

**BANNER ELK BOARD OF ADJUSTMENT  
MONDAY JULY 17, 2023  
MINUTES**

Members Present: Morgan Herdklotz, Fred Schmitt, Ted Silver, Deka Tate, Shannon Benfield and David Tate

Staff Present: Zoning Administrator Riley Pudney, Town Attorney Four Eggers

Others Present: Mark Minor, Erica Siegel, and Roy French

Chairman Fred Schmitt called the meeting to order at 6:05 p.m. Chairman Schmitt asked everyone present to stand and join in the Pledge of Allegiance.

Shannon Benfield was sworn in as the fifth board member and 2<sup>nd</sup> ETJ representative.

**Consideration of the June 19th Minutes**

The minutes for the June 19, 2023, meeting was approved unanimously as presented with a motion by Chairman Fred Schmitt and Seconded by Morgan Herdklotz.

**SUP Request: Planned Commercial Development-Mark Minor**

Before testimony began, Ted Silver disclosed to the Board that he made a site visit to the property and did not speak with anyone on site.

Zoning Administrator Riley Pudney introduced the project by stating that it was a proposed planned commercial development. The development as a whole is four buildings, with three of the buildings having 2 apartments each on the top floor. She further explained that the plan is to have mainly retail in the four buildings, as parking would be difficult to have a restaurant. She stated that all parking and sidewalks will be within the property lines of the development. She went through the review, stating that the project met the requirements of the ordinance. She did inform the board that she is still waiting on the stormwater management plan and that it will be required before a zoning permit is approved.

Morgan Herdklotz asked Ms. Pudney if the proposed dumpsters were adequate for both residential and commercial uses. Ms. Pudney answered by saying she believed they were to be adequate with the main uses being retail, the amount of refuse would be small. Attorney Eggers reiterated to the Board that they could determine if the existing trash setup was adequate or require more from the applicant.

Chairman Schmitt asked how the density was calculated. Ms. Pudney explained that it is based on the total building sq footage divided by the total square footage of the parcel. She stated that the project could not exceed 40% density and that it was calculated at 29.5%.

Ted Silver asked what the parking allocation for the residential apartments would be. Ms. Pudney answered that of the 50 provided spaces, 12 must be used for the apartments.

With no further questions from the Board, Mark Minor presented his project. He stated that the uses are mainly retail and residential. He believes that Banner Elk needs more retail and would not want to lease out a space for a restaurant or office unless there was adequate parking. He addressed the concern of the trash and stated that if it was inadequate, he would upgrade the size and location so that it was adequate for the development.

Ted Silver asked if there were any bike racks proposed for the project. Roy French, the designer, stated that there were not but they would be open to the suggestion.

Deka Tate asked what green space will be on the property. Chairman Schmitt clarified that the ordinance allows for up to 90% impervious surface and that there is a required 10% of green space and landscaping. Morgan Herdklotz asked the applicant to be mindful of the plantings so that the 10% is maximized with the correct landscaping.

Ted Silver asked if the apartments were ADA compliant. Mark Minor stated that the doorways were compliant but there were not any elevators to the unit. Ms. Pudney stated that that was a building code requirement and enforcement issue.

Morgan Herdklotz asked if the units would be leased long-term or short-term. Mark Minor stated that it was their intention to have them leased long-term. Chairman Schmitt asked Mark Minor how he believed the development would affect the surrounding properties. Mark Minor, being a realtor, believes that new construction and development would cause the property values of the adjoining properties to rise, and they would benefit from the development.

Lastly, Ted Silver asked if the parking would be limited to the development and businesses. Mark Minor answered that the parking would not be general public parking and would be reserved for the apartments and businesses.

The applicants closed by saying they are grateful for the opportunity to be in the Banner Elk Community and thanked the Board for their time.

Sally Breslauer was sworn in and provided testimony in support of the project. She stated that the Town needs more retail and that the applicant's project would be very beneficial to the Town.

Chairman Fred Schmitt asked if any of the Board members had any questions. With none, he directed Attorney Eggers to review the questions the Board were to address. Mr. Eggers said there were four questions the Board must address: 1. Is the application complete? 2. Does the application and project substantially meet the requirements of the ordinance? 3. Are there any conditions the Board would like to impose on the permit? And lastly, 4. Does the Board approve the permit?

Chairman Fred Schmitt opened the Board to discuss question one, as to whether the application was complete. Ted Silver motioned that it was with a second by Deka Tate. The vote was:

Chairman Fred Schmitt-yea  
Ted Silver-yea  
Deka Tate- yea  
Morgan Herdklotz- yea  
Shannon Benfield-yea

The motion passed unanimously.

The second question as to whether the application substantially complies with the ordinance was motioned for approval by Ted Silver and was seconded by Chairman Fred Schmitt. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

Shannon Benfield-yea

The motion passed unanimously.

The third question was whether the Board was going to implement any conditions on the project. The Board implemented the following conditions:

Ted Silver motioned for one bike rack per building be required, where each bike rack housed at least 2 bikes. The motion was seconded by Chairman Schmitt, the vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

Shannon Benfield: yea

The motion passed unanimously.

Chairman Schmitt motioned for the 12 residential spaces to have reserved parking signs. Ted Silver seconded the motion. The vote was:

Chairman Fred Schmitt-yea

Ted Silver-yea

Deka Tate- yea

Morgan Herdklotz- yea

Shannon Benfield-yea

The motion passed unanimously.

The last question considered was whether the Board approved the permit. Deka Tate motioned to approve and was seconded by Chairman Schmitt. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

Shannon Benfield-yea

The motion passed unanimously.

The application was granted and the hearing for the special use permit was closed.

The Board discussed rescheduling the August meeting to a different date due to a staff conflict. The August meeting was moved to August 22<sup>nd</sup> at 6:00 pm.

With no other business, Chairman Fred Schmitt motioned to adjourn the meeting and was seconded by Shannon Benfield. The motion passed and the meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Riley Pudney, Zoning Administrator

Approved: \_\_\_\_\_

Fred Schmitt, Chairman to the Board

Attested: \_\_\_\_\_