

BANNER ELK BOARD OF ADJUSTMENT  
MONDAY, 10/26/2021  
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

Others Present: Derek Goddard

Chairman Fred Schmitt called the meeting to order at 6:02 p.m. Chairman Schmitt asked everyone present to stand and join in the pledge of allegiance to the flag.

*Reconvene Hearing for a SUP Request for Planned Commercial Development – Banner Elk Retail*

The initial hearing for the SUP request for a Planned Commercial Development along Highway 184 was recessed on October 18, 2021 and was reconvened on October 26, 2021. The purpose of the continuation was to allow the applicant the opportunity to address a finding by the Board that the application was incomplete, and the applicant has amended the original plan to include a five (5') foot sidewalk as a requirement of the Banner Elk Zoning Ordinance. Chairman Schmitt reminded the witnesses that they were still under oath and asked Attorney Eggers to review the protocol for a reconvened meeting.

Following a review of the procedural posture of the case, Chairman Schmitt asked the Board Members if they had received any extraneous information or been contacted since the recessed meeting on October 18, 2021. None was noted.

Attorney Eggers advised that the testimony today should pertain to incomplete portion of the application, being the missing sidewalk and any changes this may have made to the submitted plan, with resumption of testimony.

Chairman Schmitt noted that the draft minutes from the October 18, 2021, meeting have been provided. Attorney Eggers said they did not need to be approved tonight and Chairman Schmitt replied that he intended only to reference them for the language of the previous motions.

Derek Goddard was called upon to present any new testimony. Mr. Goddard stated that he has presented two (2) new plans that represent the addition of a five (5') foot sidewalk with curb and guttering. The addition of the sidewalk shifted the landscaping; therefore, there is a new site plan and landscaping plan. Attorney Eggers stated that the record should reflect these as Exhibits 11 and 12. Derek Goddard said that he reached out to NCDOT with these plans and referred to their correspondence from NCDOT on the submittal. Derek Goddard testified that NCDOT's response was that they did not find any systematic problems with the plans and would be willing to give their approval based on the plans submitted. The e-mail correspondence between Derek Goddard and NCDOT about the addition of the sidewalk was labeled as Exhibit 13.

Ted Silver asked Mr. Goddard if the curb and gutter will be contained within the property and not encroach onto Highway 184. Mr. Goddard said it was contained within the property lines. Ted Silver asked if there would be drainage grates? Mr. Goddard said no, the drainage would flow back to drain on their property. Ted Silver asked about signage for ADA compliance or any additional signage? Mr. Goddard said no. Ted Silver said that he noticed that there was a notation on the plans for a 'stop' and 'don't enter' sign and asked where they were going. Derek Goddard said they were intended for the entrances and exits as appropriate per NCDOT requirements.

Ted Silver asked Mr. Goddard if he was aware if there were any additional signs and would the applicant have to pay for them. Mr. Goddard said if NCDOT does require additional signage the applicant can and will pay for them.

Chairman Schmitt asked Zoning Administrator Cheryl Buchanan if she had a chance to review these plans and if they met the requirements of the ordinance under Section 152.085 Architectural Review Standards. Ms. Buchanan answered yes.

Ted Silver asked Derek Goddard about the e-mail dated October 22, 2021, from NCDOT representative Ivan Dishman that states that the layout in general is appropriate but that the NCDOT would need more detail concerning the ADA and drainage. Derek Goddard replied that that they need to make a formal submittal for an encroachment permit and would be willing to have this be a condition of the permit.

Chairman Schmitt asked for additional closing comments. Derek Goddard stated that he believes that the new measure makes this application complete and asked for approval of the permit. Ms. Buchanan said she had comments to add as well. Ms. Buchanan said that since the meeting she had spoken with Terry Foxx with North Carolina Emergency Management about this LOMR

application. Mr. Foxx advised that the LOMR is not an absolute requirement but that an elevation certificate was essential to this project and that the LMOR would be necessary for flood insurance. Ms. Buchanan also asked for clarification from Attorney Eggers on if the plan shows a sidewalk, then it must be built. Attorney Eggers said that a minor change could be approved administratively. Ms. Buchanan said there was a discussion about a change to the ordinance to provide for an option to allow for a fee in lieu if the sidewalk cannot be built on a project and asked if that would qualify as an administrative approval. Attorney Eggers replied yes, if such an ordinance amendment were to be made by the Town Council.

With no other comment, the evidentiary portion of the meeting was closed. After some discussion, Ted Silver motioned that the application is complete. Seconded 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 motioned that the application complies with the requirements of the Banner Elk Zoning Ordinance. Seconded by Fred Schmitt. Ted Silver asked to go on record that he understands that the Town's hands are tied but he has very strong feelings and concerns with the design and placement of the NCDOT approved ingress and egress along with safety of the traffic flow in that neighborhood and wanted to go on record that the Town of Banner Elk did not approve this mess that we are bound by what NCDOT designs. 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 motioned that, as a condition, a bike rack for at least two (2) bikes be placed appropriately on the site. Seconded 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 motioned that, as a condition, an elevation certificate be obtained before a zoning permit can be issued. Seconded 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.

Chairman Schmitt motioned, as a condition, that the applicant obtain a LOMR before a Certificate of Compliance is issued by the Zoning Administrator. Seconded 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 motioned, as a condition, all requirements of NCDOT or any other ADA Agency be complied with. Seconded 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 motioned to approve the Special Use Permit for a Planned Commercial Development with conditions. Seconded 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.

The meeting was adjourned at 6:38 pm.

Respectfully submitted,

Cheryl Buchanan, Secretary to the Board of Adjustment