

BANNER ELK TOWN COUNCIL MEETING

July 10, 2023

MINUTES

The Banner Elk Town Council met on Monday, July 10, 2023, at 6:00p.m. in person for Council and staff with public participation. Remote viewing was offered through zoom.

Council Members present: Mayor Brenda Lyerly, Charles VonCanon, Mike Dunn, and Robert Tufts. David Lecka was absent from the meeting.

Staff present: Town Manager Rick Owen, Attorney Johnathan Green, Police Chief Kevin Hodges, and Zoning Administrator Riley Pudney.

Call Meeting to Order

At 6:00 p.m. Mayor Lyerly called the regular Town Council meeting of July 10, 2023, to order.

Pledge of Allegiance

Mayor Lyerly led those in attendance with the Pledge of Allegiance.

Invocation

Council Member Charles VonCanon opened the meeting with prayer.

Public Hearing for Annexation 1858-1971-4914, 1858-2072-8215, 1858-1972-1213

Zoning administrator Riley Pudney reminded the Council that this request was for three parcels across from New River hardware store. She explained that the parcels would be a contiguous annexation to the Apple Orchard development and the property owner wants the request to be contingent on any project approval. With a motion by Councilman Tufts and a second by Councilman VonCanon, the council opened the public hearing. The following comments were made:

- Susy Rein of Crooked Creek addressed the Council. She urged the Council to consider the public input from the land use plan pertaining to annexations. She stated that 65% of property owners support voluntary annexation and 75% support the requirement to be annexed in order to use Town utilities. She also stated that the majority of property owners want a higher standard for residential and commercial building maintenance. She believes while having the plumbers' house gone will benefit the Town, she believes a large commercial development could be worse. She asked the Council to consider amending the agenda to discuss the new zoning ordinance before deciding on the annexation, since the request is contingent on any project approval and asked the Council to table the annexation request.
- Greg Ballard of Beech Mountain believes the property could be beneficial for tax purposes. It would also be a good site for Lee's McRae to get much needed fill dirt. He is concerned on where workers would come from for any future development and where they would stay. He believes there should be a traffic and vacancy study completed. He stated that he is against the annexation and development of the parcel.
- Gonzalo Sanabizia of Sugar Mountain stated that he is in favor of the annexation and development. He believes having a Marriot is a step up from the current lodging options.
- Frank Wimbrush addressed the Council by stating that the Council and the public should trust the staff and boards that created the ordinance and believes they have Banner Elk's best interest in mind. He further explained that any past development was unwanted at first, but ultimately benefited the Town in the long run. He believes that there is nothing in the proposed C-3 district that is harmful to Banner Elk.

With no further comments regarding the annexation, the annexation request public hearing was closed.

Public Hearing for Zoning Ordinance Amendments: Sandwich Board Signs, Parking Setbacks, Stream Setbacks

Zoning Administrator Riley Pudney reminded the Council of the request for three zoning amendments. A change in the parking setback requirement that allows for spaces to be in the setback area, a change to the 50-foot stream buffer that allows for non-permanent structures to be placed there and a change to the sandwich board ordinance that would allow for 2 signs in a combined development.

- Brian Webb with BE Scooped addressed the Council and stated his support for the sandwich board amendment. He stated that when the sign is out, he makes roughly \$800 a day and only \$200 when the sign is not out. He believes this amendment is fair to business owners that do not have road frontage or the ability to have a development sign.
- Fred Schmitt of Crooked Creek asked the Council to consider not amending the stream setback and is concerned of potential spillage and pollution going into the creeks.

With no further comments regarding the ordinance amendments, the public hearing was closed.

Approval of June 12th 2023 Minutes

Mayor Lyerly asked the Council to review and approve the minutes from the June 12th regular meeting. With no changes made, Councilman VonCanon motioned to approve the minutes as presented with a second by Councilman Tufts. All were in favor of the motion.

Approval of Stated Agenda

Mayor Lyerly asked if there was a motion to approve or amend the stated agenda. Mayor Lyerly asked if the Council wanted to consider amending the agenda to hear the tabled discussion before the annexation request. Councilman Dunn motioned to amend the agenda and was seconded by Councilman Tufts, the motion passed unanimously. With the amended agenda Councilman Tufts motioned to approve the agenda and was seconded by Councilman Dunn. The motion passed unanimously.

