

**BANNER ELK BOARD OF ADJUSTMENT
MONDAY MAY 16, 2022
MINUTES**

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

Staff Present: Zoning Administrator Riley Pudney, Town Attorney Stand in Kevin Friley, Town Manager Rick Owen

Others Present: Kristi Turbyfill, Vu Nguyen, Marley Turbyfill, David Woods, and Jennifer Woods

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.

Consideration of the April 2022 Minutes

The minutes for the April 22, 2022, meeting was approved unanimously 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. Ted Silver made a motion to amend the agenda to move Callista's SUP to be heard first. The motion was seconded by Chairman Schmitt and was passed unanimously. The hearing proceeded without further comment.


The following individuals were sworn in by Chairman Schmitt:

Zoning Administrator Riley Pudney
Kristi Turbyfill
Marley Turbyfill
Vu Nguyen
David Woods
Jennifer Woods

SUP REQUEST CALLISTA'S FLOWER SHOP AND COFFEE BAR

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. 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 Fred Schmitt asked the applicant if they had any questions regarding the testimony presented. Ms. Turbyfill informed the Board that she did not have and questions. Chairman Fred Schmitt then allowed Ms. Turbyfill to provide her testimony. Ms. Turbyfill informed the Board that it will be just a small coffee bar and will also be offered curbside. She also stated that she will be providing prepackaged foods and asked the Board if the vendor for the food mattered. The Board told her that it was not specified in the Health Department letter and therefore she can use any vendor of her choosing. Ms. Turbyfill had nothing further to add. Chairman Fred Schmitt asked if any of the Board members had any questions. With none, he directed stand in Attorney Friley to review the questions the Board were to address. Mr. Friley 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. Chairman Fred Schmitt motioned that it was with a second by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The second questions as to whether the application substantially complies with the ordinance was motioned for approval by Ted Silver and was seconded by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The third question was whether the Board was going to implement any conditions on the project. Ted Silver motioned for no conditions to be added and was seconded by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

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

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.


Chairman Fred Schmitt congratulated the applicant and motioned to close the hearing. His motion was seconded by Deka Tate and the hearing for this SUP was closed.

SUP REQUEST DAVID AND JENNIFER WOODS-PLANNED COMMERCIAL DEVELOPMENT

Zoning Administrator Riley Pudney explained to the Board the scope of the project. She stated that it is a planned commercial development and will also serve as their main residence. She indicated that the residential section was well under the 40% allotment at 32%. The business is a commercial laundry service for rental units in the area. The business will mostly offer a pickup and delivery service, so traffic would be minimized. She stated that the applicant had not applied for a sign permit yet and asks the Board to make that a condition of their approval. She informed the Board that the impervious surface calculations meet the requirements of the ordinance at 19.77%. They are required to have 6.3 spaces and are providing 8, which meets the ordinance requirements.

Zoning Administrator Riley Pudney also informs the Board that the project is in the viewshed area as it is right of Highway 184. She explained that the building will have landscaping to help buffer the building from the road. The applicants also have DOT approval for their exit onto 184. Their entrance will be on Hardee's Lane, which they own half of. She informed the Board that the look and use of the building will match the surrounding properties and that the application and project meet the requirements of the ordinance. Chairman Fred Schmitt asked the applicant if they had any questions regarding her testimony. The applicant asked if their sign rendering was sufficient for their sign condition. She informed them that she was regarding the actual sign application, which has not been given.

Chairman Fred Schmitt asked the Board if they had any questions regarding her testimony. Ted Silver asked if the residential part of their building would be allowed to be used as a rental. She answered that it would be allowed, they would have to comply with the short-term rental ordinance. He also asked how much of Hardee's Lane the applicant owned. She stated that she did not know and recommended asking the applicant. Mr. Silver also asked if a public laundry service would be allowed as a permitted use, and she informed the Board that it would be. Deka Tate asked if individuals could bring in their own linens and the applicants stated that they could, however the machines do not allow for small public use. Ms. Tate also asked if the building met the building design standards since it was a metal shell. She informed the Board that while the building will be metal, it will be covered with allowed materials such as stone veneer, hardy board, and wood accents. Chairman Fred Schmitt asked why the impervious surface was included in the dimensional requirements. Zoning Administrator Riley Pudney stated that the calculations were the same and the two sections were combined. He also asked if the non-buildable side of the parcel was included in the calculations. She stated that the entire gross square footage of the parcel has to be used in the calculation. Deka Tate asked if the applicant owned part of the Elk River, and the answer was no. The river has a reserved fifty (50) foot easement that they have limited use of. Ted Silver recommends for the Town to review the calculations regarding the unusable space in the parcel. Mr. Silver asked if the applicants were bound by the renderings provided. Zoning Administrator Riley Pudney answered that she did not believe they would be. As long as the building complies with the




