

BANNER ELK BOARD OF ADJUSTMENT
MONDAY, 03/22/2022
MINUTES

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, Deka Tate

Staff Present: Zoning Administrator Riley Pudney, Stand in Town Attorney Jonathan Green, Town Manager Rick Owen

Others Present: David Tate

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.

Chairman Schmitt stated that this meeting was a continuation of the March 21, 2022, meeting that was called to order and then recessed due to a lack of a quorum.

Consideration of the Two October 2021 Minutes


The minutes for the October 19, 2021, and October 26, 2021, were approved as presented with a motion by Ted Silver and seconded by Chairman Fred Schmitt.

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. Witnesses will be sworn in for testimony. Before opening the hearing, Chairman Schmitt reviewed the requirements for the board members to be seated. 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. The hearing proceeded with the note that the applicant was not present.

Zoning Administrator Riley Pudney was affirmed by Chairman Schmitt.

SUP Request for Callista's Flower Shop

Zoning Administrator Riley Pudney stated that this is a request for an accessory use to add a coffee shop in an existing business. Zoning Administrator Riley Pudney informed the Board that there is no additional square footage being added to the building and that the only thing she was concerned about involved parking and the issuance of a new sign. Zoning



Administrator Riley Pudney stated that the ordinance called for 2.1 parking spaces and that the applicant has sufficiently met that requirement by providing a total of 12 spots.

Zoning Administrator Riley Pudney also informed the Board that the applicant plans to add a small sign and has about 9 square feet left, which should meet the requirements of the ordinance. She recommended that final approval of the project be contingent on the approval of the new sign. With no further evidence, Zoning Administrator Riley Pudney stated to the Board that as the project and permit was turned into her, it meets the requirements of the ordinance.

Chairman Schmitt asked stand in Town Attorney Jonathan Green if the hearing can proceed without the applicant present. Town Attorney Jonathan Green asked for a brief moment to find out that answer. Ted Silver asked the Board and Town Attorney Jonathan Green if the application packet signed by Ms. Turbyfill was sufficient evidence and testimony for the Board to decide an outcome. Town Attorney Jonathan Green informed the Board that there is a burden on the applicant to provide evidence or a witness in the hearing. Case law requires for either the applicant or a witness on their behalf to be present for the hearing. It was determined that the hearing cannot continue without the applicant present.

The Board discussed further dates for the hearing and determined that this case would be heard again on May 16, 2022 during their regular scheduled meeting. The Board also moved the April 18th meeting to April 22nd, 2022, due to scheduling conflicts with Morgan Herdklotz.

Chairman Schmitt reminded the Council to look for an additional ETJ member to sit on the Board.

With nothing further on the agenda, Chairman Schmitt adjourned the meeting at 6:31 pm.

Respectfully submitted,

Riley Pudney, Zoning Administrator