Public Comment

Mayor Lyerly opened the meeting to comments from the public who were not on the stated agenda. The following individuals spoke:

- Seth Fellman the Hotel Developer addressed the Council. He stated that he has been in the area for over 40 years and has brought his family up here. He has conducted a traffic study and stated he has heard the concern of the public and has lowered the proposed building to four stories. He asked the Council to approve the C-3 district with the only change being from 70 feet to 50 feet.
- Kate Gavenus with Avery County EDC stated that she believes the future of Avery County is hospitality driven and that the area needs a hotel to accommodate the tourists and travelers. She further explained that there is no workforce housing due to the tourists tying up the short-term rentals. She explained that a hotel would increase both the property tax rate and occupancy tax.
- Alisa Ballard from Banner Elk said that Banner Elk has grown but has been able to keep its charm. She asked the Council what they were hoping to achieve with the proposed ordinance and was worried that Banner Elk would become the next Pigeon Forge. She asked the Council to consider what was in the best interests of the Town.
- Hallie Willis, the Banker for the developer, addressed the Council by saying that the proposed hotel project was not going to bring any new people here. She explained that

the people are already here, and a hotel will allow them to stay in the area rather than having to find lodging in Boone or elsewhere. She believes the project would be beneficial to the Town and hopes the Council approves the ordinance with the amended height.

- McNair Tornow, the property owner's attorney briefly spoke stating that he believes the development is good for the Town and does not think the Town or Town staff would recommend anything that is not beneficial for Banner Elk.
- Tina Marmesh of Crooked Creek spoke against any development without further study on the impact it would have on the Town's infrastructure. She is concerned that not enough information has been given to property owners for a decision to be made.
- Susan Brown of Banner Elk addressed the Council by simply asking for the C-3 zoning district to be amended from 70 feet to 50 feet and approved from there.

Zoning Ordinance Amendment: Tabled Commercial Highway District Discussion

Town Manager Rick Owen addressed the Council by explaining that this conversation is a continuation of the one from the last meeting where the Council tabled the discussion and referred it back to the Planning Board. He asked the Council to discuss and provide more feedback to Staff regarding the direction that they want to go in. He also informed the Council that the original proposal was driven by the needs of the developer, and any additional conversation would likely result in a different document that had a more open form of communication with the Town's interest put first.

Councilman VonCanon believed that the Town has put the cart before the horse and believes that the ordinance needs more work and consideration into what the ordinance would look like where it would benefit the Town.

Councilman Tufts asked Zoning Administrator Riley Pudney what the difference between the C-3 district and the C-2 district. She explained that the C-3 came from a scenario where the developer wanted a 70' foot building and the project would not fit in to any other zoning districts. She stated that with the recommendation from the Town Council, the Planning Board and staff worked to create a district where this proposed project could work. It includes a 70' foot tall building, 125-foot front setbacks and only being able to use 12% of the parcel. She explains that C-2 allows for less restrictive permitted growth where C-3 is hard to utilize in other areas besides the targeted parcel. She states that if the Council wants to change the building height, she would start at the C-2 and work from there. Councilman Tufts asked why would they start at C-2 and not C-3? She answered that long term strategic planning would include possibly raising the commercial building height to 40-45 feet, which allows for a more controlled growth for developers needing a few extra feet. Councilman Tufts stated that he is afraid that the C-2 would be able to come to downtown Banner Elk and C-3 requires a larger parcel and would protect downtown from those taller developments. Zoning Administrator Riley Pudney explains that C-2 would not be downtown, that the zoning districts of C-1 and C-1P are for the downtown areas. She asked the Council what their goals were and what they wanted a new district to achieve. She states that if the goal is to have a hotel, there is one that has been permitted in Tynecastle and a 35-foot hotel that has been applied for and in front of their Planning Board in August.

Councilman Tufts states that he would like to see staff look at the C-2 district and how we could make it accommodate larger buildings. He believes that any changes should not exceed four stories in height. Councilman Dunn further states that he does not think the Town should create new districts for every new project that comes to Town. He believes that the Planning Board and staff should look into amending C-2 to allow for taller buildings around 45 feet in height. Mayor Lyerly informed the Council and the public that Councilman Lecka, who is absent, believes that the threshold should not exceed 48 feet.

Town Manager Rick Owen thanked the Council for their feedback and direction to staff. He further explained that the Town has been in contact with the architect and other hotel developers that have permits in with the Town for next month.

The Council agreed to table the conversation and send it back to the Planning Board with the recommendations that were discussed.