architectural design standards that it is subjective to her review. Chairman Schmitt asked if the business could be opened to the public. Zoning Administrator Riley Pudney answered that it is commercial, and they could open it up to rentals or public individuals.

With no further questions for Zoning Administrator Riley Pudney, the Board opened the floor for the applicant's testimony. David Woods opened his testimony by stating that this is a need for the area and has begun working with the correct channels. He explained that the building and parking lot will be outside of the fifty (50) foot easements for the stream, and they will have a gravel parking lot. DOT had given them approval for a 74' radius as their exit onto Highway 184. He explained that the metal structure would be covered in board and batten, it will have an extended porch and a pitched roof. The look of the structure will be a farmhouse style with wood, stone, and farmhouse accents. He informed the Board that they will be connected to the Town water and sewer and their usage will be similar to the car wash up the street. The building will have 4 commercial washers and a large self-folding machine. He explained that they could have a water catchment system which would help alleviate the water uses. Their chemicals will be eco-friendly so it will not impact the environment. Their section of the stream is not a trout stream. Chairman Fred Schmitt opened the Board to questions or comments. Deka Tate asked if the exit onto 184 was safe. Mr. Woods said that it has a large radius and can fit firetrucks. Morgan Herdklotz asked both the applicant and Zoning Administrator Riley Pudney who would be responsible to ensure the construction site would be managed correctly regarding the erosion and sediment. Zoning Administrator Riley Pudney said it would be both a County regulation and a Town/applicant responsibility. Mr. Woods informed the Board that he has a professionally done erosion control plan and provided the Board with copies of the plan.

Chairman Fred Schmitt asked the applicants if they had considered the old Hardee's property. Mr. Woods said he had and many other properties, but the infrastructure needed a complete overhaul and was not within their budget. He explained that with this project, all of the utilities will be underground, including the electrical. Ted Silver asked about the proposed sidewalk on the plans and if they were putting it in. Mr. Woods said it was recommended that they have a sidewalk and will put it in if needed. Mr. Silver said that he would consider an easement to the Town instead of a sidewalk being built by the applicants. Mr. Silver is also concerned about the entrance and exit to the business. He believes that people will get confused and will turn in to the entrance. He recommends signs to be installed that helps drivers know where to turn. Mr. Silver asked how far back they own Hardee's Lane. Mr. Woods answered that they own all the way up to Elk River and the adjoining property owns the other half.

Chairman Fred Schmitt asked for closing remarks. Mr. Wood stated that they want to be part of this community. They have been on the outside for four years and want to come and help the community with their business. Zoning Administrator Riley Pudney had no further remarks. Before going any further, Ted Silver asked for a quick recess to discuss a matter with the Town Manager. Chairman Fred Schmitt and stand in Attorney Kevin Friley indicated that the conversation would have to be on record and the Town Manager could be sworn in. Mr. Silver did not request for the Town Manager to be sworn in and the matter was dropped.

With no further questions, Chairman Fred Schmitt closed the public comment section of the hearing and directed Attorney Friley to review the questions that were to be considered. Mr. Friley 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. Chairman Fred Schmitt motioned that it was with a second by Ted Silver. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- 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 Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The third question was whether the Board was going to implement any conditions on the project. Chairman Fred Schmitt motioned for the Condition of having the signs be submitted for approval to be added to the permit. The motion was seconded by Deka Tate. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

Ted Silver motioned for another condition to be added. The condition was for up to an eight (8) foot easement to be granted to the Town where the proposed sidewalk is on the plans. If the Town does not accept the easement, then the applicants must put in up to an eight (8) foot sidewalk, greenway, multi-use pathway that connects their business to Highway 184. This motion was seconded by Chairman Fred Schmitt. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

Ted Silver motioned for the condition of directional signage be added to the permit. His condition stated that exit signage be added closer to the Town side of the building that clearly indicates that the exit is not an entrance and that the entrance is on Hardee Lane. Chairman Fred Schmitt amended the

condition to include that it was due to safety concerns. The motion was seconded by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea

The motion passed unanimously.

The last question considered was whether the Board approved the permit. Ted Silver motioned to approve and was seconded by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea

Ted Silver- yea

Deka Tate- yea

Morgan Herdklotz- yea


The motion passed unanimously.

Chairman Fred Schmitt congratulated the applicant and motioned to close the hearing. His motion was seconded by Ted Silver and the hearing for this SUP was closed.

Before hearing the last application, the Board took a five-minute recess and reconvened at 7:45 p.m.

SUP VU NGUYEN'S ASIAN GRILL

Zoning Administrator Riley Pudney informed the Board that this application was for a new restaurant to go in next to the Scotchman on Tynecastle highway. The location has historically been restaurants but because the special use permit has expired, a new one was required. She informed them that this was an Asian Grill that would mostly be offering takeout. They are required to have 1 parking space per 3 seats and currently are required to have 12 spaces. The applicant has installed a new dumpster with correct screening and drainage that meets the ordinance. She provided the Board with a new parking plan, which showed the new layout of the parking lot and interior seats. Chairman Fred Schmitt asked the applicant if they had any questions regarding the testimony and he did not. Chairman Fred Schmitt asked if any of the Board had questions for the Zoning Administrator. Chairman Fred Schmitt asked if the owner had already gotten sign approval. Zoning Administrator Riley Pudney said he had applied for a sign permit and was told that it was contingent on his approval for the permit. Ted Silver asked if the amount of parking was adequate for the number of seats. She answered that it was and could be adjusted accordingly. Mr. Silver also asked if the applicant had the right to use the parking spots labeled 6-14 through his lease. Neither the Zoning Administrator nor applicant had that answer on hand. He also wanted to make the applicant aware of the parking spot dimensions that were required. With no further questions from the Board, Chairman Fred Schmitt opened the testimony for the applicant. Mr. Vu Nguyen had nothing further to testify and informed the Board that he is willing to comply with whatever is needed. Deka Tate asked the applicant if he had the ability to paint the exterior of the building to make the restaurant more noticeable. He stated that they could change the exterior if needed.



Chairman Fred Schmitt informed the applicant that that was just a suggestion and will not be considered for their decisions.

With no further questions, Chairman Fred Schmitt closed the public comment section of the hearing and directed Attorney Friley to review the questions that were to be considered. Mr. Friley 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. Deka Tate motioned that it was with a second by Morgan Herdklotz. The vote was:

Chairman Fred Schmitt-yea
Ted Silver- yea
Deka Tate- yea
Morgan Herdklotz- yea
The motion passed unanimously.

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


Chairman Fred Schmitt-yea
Ted Silver- yea
Deka Tate- yea
Morgan Herdklotz- yea
The motion passed unanimously.

The third question was whether the Board was going to implement any conditions on the project. Ted Silver motioned for the Condition of having proof that shows that the applicant has the legal right to use the parking spaces in the front and side of the building. The motion was seconded by Chairman Fred Schmitt. The vote was:

Chairman Fred Schmitt-yea
Ted Silver- yea
Deka Tate- yea
Morgan Herdklotz- yea
The motion passed unanimously.

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

Chairman Fred Schmitt-yea
Ted Silver- yea
Deka Tate- yea
Morgan Herdklotz- yea
The motion passed unanimously.



Chairman Fred Schmitt congratulated the applicant and motioned to close the hearing. His motion was seconded by Deka Tate and the hearing for this SUP was closed, and the meeting was adjourned at 8:10 p.m.

Respectfully Submitted,

Riley Pudney, Zoning Administrator