attorney Eggers asked how Ms. Tate knew Mr. Accetturo. Ms. Tate said she had known him a long time, just like everyone else, that he is a prominent businessman in Town. Mr. Eggers asked how long Ms. Tate spoke with Mr. Accetturo and if anyone else was present. Ms. Tate said Mr. Accetturo's attorney, Mr. Wilson, was present and they spoke for another 15 minutes before she walked away to continue looking around. Mr. Eggers asked about the essence of the conversation with Mr. Accetturo and Ms. Tate said it was about where the road would go and where trees would need to be cut down. Mr. Eggers asked Ms. Tate if there was anything in these conversations that would hinder her from making an impartial decision about this application. Ms. Tate responded no. Mr. Eggers asked if there was anything in her past relationships with either of the parties that would hinder her from making an impartial decision, to which Ms. Tate said there was not.

Mr. Eggers reviewed his role in the proceedings as legal adviser to the Board of Adjustment and outlined the process for the order of the hearing, establishing parties participating in this hearing, and the difference in who may wish to intervene in this hearing and who is a witness. North Carolina law states that those qualifying as an Intervener must demonstrate that they are affected differently than the citizenry as a whole and would incur special damages or have a special relationship that is unique to the property from that of the general citizenry. An Intervener can make opening comments, present testimony, call witnesses and present a closing statement. The Intervener must demonstrate that they are affected differently than the citizenry as a whole, be it proximity to the project, damages, and other adverse effects of the project to the property. Mr. Eggers clarified that there is a multitude of factors which must be considered and not just one that plays a part in establishing standing as an Intervener. Two matters which require expert witness

testimony are effects on property values and traffic impact, as both would require an expert witness qualified to speak on these matters. A short hearing was held to interview the applicants for intervention. Four applicants were sworn in and testified.

Johnny Connolly presented his arguments and was cross examined by Gray Wilson, Attorney representing the applicant. Mr. Connolly stated that his property was adjacent to Banner Knoll, but that he didn't see monetary harm affecting his property. He stated this project is within the Hwy. 184 sightline, and will also block his view of Beech Mountain. Mr. Wilson asked Mr. Connolly if there were trees on the applicant's property whether that would block his view of Beech Mountain, and Mr. Connolly agreed. After a short deliberation, a motion by Ted Silver to find that insufficient evidence of standing had been presented and to deny the motion to intervene with a second by Morgan Herdklotz. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate – Aye. The motion to deny carried with a vote of 4-0.

The second applicant for Intervention was Chad Carpenter. Mr. Carpenter presented his case and was cross examined by Gray Wilson and the Board Members. Mr. Carpenter testified that he was surrounded on the North, South, and East. He stated that this project will be looking into his house and is concerned about damage caused to him due to springs and runoff. Mr. Carpenter testified that in large rains, water bubbles up through the concrete of his basement and is concerned what will happen when that spring is released on the neighboring property above his house. He testified that this was an issue when he rented the house, but he proceeded to purchase it 15 years ago. He also stated that he was concerned about potential damage to his road, High Lowe Lane, which is being partially relocated as part of this development. Mr. Carpenter testified that he could not forecast any monetary damages. A motion by Fred Schmitt to allow Mr. Carpenter as an Intervener with a second by Deka Tate. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Nay

Fred Schmitt – Aye

Deka Tate – Aye. The motion to allow was approved with a vote of 3-1.

The third applicant Marian Pierce, who was not present. A motion by Fred Schmitt to find that insufficient evidence of standing had been presented and to deny her motion to intervene with a second by Ted Silver. The vote was:

Morgan Herdklotz – Aye

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate – Aye. The motion to deny carried with a vote of 4-0.

The fourth applicant was Susan and Mike Brown. Mrs. Brown testified that her property is at the bottom of the slope of the applicants property. She testified that her property is a commercial property and that she is concerned about litter and runoff. Mrs. Brown also stated that she is concerned that the project will not follow the guidelines of the Town because it is a Special Use Permit with increased density. Upon questioning by the Board, Mrs. Brown stated that the increased density would result in increased trash, as more density resulted in more everything. Attorney Gray Wilson argued that no evidence of monetary damages was presented and that Mrs. Brown's property was steeply below the proposed development. Morgan Herdklotz motioned to allow the Browns to Intervene as a party to the proceeding. No second was forthcoming and the motion failed for lack of a second. A motion by Ted Silver to find that insufficient evidence of standing had been presented and to deny the motion to intervene with a second by Fred Schmitt. The vote was:

Morgan Herdklotz – Nay

Ted Silver - Aye

Fred Schmitt – Aye

Deka Tate – Aye. The motion to deny carried with a vote of 3-1.

The following were recognized as parties to the proceedings and were sworn in:

1. Cheryl Buchanan, Zoning Administrator for the Town of Banner Elk
2. Angelo Accetturo, Owner and Applicant for Notting Hill, LLC
3. Gary Davis, NC Licensed Certified Engineer for Davis Civil Solutions, PA
4. Robert Grasso, Landscape Architect and Planner, Land Planning Collaborative
5. Chad Carpenter, Intervener and Adjoining Property Owner

At 7:43 pm a short recess was taken. The Chairman reconvened the meeting at 7:53 pm. Chairman Schmitt asked Zoning Administrator Cheryl Buchanan to give an overview of the application for a planned residential development.

Ms. Buchanan read a short summary of the project. The owner of the property Angelo Accetturo has applied to the Town of Banner Elk for a SUP for a Planned Residential Development (PRD) in the R-2 zoning district. Ms. Buchanan also reviewed the Exhibits list (see attached) in detail. Ms. Buchanan noted that Exhibit #15 was the newest set of plans that were

presented to her late Thursday afternoon, April 22, 2021. There was only one set, and the additional sets were delivered just before the meeting tonight. The difference in this plan shows a 15-foot buffer as opposed to the required 10-foot buffer around the development. Ms. Buchanan said Mr. Grasso prepared these new plans at her request to illustrate that a 15-foot buffer could be accomplished for this development if the BOA decided to require it.

The review by the Zoning Administrator was read in detail. The property is located off Old Hotel Drive and High Lowe Lane and is identified as parcel identification number 1858-0529-3201 and is in the Corporate Limits of Banner Elk. The property consists of 4.099 acres. A PRD is a special use and is further defined in Section 907 of the Banner Elk Zoning Ordinance. Ms. Buchanan reviewed the definition of a PRD and a subdivision and gave several examples of each. Ms. Buchanan said that her interactions with the public had resulted in several different concepts of calculating lots and acreage. Ms. Buchanan said the ordinance states that a lot served with town water and sewer in the R-2 zoning district requires 10,000sf for the first lot and an additional 4,000sf for each subsequent lot. Since 10 lots are being proposed, Ms. Buchanan calculated the lots as 10,000sf for the first lot and 14,000sf for the remaining 9 lots totaling 136,000sf or 3.12 acres. The development is 4.099 acreage, more than enough to provide for 10 lots.

Ms. Buchanan testified that she found the application complete in relation to the requirements of the Banner Elk Zoning Ordinance and that it has the required road access of 25 feet of existing road right-of-way access, that the zoning of R-2 allows for multi-family development, that the setbacks are 20ft in the front and 10ft on the side and rear with a maximum of 35% impervious surface for a slope calculation that falls within 31% to 41%. Exhibit #7 gives the calculation for all the impervious surfaces being proposed. The average steep slope of the property is 33.16% and the plans reflect an impervious surface calculation of 26.8%. There was also some question as to whether a retaining wall can be located in a setback. The definition for structure in the ordinance reads: “ Structure. Anything vertically constructed or erected and is permanently attached to the ground; not including roads, driveways and streetscape features. Streetscape features may include but are not limited to retention walls, fences, sidewalks, light poles, entry features, monuments, pylon signs and similar ancillary development items, will be considered on a project-by-project basis as a function of the issuance of a Special Use Permit.” This illustrates that a retaining wall can be located in the setback.

In reviewing land disturbing activities on this parcel, Ms. Buchanan noted that she consulted the Banner Elk Comprehensive Land Use Plan for soil types located on the property and their potential impact on this project (See Exhibit #13 attached). Ms. Buchanan also noted that in the set of plans on page D1,

note #6, a Geotechnical Engineer will be on site before construction begins to test spoil types and borings for the water table and rock bed to determine the stability of the site for this project. A common concern expressed to Ms. Buchanan was the possibility for underground springs. In speaking with Bob Grasso, he explained that there are remedies for dealing with this type of situation should it arise.

Active recreation areas have been identified with a cross hatch indication on the second set of plans. Stormwater was reviewed by Derek Goddard of Blue Ridge Environmental Consultants, who reviews all the Town's stormwater needs. Mr. Goddard has given his approval with two conditions set forth as:

1. Prior to construction starting, the owner shall provide a PE sealed geotechnical report that indicates the elevation of the seasonal high-water table and make adjustments to the stormwater treatment design on site if necessary. Changes to the design must be approved by the Town prior to construction, and
2. The engineer shall certify that the stormwater treatment system meets the requirements to reduce thermal pollution (see Exhibit #6).

Ms. Buchanan further pointed out that there was an extensive stormwater calculation manual (Exhibit #10) that was nothing but numbers and graphs and that she did not copy the entire manual; but copied the cover and has the manual if anyone wants to look at it.

In relation to the wellhead protection overlay district, the property falls within well #3 and #5. In reviewing the ordinance, the Zoning Administrator determined that the impact to these two zones would be low as no toxic materials will be released into the ground.

Parking requirements are two (2) per residence. Each single-family townhome will have a garage with a driveway and can provide enough parking for the required number as well as a visitor. Ms. Buchanan also testified that the Town Manager Rick Owen consulted with David Poore, an engineer with West Consultants to evaluate the entrance into the development off Old Hotel Drive and received a good recommendation for this connection. Ms. Buchanan also drew attention to Exhibit #11 as the application for connection to a town street from the applicant. Additionally, Ms. Buchanan pointed out a proposed connection of High Lowe Lane and told the Board that Town Manager Rick Owen had made this request of the developer in reaction to years of complaints from the residents on High Lowe Lane and their concerns for safety pulling in and out of High Lowe Lane onto Banner Road. Ms. Buchanan repeated that this was an option and was not set in stone. In reviewing the architectural review guidelines, Ms. Buchanan noted that it would be hard to place this development tucked into the site as opposed to being superimposed due to the nature of the site being on top of a knoll. The regulations addressing viewshed are also applicable and the Zoning Administrator opined that with muted

colorings, the development will be seen but not stand out obtrusively. The development is in the Heritage Overlay District and Section 503 is applicable as well in regard to the design of sidewalks, streetlights and other amenities required by the ordinance. The street is being designated private but will be designed to meet the requirements to be dedicated to the Town upon completion. A bond for the improvements is an option in the ordinance and should this be made a condition, there is a process the owner and the Town will need to follow. Retaining walls are being proposed and the maximum height on the plans is 6ft. Ms. Buchanan noted that the material to be used is called verti-block and included some pictures of the product in Exhibit #9. Ms. Buchanan said that another objection she had dealt with from the public is the height of retaining walls and if they require an engineer's seal. Ms. Buchanan quoted the Banner Elk Zoning Ordinance, Section 501(h) as thus: *"Use of retaining walls over eight (8) feet in height require design and certification by a NC registered engineer."* Ms. Buchanan said that unless there is a change in the status of the proposed retaining walls, it does not require a certification. Ms. Buchanan paid special attention to Sections 503 for the Heritage Overlay District and Section 504 Viewshed Development Guidelines and how they affect this project. Ms. Buchanan reiterated that the project could be seen coming into town along with the other two houses that are adjoining the property. Ms. Buchanan stated that with the right coloring and landscaping, this development would not be an eyesore for the Town of Banner Elk any more than any other housing development you see driving into town, of which several were named.

Section 600 covers signage and Ms. Buchanan asked the BOA to consider this as a condition of the Zoning Administrator's approval for color, materials, and placement prior to installation of a development sign. Ms. Buchanan noted that Exhibit #8 is the landscaping plan, and the proposed varieties are in keeping with the requirements of the Banner Elk Zoning Ordinance. Solid waste removal will follow the same as any other neighborhood in Banner Elk with the option to take their own trash off or sign up for residential service with Republic Services.

The last section Ms. Buchanan covered was Section 907 which goes into detail about what is required for a PRD (Planned Residential Development). Section 2 outlines permitted uses in a PRD, Section 3 outlines dimensional requirements, and Section 4 outlines density and building coverage. There is a statement in this section that reads: *"If the Board of Adjustment deems necessary, all or part of the boundaries of the development shall be provided with a fifteen (15) foot wide buffer strip, upon which evergreen trees or shrubs shall be planted which at maturity shall be at least ten (10) feet in height."* This is what generated the new set of plans in Exhibit #15, illustrating a 15ft buffer should the BOA make that request. Ms. Buchanan commented that a good portion of the property is


heavily wooded and may not require a 15ft buffer around the entire perimeter. Ms. Buchanan's last comment on this section related to subsection 6 on streets and utilities and that the proposed utilities and road had been reviewed by the Town Manager, Rick Owen, Public Works Director Justin Hodges, and West Consultant Engineer David Poore and were found to be acceptable per the ordinance.

Ms. Buchanan said that she could read the responsibilities of the applicant but that it was lengthy. Chairman Schmitt deferred to the other two parties, Chad Carpenter as the Intervener and Angelo Accetturo as the applicant. Both agreed that they did not need to hear the remainder. Ms. Buchanan then reviewed the list of Exhibits (see attached) and what they represent as supporting documentation for the application. This concluded Ms. Buchanan's testimony and she was available for questioning.

Gray Wilson asked if this use was a permitted use or a special use. Ms. Buchanan's response was that this is a special use.

Chad Carpenter asked why this was a special use. Ms. Buchanan said that in the table of uses, a PRD is listed as a special use in the R-2 zoning district and requires a different process than a permitted use. Mr. Carpenter asked how many streetlights are being proposed to which Ms. Buchanan answered three (3). Mr. Carpenter said that it appeared to him that they have changed the retaining walls again that they went from 4' to 8' to 6'. Ms. Buchanan said they had never been 8', that in an earlier conversation with Mr. Carpenter, Ms. Buchanan said that any retaining walls over 8' require an engineer's certification. Mr. Carpenter asked if there were any renderings of the view from the highway coming into town. Ms. Buchanan said that this is not a requirement of the zoning ordinance.

Ted Silver stated that there is a floor plan and side elevations and asked if the developer is bound to build exactly what they are showing. Attorney Eggers answered that the ordinance requires compliance with the plans as presented to the Board; however, there is some discretionary authority for the Zoning Administrator regarding substantial compliance. Mr. Eggers asked Mr. Wilson to stipulate as to which set of plans being presented represented the proposed project. Mr. Wilson stipulated as to the renderings and representations made in Exhibit #15. Mr. Eggers said that the Board should consider these as the finalized set of plans presented to the Board. Mr. Silver stated that his understanding is that the footprint is a direct correlation to the calculations of impervious surface. Ms. Buchanan said that is her understanding as well, but if the footprint were reduced (reducing the amount of impervious surface), she would use that discretionary authority to approve that change since it would be of lesser impact on the land.



Fred Schmitt commented on Ms. Buchanan's commentary about the viewshed; noting that although not lengthy, Section 504 does talk about the conservation of trees and asked Ms. Buchanan if she knew how many trees are planned to be cut down. Ms. Buchanan said she did not know, but the Tree Ordinance in Section 700 contemplates that trees must be removed to make way for construction and does allow for the trees to be marked and approved before they are cut. Mr. Schmitt said that in Section 504(8) the ordinance refers to no silhouettes against the sky or ridges, and asked Ms. Buchanan if this development would do that. Ms. Buchanan said she was not sure how to answer that since the developer plans to take 8 feet off the top of the knoll for construction. Mr. Schmitt asked about the two (2) concerns raised by Town Engineer Derek Goddard and if the second condition had been addressed. Ms. Buchanan answered that it is indicated by the detention tank buried in the middle of the loop. Ms. Buchanan said the design indicates that the water is collected there and is held for 24 to 48 hours and then dissipates back into the ground or released at a very slow rate.

Mr. Schmitt stated that in Ms. Buchanan's review she talked about the differences in a subdivision and a PRD. Mr. Schmitt said that in the Planning Board minutes the topic of the Community Development Act came up and he asked what bearing that had on this application. Attorney Eggers addressed this with the Board, noting the proposed development would have multiple buildings on a single lot causing this to fall under Section 907 guidelines. Deka Tate asked if the applicant could be permitted for more units to be built. Ms. Buchanan said she was not sure exactly how many but there could be more depending on how they configure the property and if it did not exceed the impervious surface calculations. Mr. Silver described the landscaping plan in relation to the Tree Ordinance and asked if the design of the landscaping was to help the houses blend into the surroundings. Ms. Buchanan stated that was her interpretation. Ms. Buchanan said she looked at the site on her way into town and you can clearly see the two existing houses considering all the trees that were in front of Mr. Connolly house have been cut down.

Chad Carpenter asked if they could flip the orientation of the houses and would he be notified. Ms. Buchanan said she would consider that to be a minor alteration and not a substantial change if they did not increase the percentage of impervious surface and no, she was not required to notify him.

Mr. Gray Wilson was present to represent the applicant, Angelo Accetturo. Chairman Schmitt asked Mr. Wilson to proceed with his first witness. Mr. Wilson called Bob Grasso. Chairman Schmitt administered the oath and asked Mr. Grasso to provide his qualification to the Board. Mr. Grasso said he is a licensed landscape architect and has been practicing in North Carolina

since 1984. Mr. Grasso described the process of how he designs a site for development while meeting various regulations in North Carolina and Banner Elk. Mr. Grasso reviewed the application by each section and how they provided information to illustrate they met the requirements of the ordinance. Mr. Grasso testified about the changes to the second set of plans (Exhibit #15). Mr. Grasso stated that the Geotechnical Engineer may make changes based on the actual property and what they find when they begin grading, as well as adding the 15-foot buffer. Mr. Grasso stated that his plans, like landscaping have the minimum requirements and may be increased if needed.

In cross examination, Chad Carpenter asked Mr. Grasso about the footprint that will be conveyed to each house and what the property owner is responsible for mowing. Mr. Grasso testified that a landscape company would be responsible for mowing the property for the homeowners Association. Mr. Carpenter referred to Section I of the application which reads: The proposal is in general compatibility to adjacent property or other property in the District, and asked Mr. Grasso if he had seen his house. Mr. Grasso said yes. Mr. Carpenter stated this does not compare to his house which is 1,300sf and does not jive with what the application says.

Ted Silver said he wanted to clear up some terminology that is being thrown around. To start, the word "lot" is the entire tract, 4.099 acres and where the development will take place is actually the "lot." Mr. Silver asked if the house was the deeded footprint of the lot. Mr. Grasso said yes. Mr. Silver asked if the grass outside the footprint belongs to the homeowner or the association. Mr. Grasso stated it would be the association. Mr. Silver asked about the amenities and where they were placed. Mr. Grasso stated that they are illustrated on the plans and detailed those amenities. Mr. Silver said in terms of Section 503(e) the requirement is for more than 2 benches and that they may need to readdress this. Mr. Silver asked if Mr. Grasso is aware of the term "complete streets" as used by the N.C. Department of Transportation. Mr. Grasso stated he was not. Mr. Silver asked if the developer may add a few more benches. Mr. Grasso said there would be more amenities which are not on the plans. Mr. Silver said the minimum may or may not be what the ordinance requires, that the plans should address the requirements of the ordinances. Mr. Silver said he sees this as a nice family development where residents might want to walk to town and said they may also want to ride their bikes and asked that a bike rack be added and that he may find that this needs to be a condition related to approval. Additionally, people may want to walk their dogs and asked if a station for doggy bags could be installed. Mr. Silver asked about the mailbox kiosk. Mr. Grasso stated a kiosk was a requirement of the Post Office.

Morgan Herdklotz said she cannot read elevation lines and asked what the back of the units would look like. Mr. Grasso said they would be a stem wall. Mr. Grasso stated that would be a foundation wall. Mrs. Herdklotz asked if there would be some landscaping to help disguise the wall.

Chairman Schmitt asked about the drop in elevation and which buildings would be impacted by this. Mr. Grasso said it would be buildings #2, #3, #4, #5, #6, #7, #8, & #9. Mr. Schmitt said he would like to see wording for the association covenants that trash would be the responsibility of the homeowner and the common area would be the responsibility of the association and that would be a potential condition related to approval. Mr. Schmitt asked if it was a separate road from High Lowe Lane. Mr. Grasso said that the plans illustrate High Lowe Lane turning up into the new street. Mr. Schmitt asked if the developer was in agreement with the proposed connection as presented by the Town staff. Mr. Grasso agreed and gave a description of what it will look like.

Deka Tate said she would like to see this development work with Chad Carpenter to make his property look like it belongs with this development. Mr. Carpenter said he was under the impression that the connection with High Lowe Lane was an option. Mr. Grasso said he remembers those discussions as well. Ms. Buchanan spoke on behalf of the Town that this option was at the request of the Town Manager due to years of complaints from those property owners who live on High Lowe Lane. Mr. Carpenter said he got that fixed after calling Lees McRae. The option has been on both sets of plans and Mr. Carpenter came to the office and took pictures of those plans. Mr. Carpenter asked if he would be charged for this road work and Mr. Grasso said no, it was an additional cost to the developer. Chairman Schmitt asked Ms. Buchanan when this decision would be made. Ms. Buchanan said it was a legal issue between the Town and the residents of High Lowe Lane and perhaps that question should be directed to Mr. Eggers. Mr. Eggers said if the plan is approved as presented, the cost of improvements would be required of the developer. If conditions change and the proposed development needs to be amended, such as a connection which cannot be made, the proposed development will have to come back before the Board for reconsideration. Ted Silver asked if a change could be made by the Zoning Administrator. Mr. Eggers replied that any substantial changes to the plan would require reconsideration by the Board of Adjustment.

Gary Davis was sworn in and stated that he is a registered engineer in the State of North Carolina and has been practicing for 37 years. Mr. Davis said his experience is in stormwater, erosion and control measures, utilities, and roadways for industrial, residential, commercial, and institutional projects. Mr. Wilson asked Mr. Davis to address Section D on the SUP application. Mr.

Davis responded that the water and sewer utilities, along with fire hydrants, are designed to meet the standards for the Town of Banner Elk and the State of North Carolina. The erosion control measures meet the specification of the Town and especially the State of North Carolina and will be monitored during the construction process. Included in the plans are sediment basins that will direct runoff during the construction phase. Mr. Davis said there will be measures in place at the entrance that will shake the mud off vehicles leaving the property to prevent mud in the streets. Mr. Davis stated that stormwater measures are in place to manage the stormwater to be equal to or less than what the property produced before construction. Mr. Davis explained that this is done by diverting all the stormwater runoff to a detention basin where it holds onto the water for 24 to 48 hours and then releases it at a slower rate than it would if it ran over the ground and is not released directly into any trout waters. Deka Tate asked about the sediment. Gary Davis said there is a maintenance schedule, and they will have to be cleaned out accordingly. The storm-tech system concentrates on quantity control and quality control.

Chad Carpenter asked which side of the hill the water not going into the town's stormwater system would be discharged to. Mr. Davis said the side along Highway 184. Mr. Carpenter asked if it would then be thrown into the highway. Mr. Davis said that the system is designed to reduce the runoff so that it will be less than what it was before construction. Mr. Carpenter asked about the detention basin at the bottom of the project near his driveway and could it be breached and wash out his road. Mr. Davis said it is designed for a 50-year storm and the basin is over designed to maximize its functionality.

Ted Silver noted on sheet D11, which are the Storm Tech details, and asked if this was all the details for the project. Mr. Davis said that those details along with the stormwater manual work together to provide the details for the system. Ted Silver referred to the Geotechnical Engineer details on another sheet. Mr. Silver asked if Mr. Davis wrote the part about if an underground spring is discovered the following action will take place. Mr. Davis confirmed this and said if one is discovered, it has been addressed in the plans. In answer to another question, Mr. Davis said the cost is upon the developer to mitigate a spring if uncovered. Morgan Herdklotz asked if a spring is discovered will the cost be incurred by the developer. Mr. Davis said if the spring is within the limits of the development. Mr. Schmitt asked for clarification of the 50-year storm and how that relates to current weather patterns. Gary Davis said the data is provided by NOAA, National Oceanic and Atmospheric Administration, and is updated as often as needed, providing the most current rainfall data. Gary Davis said this is according to North Carolina requirements. Mr. Davis said the Town's ordinance requires a 10-year storm design; but they over-engineered it for a 50-year storm. Chad Carpenter asked Mr. Davis if a major spring were uncovered and was occurring on another

property, what would be the remedy. Mr. Davis answered that it would be the responsibility of the developer to manage it on his site, but in an unforeseen situation it may involve an adjoining property owner as well. This concluded the engineer's testimony.

Chad Carpenter, as Intervener, had an opportunity to present evidence. Mr. Carpenter testified that the developer is willing to say anything to get an approval. Mr. Carpenter stated that like all the other developments in town, it starts out one way and then changes to something else and then what happens to him and all around his home. Mr. Carpenter stated this development feels aggressive to him and he feels intimidated. Mr. Carpenter said as this relates to the zoning ordinance, this property can be seen from everywhere in town and nobody thinks about trees until they are gone, and his biggest worry is the viewshed. Mr. Carpenter said that people that come to this town want to see the mountains not large homes. Mr. Carpenter said that he was upset over plans that have been submitted and he knows nothing about what is going on, that if he had he would be a lot easier to work with. Mr. Carpenter asked for clarification on retaining walls from Cheryl Buchanan. Ms. Buchanan again explained the requirements of the ordinance as it pertains to retaining walls. Mr. Carpenter said he felt the property is being overdeveloped.

Mr. Wilson asked if Mr. Carpenter had any conversations with Mr. Accetturo prior to submitting these plans. Mr. Carpenter said yes; that Mr. Accetturo called him at work, while he was with clients, and said he would like to buy his property and tear down his house and build a bigger one there. Mr. Carpenter said he told Mr. Accetturo he would take \$550,000 for his property and that this figure was just off the cuff, that he knows the worth of his property to Mr. Accetturo, especially with it having the best view in Banner Elk. Mr. Carpenter asked if this answered Mr. Wilson's question and that he never told Mr. Accetturo that he would sell his house and never intended to sell his house. Mr. Wilson said that he actually understood that Mr. Carpenter said his house was modest compared to the proposed houses in this development. Mr. Wilson asked Mr. Carpenter what he said to Mr. Accetturo when he called him about selling his house before this project was even presented to the Planning Board. Mr. Carpenter said he threw out the first number that came to his head but that he never actually considered selling his home to Mr. Accetturo. Mr. Wilson asked what number above the \$550,000 would Mr. Carpenter consider selling his home. Mr. Carpenter said he is not interested in selling his home and that is why he is at the meeting defending his home. Mr. Wilson stated that there was no mention of the viewshed in his intervention form and asked him if that was true. Mr. Carpenter said he was not familiar with the form. Mr. Wilson read from the form and asked if the plans had not satisfied his need to know what the development was going to

look like. Mr. Carpenter responded with a concern about the retaining wall to be built behind his home and that a sketch drawn out quickly in a zoom meeting of the Planning Board was not enough to make him feel better about the project and the impact on his home. Mr. Carpenter referred to the “stick” drawing and told Mr. Wilson he should go back and review the minutes from the Planning Board meeting because he had to do so before this meeting. Mr. Eggers instructed Mr. Carpenter to answer the questions as they are asked, that there will be an opportunity to give his closing statement after all testimony was given. Mr. Wilson asked Mr. Carpenter if he had learned anything about this project tonight. Mr. Carpenter’s response was yes, he had learned a lot about this project tonight. Zoning Administrator Cheryl Buchanan asked Mr. Carpenter about a statement he made earlier that the ordinance allows the developer to do what he wants how he wants and asked what specific section of the ordinance allows that. Mr. Carpenter said he did not remember saying that but that the developer needs the SUP to do what they want how they want. Mr. Carpenter said he did not remember saying that. Ms. Buchanan asked about Mr. Carpenter’s statement that the plans kept changing and he was not allowed to see them. Ms. Buchanan further asked about the new set of plans came in tonight and the reason it was done at her request to show the BOA that there could be an increased 15-foot buffer around the property.

Mr. Carpenter called Susan Brown as a witness. Mrs. Brown had previously been sworn in and was reminded that she is under oath. Mr. Carpenter asked Mrs. Brown if by her calculations would the development need to be decreased by 60%. Mrs. Brown said that she believes the developer should not be allowed to get a SUP. Mrs. Brown asked what the footprint was according to the plans before the Board tonight. Mr. Eggers advised that as a witness it was Mr. Carpenter’s place to ask questions of Mrs. Brown. Mr. Carpenter asked Mrs. Brown if the existing runoff from the Cottages and runoff from the proposed development would create an unnecessary hardship for her. Mrs. Brown responded that it would; that it was her understanding that the rate would be slower, but the volume would be greater. Mr. Carpenter said that was all the questions he had. Mr. Wilson asked when Mrs. Brown purchased her commercial property. Mrs. Brown responded in 2008 as she was not exactly sure when she bought it. Mr. Wilson asked Mrs. Brown if it was after the Cottages were built. Mrs. Brown said yes. Mr. Wilson asked if the adjoining property owner is Edge of The World. Mrs. Brown answered yes. Mr. Wilson then confirmed that Edge of the World was a recreational property and she answered yes. Mr. Wilson observed that it probably draws a lot of young people who could possibly generate a lot of trash, to which Mrs. Brown replied they did. Mrs. Brown said that she has pictures of black corrugated pipe dumping water onto her property from The Cottages. Mr. Eggers inquired about the pictures Mrs. Brown referenced and if she wished to tender those to

the Board. Mr. Eggers asked her to identify the pictures and what they represent. Mrs. Brown said these photos were of the neighboring development the Cottages, and that when the Cottages were built, they were beautiful, but the problem is they have no POA. Mr. Eggers said these would be marked as Exhibit #17 and the board could determine the extent, if any, as to how they relate to this application being considered tonight if an objection was raised. Mr. Wilson as counsel for the applicant objected to the submission as to the relevance to the application. Mr. Eggers deferred to the Chairman to rule on the objection and advised he may defer to the Board for discussion. Ted Silver said that he was not sure what probative value the pictures may have to this application but would allow the submission. Morgan Herdklotz agreed. Chairman Schmitt said he was having difficulty correlating the Cottages development with the proposed development. Mr. Carpenter asked Mrs. Brown if she was trying to illustrate the foreshadowing of how a development can start out and end up another way. Mrs. Brown answered yes. Chairman Schmitt overruled the objection and allowed the pictures to be admitted. Ms. Buchanan asked Mrs. Brown about her litter complaint and how often and with whom did she speak to when she called Banner Elk Town Hall. Mrs. Brown said she spoke to the Town Manager and she had called twice. Mrs. Brown said that it was worse when students rented units in the Cottages. Mrs. Brown asked to look over the new set of plans and returned to the microphone to speak as to the plans complying with the ordinance. Mrs. Brown said the footprint of the buildings are calculated correctly for the total amount of impervious surface for the buildings.

Mr. Eggers stated that the parties have completed their initial testimony and Banner Elk allows interested parties to speak to the application and its compliance to the zoning ordinance. Each of the witnesses were sworn in to provide additional testimony. Mr. Connolly was sworn and testified that the rules are made and that this request has not been through the process of being reviewed by the Architectural Board. Mr. Connolly said there are no 3,700sf homes in the historic overlay and he does not think these fit in. It just feels like that the citizens are not being represented, that the person with the money is making this difficult. Seems that if you listen to some of the things that Cheryl has said, she works for Angelo. Regarding the trees, the tree ordinance does not apply to residential, but new construction, and since the first part of his house was built in the 1900's, it should be grandfathered in. On cross-examination, Mr. Wilson reiterated that the trees obviously have been cut down in front of Mr. Conolly's house and asked Mr. Connolly if they had been cut down before he bought the property. Mr. Conolly replied yes. Mr. Wilson asked how long he had owned the house. Mr. Connolly said he bought it in 2011. Mr. Wilson asked him if he had a son-in-law named Aaron Barlow. Mr. Connolly confirmed he did. Mr. Wilson asked if Mr. Barlow is a member of the Planning Board. Mr. Connolly said he is. Mr. Carpenter asked

Mr. Connolly if Mr. Wilson was correct when he asked if the trees had been cut down on the Beech Mountain side of the property. Mr. Connolly said Mr. Wilson was incorrect on which side of the property the trees had been cut down.

Meredith Olan was the next witness to speak. Mrs. Olan was sworn and identified herself as a planning board member. Mrs. Olan said she wanted to convey the objections of the three members of the Planning Board, the ones that voted and did not abstain to make sure they were correctly represented to the BOA. Ms. Olan said that the concern was that a PRD would significantly impact the viewshed. According to the plans, five or six of the houses would be visible from Highway 184. In her opinion the developer would need to reduce the number of houses to protect the impact on the viewshed. Mrs. Olan said she thought the proposed houses should be pulled back off the slopes to the cleared areas and she based that on a site visit and the significance of the existing trees. Mrs. Olan noted that she did not object to the density and their mathematical calculation, but to protect the viewshed would require a reduction in density, particularly noting Mrs. Herdklotz's viewpoint on being able to see the backs of the houses and them being multistory. Mrs. Olan also mentioned the Planning Board's recent review of the Pedestrian Plan and said that no amount of landscaping could be enough to overcome the negative effect of those houses on what could be considered a ridgeline.

Mr. Wilson asked Mrs. Olan is she was aware that Aaron Barlow was related to adjoining property owner Mr. Johnny Connolly and asked whether this was disclosed at the Planning Board meeting. Mrs. Olan answered she was aware of the relationship and that she believed it was disclosed. Mr. Wilson asked Mrs. Olan if it was disclosed by her to which she responded no. Mr. Wilson asked Mrs. Olan if she had any conversations with any of the adjoining property owners before the Planning Board meeting. Mrs. Olan said yes, she had parked in Mr. Connolly's driveway and that their conversation was strictly about the history of Old Turnpike Road. Mr. Wilson asked Mrs. Olan if she represented all the members of the Planning Board. Mrs. Olan said no, she only represented herself. Mr. Wilson asked Mrs. Olan to confirm that she was aware of Mr. Barlow's conflict of interest and that it was not disclosed to the Planning Board. Mrs. Olan said she believed it was disclosed to the Planning Board. Mr. Wilson asked if she had knowledge of the petition that was circulating on Facebook regarding this project. Mrs. Olan said she did not have any knowledge and that she was not on Facebook or any other social media. Mr. Wilson asked Mrs. Olan if she had helped draft the petition in any way. Mrs. Olan said she had not. Ted Silver asked Mrs. Olan if she stands on the sidewalk coming into Banner Elk along Highway 184 can she see Mike Eggers house and the condos on Beech Mountain. Mrs. Olan said those

condos were not in Banner Elk. Mr. Silver said he knows that but again asked her if she could see them. Mrs. Olan responded yes.

The next person to speak identified himself as Aaron Barlow. Mr. Barlow was sworn in by Chairman Schmitt. Mr. Barlow began his testimony with the mention of Section 308-2 of the zoning ordinance and when he ran the numbers, he came up with 178,552sf and that according to his calculations would allow only 7 houses. Mr. Barlow was not pleased with Mrs. Buchanan's term misinformation and stated that the fact that these were townhomes and not single-family houses as well as the fact that this was a PRD and that was not disclosed to the Planning Board. Mr. Barlow said that having a copy of the subdivision ordinance included in his packet further added to the confusion. Mr. Barlow testified that the Banner Elk Land Use Plan says that the Planning Board is charged with the control of growth in the Town, that the property is zoned R-2 and there is nothing they can do about it, that Mr. Accetturo is well within his right to develop the land but that the Planning Board should control the growth. Mr. Barlow said one of the biggest concerns for him was the viewshed. Mr. Barlow said that lately there have been instances where they have been told one thing and another has happened, citing a Lot in The Farm where they were told not to cut trees and skinned the entire hill anyway. Mr. Barlow stated that the Chairman of the Planning Board specifically said he did not want to see the hill cut down on that site and it was cut down on that site. There is no going back, and we will see it forever and this is our town. Mr. Barlow said that timing of the process was wrong; that they received their packet on Friday for a meeting on Monday. That was not enough time to review all the material, so they moved the agenda item to the following month's meeting. That being said, the plans changed in between. Mr. Barlow complained that left them with only 37 days to review the plans. Mr. Barlow said that as the Preserve America Committee, which is planning and zoning, and the Heritage Overlay Committee, which is planning and zoning, and the Architectural Review Committee, which is planning and zoning, they only had 37 days. Mr. Barlow quoted Section 1152 that gives them 45 days to review the plans. Mr. Barlow said they got a picture of a home without square footages.

Mr. Wilson asked Mr. Barlow if he started his testimony with a list of things that were not disclosed to the Planning Board. Mr. Barlow said that was correct. Mr. Wilson asked if Aaron Barlow disclosed to the Planning Board that Johnny Connolly was his father-in-law, to which Mr. Barlow said he did. Mr. Wilson asked if he had disclosed that in writing. Mr. Barlow said he mentioned it before the zoom meeting and assumed everyone knew. Mr. Wilson stated that Mr. Grasso and Mr. Davis were present at the zoom meeting and were not aware of the status. Mr. Barlow said that if the attorney was talking about a conflict of interest, he was sure that every member on that

board would have a conflict of interest with this project. Mr. Barlow mentioned that Penny VonCanon owns property that adjoins this property across the street and without her they would not have had a quorum. Mr. Wilson asked whether Mr. Barlow disclosed his relationship with Mr. Connolly and whether Mr. Barlow was sensitive to conflicts of interest. Mr. Barlow said yes. Mr. Wilson asked if Mr. Barlow has a conflict of interest where his father-in-law was concerned, and Mr. Barlow responded yes. Mr. Wilson asked about Mr. Barlow's knowledge of the Facebook petition that was circulating related to this project. Mr. Barlow said he was aware of it but was not a member of it. Mr. Wilson asked if Mr. Barlow had shared it with anyone. Mr. Barlow said yes, his mother. Mr. Wilson asked if Mrs. Olan was aware of his relationship to Mr. Connolly. Mr. Barlow said yes. Mr. Wilson asked if Mrs. Olan disclosed it to the Planning Board. Mr. Barlow said no. Mr. Wilson asked Mr. Barlow if he was aware of what recusal means. Mr. Barlow replied yes.

Fred Schmitt said that Mr. Barlow started out with numbers and asked him to go back and illustrate why he thinks this project falls outside the requirements of the zoning ordinance. Mr. Barlow referred to Table 308-2 in the ordinance and said that when you take the first lot at 10,000sf and add 4,000sf to each lot he came up with 10,000sf + 14,000sf + 18,000sf + 22,000sf and so on, and this came close to the acreage. Mr. Schmitt said he recall the Zoning Administrator to address this, but that previous testimony indicated this as a single lot with the homes being a meets and bounds description determined by the drip line of each individual home. Mr. Barlow said he felt the verbiage does not meet the spirit of the law. Mr. Barlow further stated that he did not think the spirit of the law wants these houses so close together but to have space and they are townhomes now. Mr. Schmitt said that the special use process being gone through tonight are specifically for uses in zoned areas in Banner Elk, that are not specifically allowed, but have been set aside as needing to meet certain standards outlined within the ordinance. Mr. Schmitt reiterated that the special use process is not a negative process; but is meant to guide various applications through the process. Mr. Barlow said that he was confused, as the planning committee they shot this down; however, the developer was all ready to come to the BOA.

Mr. Barlow said if they are not doing anything, then why are they here. Mr. Silver asked regardless of how we define a single structure, whether a house or a townhome, your objection is the number of units for this request. Mr. Barlow said yes. Mr. Silver asked Mr. Barlow if, as a member of the planning board, was he aware that multifamily units are allowed, or a modular unit is allowed. Mr. Barlow said yes, he was aware. Mr. Silver cited several more examples and then asked Mr. Barlow if he was aware that without this process, a cluster subdivision was allowed as a permitted use. Mr. Barlow responded that he was aware. Mr. Silver asked if Mr. Barlow would accept a

cluster subdivision with more units than the ten being proposed. Mr. Schmitt said this was a hypothetical question and did not think it was relevant. Mr. Silver said he was aware but wanted to address the issue of density. Mr. Barlow said he was not sure, that he would need to check the density table. Mr. Barlow said if it falls under the ordinances, yes, but what the ordinance says and what the spirit of the ordinance is can be something else. Mr. Schmitt summarized Mr. Barlow's objections and asked if what he was trying to say was that the 10 single family units do not meet the spirit of the ordinance. Mr. Barlow said yes, 10 single family homes do not meet the spirit of the ordinance.

Chairman Schmitt stated that the BOA generally gets the paperwork for these hearings a week before the actual hearing. They are allowed to visit a site but are prohibited to interact with anyone outside of the Board. Chairman Schmitt said that is why these meetings are so important and why they last so long. Chairman Schmitt said that is why they rely upon the Planning Board's recommendations and minutes and such. Ms. Buchanan asked Mr. Barlow to again reiterate how he calculated the lot sizes. Mr. Barlow answered that he was not sure how to calculate it either.

Mrs. Susan Brown was recognized and allowed to address the BOA. Mrs. Brown expressed concern over the density and stormwater runoff being increased with this development. Mrs. Brown said she was told that the footprints on the plans are not the actual ones and that she was also told that if they stay within the impervious surface calculations, it did not matter. Mrs. Brown also objected to the foundations of the buildings on the steep slope of the property and testified that Banner Elk could end up with 50- or 60-foot walls. Other items of contention by Mrs. Brown include the effects on Pine Needle Hill, the viewshed and appropriate application of the Land Use Plan. In Mrs. Brown's opinion, the application of the zoning ordinance only allows for four (4) single family homes, not 10 and that this development is not in harmony with the Carpenter's home or any of the other homes. Ms. Buchanan asked Mrs. Brown to review her calculations again and stated that her calculations came up as 136,000 sf for the lots taken from 178,552 sf of property. Mrs. Brown said she then deducted the percentage of impervious surface of 35% from that 178,552sf. Mrs. Buchanan asked her where the ordinance directs you to remove the impervious surface percentage from the calculations. Mrs. Brown said she thought that was what had to be done.

Mr. Eggers asked Ms. Buchanan if she had any additional testimony before the hearing is closed. Ms. Buchanan said that her interpretation of the ordinance for the calculation of lots, if that standard is used, is 10,000sf for the first lot and 14,000sf for the other 9 lots and you could not remove the percentage of the impervious surface and then start calculating lot sizes. Ms. Buchanan

said that the first set of plans she was given were shared with everybody. Ms. Buchanan said she met with Mr. Conolly on a Friday and Mr. Carpenter and Mrs. Brown on the following Monday to allow them to review the plans, that she did not have any extra sets to hand out. Ms. Buchanan said the second set of plans came in tonight, before the meeting. The second set were a direct result of her request to Mr. Grasso to show a 15-foot buffer around the property as opposed to the minimum 10-foot buffer requirement. Mrs. Buchanan said nothing changed between the two sets of plans and it was not her intention to try and hide them from anyone. Ms. Buchanan said she wanted to clarify these two points for the Board. Chad Carpenter asked Ms. Buchanan if when they met, did they have a conversation about the ease of speaking about the ordinances and how they work? Mr. Carpenter asked if she recalled being asked to speak kinder, that she seemed agitated when he asked questions. Ms. Buchanan said it was the way Mr. Carpenter asked those questions that upset her, but when he pointed it out she apologized and said she would try harder to speak calmly. Mr. Carpenter said he believed Ms. Buchanan said in the Planning Board meeting that she was sentimental and that was why she took ownership of the project. Ms. Buchanan said she did not recall saying that and Mr. Carpenter said it was in the minutes. Mr. Eggers asked Mr. Carpenter to put this in the form of a question. Ms. Buchanan asked Mr. Carpenter to ask her if she was sentimental about the project. Mr. Carpenter asked her if she was sentimental about this project. Ms. Buchanan said she was not and did not recall that coming up in the meeting.


Chairman Schmitt asked Ms. Buchanan to go over her calculations again just to clarify it for the Board. Ms. Buchanan referred to the Zoning Administrator's review on the first page under Definitions, the first print in red. Ms. Buchanan said she calculated the first lot at 10,000sf and 14,000sf for the other 9 lots totaling 136,000sf. Taking that 136,000 and dividing that by an acre of 43,560sf equals 3.12 acres, under the total acreage of 4.099 the development has. Chairman Schmitt asked if there was an alternative calculation. Ms. Buchanan said no. Ms. Buchanan said that impervious surface was a different calculation than lot size calculations. Chairman Schmitt asked if it is related to runoff. Ms. Buchanan said that was true, but the developer cannot cover more than that percentage with impervious surface and stated that therefore she relies on qualified experts to present the calculation of impervious surface.

With no more questions or rebuttal testimony from either the applicant or the intervenor, Mr. Eggers said that this is the close of the evidentiary portion of the meeting. Mr. Eggers said that the next step would be closing statements and then a deliberation by the Board. Ms. Buchanan stated that she evaluated this project based on the merits of the ordinance. Ms. Buchanan said she

does not have a personal feeling about this project and that she is not personally involved with Mr. Accetturo as accused. Ms. Buchanan said that her review takes the ordinance section by section and applies the requirements to the proposed project and that was her goal and she believe this project meets the requirements of the ordinance.

Mr. Carpenter's closing statement was that he was only able to see the new measurements of the second set of plans tonight and that the amount of money that has changed hands over the years for this piece of property is the reason for this aggressive development. Mr. Carpenter said he feels the pressure and that they want him gone. Mr. Carpenter said he had the opportunity to go back and listen to the audio of the Planning Board and that he was struck by the constant changing of verbiage by the developer's representative, especially Mr. Grasso. Mr. Carpenter said Mr. Grasso used the Restore America Act as to how they were going to push this through, then 47F and then as a planned residential development. Mr. Carpenter said there were all these terms being used and that he, as a homeowner, should be comfortable with the building of these walls in the setbacks and it did not make him feel comfortable. Mr. Carpenter said that Mr. Grasso nor the developer have been able to provide him with renderings of what his home will look like with these walls up against it. Mr. Carpenter said that if the proper committees had been utilized, he would not have these questions. Mr. Carpenter said it was very clear that it was going to get shoved through and due to his problems with Cheryl, it was very clear that she did not like getting questions about the project. Mr. Carpenter said that every time he asked her a question, it became clear that she did not want to answer it when she puts her hands over her face and acts certain ways. Mr. Carpenter cited an instance in the planning board meeting where she put her hands over her face like you are a problem for her. As a citizen of the city, he should not be made to feel inferior. Mr. Carpenter said he also thinks these homes being so close together is a fire risk as laid out in the Land Use Plan and the Zoning Ordinance, respectively. Mr. Carpenter said that people come in to buy a home close to each other and assume a risk and Mr. Carpenter said he did not assume that same risk. Mr. Carpenter mentioned a dispute of an old property line. In closing, Mr. Carpenter said he would like to see this property dispute settled, and have the developer contact him. When people who work for the Town take ownership of a project it did not seem like someone who represented a municipality. Mr. Carpenter said he would like to have more concise information about this development.

Mr. Wilson said he recognized that the beauty of this process is that everybody gets an opportunity to be heard. Mr. Wilson said that he visited the site that day and that Banner Elk has a beautiful development here and that the Board heard from two professionals tonight. Mr. Wilson felt bad that he had to listen




to shameful attacks on Ms. Buchanan who could only be convicted of doing her job very well. Mr. Wilson said that tonight we heard suggestions for everything from adding doggy bag dispensers to who would be responsible for cutting grass and that the developer has been amenable to every one of those suggestions and more. Mr. Wilson said the threshold question is whether the developer has met with the standards and specifications for a special use permit, which he clearly has. The opposition has offered speculation, innuendos, hysteria, and fuzzy math in order to challenge the proposed development. Mr. Wilson brought attention to several Planning Board members and applauded their right to be heard. Mr. Wilson said that the developer was prepared to put up any securities that might be required and to meet any conditions the Board puts on this permit. Mr. Wilson believes the applicant has met the requirement of the Banner Elk Zoning Ordinance and requests the Board move to approve.

With no further evidence being proposed, Chairman Schmitt closed the evidentiary portion of the hearing. Chairman Schmitt said that the Board could vote today and direct staff to bring findings of fact and conclusions of law consistent with the decision or the board could continue its discussion and decision to presumably the next meeting. Chairman Schmitt stated that it was 11:30 pm and that there is a lot of information there to absorb and complimented the applicant and the community for their time to present to the Board. Chairman Schmitt said they have the black and white of what is in the application, and the black and white of the zoning ordinance to make a decision based on their best judgement as to whether this development fits within the parameters and intent of the zoning ordinance. Chairman Schmitt said that with the material they have tonight, he is not in a position to make a decision tonight. Chairman Schmitt said that he was leaning towards meeting at another time and that this meeting would be open to the public. Deka Tate said she was not ready to decide either, that the Board should call a special meeting, so this is not stretched out for another month. Ted Silver said he agreed that he needed another night to be able to deliberate and have a back and forth among the members. Morgan Herdklotz agreed and asked if there was any way they could get more detailed renderings of what these units would look like on the steep slopes.

Mr. Eggers said that the Board has been presented with all the evidence and heard all the testimony and closed that portion of the meeting and the deliberation is towards the evidence and testimony that has been received. Mr. Eggers told the Board that the first item they would vote on would be if the application is complete.

Ted Silver motioned that this meeting be recessed until Thursday, May 6, 2021 at 6:00 pm at the Banner Elk Townhall. Second by Morgan Herdklotz. The



discussion was to move this portion of the meeting to the Historic Banner Elk School after the initial hearing at Banner Elk Town Hall.

After some discussion, Ted Silver amended his motion to recess this meeting to Tuesday, May 4, 2021 at 6:00 pm at the Historic Banner Elk School.

Seconded by Fred Schmitt. The vote was:

Morgan Herdklotz: Yea

Fred Schmitt: Yea

Ted Silver: Yea

Deka Tate: Yea. The motion carried with a vote of 4-0.

Attorney Eggers cautioned the members of the Board not to discuss this matter with any friends, family, or anyone outside this Board.

Motion by Deka Tate to recess the meeting to the date and time set forth above. Second by Fred Schmitt. The vote was:

Morgan Herdklotz: Yea

Fred Schmitt: Yea

Ted Silver: Yea

Deka Tate: Yea. The motion carried with a vote of 4-0.

Respectfully submitted,
Cheryl Buchanan, Secretary to the Board of Adjustment