Zoning Ordinance Amendments: Sandwich Board Signs, Parking Setbacks, Stream Setbacks

Zoning Administrator Riley Pudney gave additional information to the Council regarding the three amendments. She explained that the stream setback ordinance will allow for non-permanent structures such as fencing, sheds, dumpsters, and gravel lots to be within the 50-foot setback within the commercial districts. She explained to the Council that the Town did not know where the 50-foot buffer came from or the reasoning behind it. The State requires a 25- or 30-foot setback from the stream banks and this amendment would not allow anything to encroach on those setbacks. Councilman Tufts asked if a dumpster pad is considered a permanent structure. She explained that a concrete pad is not a permanent structure, that a permanent structure would be a deck, or a house.

She explained that the request for the sandwich board sign ordinance will allow for up to two permitted signs in an approved location within a combined development. Councilman Dunn asked if the same owner could have 2 signs or what happens if there are 3 permitted signs. She explained that the property owner would be in charge of determining which signs are to be out and that they have to be permitted. If three signs are out and are all permitted, then the property owner will receive a letter of violation.

Lastly, Zoning Administrator Riley Pudney explained an amendment to the parking setback requirements. The current ordinance does not allow for parking spaces to be in any setback and the Town does not enforce this requirement and asked the Council to amend the ordinance to delete that requirement.

With no further questions, Councilman VonCanon motioned to approve the three amendments and was seconded by Councilman Dunn. The motion passed unanimously.

Annexation Request 1858-1971-4914, 1858-2072-8215, 1858-1972-1213

Mayor Lyerly reminded the Council that the property owner did not want the annexation without project approval. Town Manager Rick Owen stated that it is staff's recommendation to table the request for three months to see where the process is for any development. He explained that the request is good for 24 months and could be revisited at a later date.

Councilman Dunn asked if the parcels as a whole, was a contiguous annexation. Town Manager Rick Owen answered that the three parcels combined as a whole were contiguous to Apple Orchard. The Council decided to table the request to a later date.

Call for Public Hearing, Zoning Ordinance Use Table Amendments

Zoning Administrator Riley Pudney introduced a change to the use table. She explained that there are some uses that are permitted outright and do not require to come to the Planning Board or Board of Adjustment. She stated that there are uses, such as a hotel, that need stringent review from both Boards and has recommended changes to change specific uses from permitted use to a special use. She asked the Council to call for a public hearing to have these changes amended.

With no questions or comments, Councilman Tufts motioned to call for a public hearing and was seconded by Councilman VonCanon.

Annexation Request Eagles Nest Holdings: 1849-00-93-8430

Zoning Administrator Riley Pudney explained that she received a contagious annexation request for a 13.6-acre parcel next to The Vistas. The parcel is requesting Town water and sewer for a future development. She asked the Council to call for the Clerk to certify the petition for their next meeting. With no comments or questions, Councilman Tufts motioned to have the clerk certify the petition and was seconded by Councilman Dunn. The motion passed unanimously.

ABC Board Member Appointment

Town Manager Rick Owen informed the Council that he has received a request for Ron Corn to be the new ABC alternate member for the Town. He explained that he was recommended by Donna Dicks and believes Mr. Corn has the Town's interest in mind and would be a good alternate member. Councilman Tufts addressed the public inviting them to apply to be on other Boards. Town Manager Rick Owen clarified that any full-time resident in the Town limits or ETJ can apply to be on a Board.

With no further comments or questions, Councilman VonCanon motioned to appoint Ron Corn to the Board and was seconded by Councilman Dunn. The motion passed unanimously.

Manager Updates

Town manager Rick Owen provided the Council with staff reports and the following updates:

-The Town had called for RFQ's for the water and sewer projects and received 3 responses. He will have a recommendation to the Council by their next meeting.

-He informed the Council that the July Art on The Green show was a success and had a great turn out.

-He informed the Council that the bids for the Historic School project will be going out in the next couple of weeks. He also stated that the LGC will not loan money for a property that the Town does not own and does not accept the Town's renegotiated terms with the County on the remaining payments on the property. He explained that the Town will need to make the full payments rather than the newly agreed payments. He provided a budget amendment with the additional \$41, 666 to be paid for this year's payment. Councilman VonCanon motioned to approve the amendment and was seconded by Councilman Tufts. The motion passed unanimously.

Other Business

There was no other business stated.

With no further comments or questions, Councilman Tufts motioned to adjourn and was seconded by Councilman Dunn. The motion passed unanimously, and the meeting was adjourned at 7:50 p.m.

Mayor Brenda Lyerly

Attested

Approved: