

**BANNER ELK TOWN COUNCIL MEETING
SEPTEMBER 11, 2023
MINUTES**

The Banner Elk Town Council met on Monday, September 11, 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, Robert Tufts and, David Lecka

Staff present: Town Manager Rick Owen, Attorney Four Eggers, Public Service Director Justin Hodges, and Zoning Administrator Riley Pudney.

Call Meeting to Order

At 6:00 p.m. Mayor Lyerly called the regular Town Council meeting of September 11, 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 C-3 Zoning District

Mayor Lyerly opened the public hearing with a motion by Councilman Tufts and second by Councilman Dunn. Councilman VonCanon briefly stated that he was thankful for the Planning Board in making changes based on the recommendations from the Council. Zoning Administrator Riley Pudney addressed the Council and members of the public with the proposed changes to the document. She listed the following changes:

1. Section 152.027 (Q) was updated to include a 1.5-mile radius from the stoplight where the C-3 zone cannot exist. The Council originally recommended a 1-mile radius, but after review of parcels that could be affected, the 1.5-mile radius was more protective of the downtown area and its outskirts. The ordinance was also changed to the “C-3 State Highway 184/194 Commercial District” to reduce any confusion on the definition.
2. Section 152.028(A) references the uses allowed in the district as they are defined in the Use Table.
3. Section 152.036 (A) 1. Changes the height of the building to a maximum height of 50 feet and deleted the additional height allotment. The changes were made on recommendation from the Council.
4. Section 152.036 (A) 8. The setbacks were pushed further back to 300 feet. This was done after arial maps were provided that showed how close to the road the current 125-foot setbacks were. The Board felt that it was a severe safety concern to have buildings, pedestrians, and traffic that close to the road and planned for any future turn lanes and road widening. 300 feet is where the Board felt that even with turn lanes and widening, the business and pedestrians would not be in danger.
5. Section 152.036 (A) 9. The Board determined that the height of the adjoining hillside should be 40 feet since the maximum height of the building was lowered to 50 feet.
6. Section 152.036 (A) 10. Similar to item 9, the Board changed the ratio from 200 feet to 140 feet and it was determined by the height of the building. This allows for the hillside to be on the same parcel and within 140 feet of the back of the building.

The following comments were made by the public:

- Tina Marmesh from Crooked Creek wanted to know how the proposed C-3 district affected the existing infrastructure in Town. She has concerns over the water and sewer capacity along with the possible increase of police and fire coverage. She lastly wanted the Council to address why the C-3 zoning was a discussion topic at all.
- Nicole Lamonte of Banner Elk echoed the concerns of Ms. Marmesh in asking why a new district is needed and how any new uses would impact the Town.
- Bob Mayland of Crooked Creek addressed the Council by stating he is against the C-3 zoning district and the possible annexation of the “Plumber’s House”. He believes that the Town could use Avery County’s existing 40-foot building height requirement while providing Town services to a project without annexation. He asked the Council why their proposal was 50-feet when Avery County has an existing ordinance of 40-feet. He also asked if the Town was capable of reviewing building plans and performing inspections on buildings that would exist in the C-3 district.
- Len Mullhall of Crooked Creek asked the Council why C-3 was created and is being discussed. He believes that the existing C-2 ordinance accomplishes what the Town wants.
- Pat Willinsky and Roger Rulifson of Crooked Creek shared similar concerns over the creation of a new district to allow for 50-foot buildings. They believe that the Town should either remain at 35-feet or adopt the Avery County height ordinance of 40-feet. Mrs. Willinsky asked why there is a need for C-3 as Hampton Inn can be built to meet the existing ordinance requirements.
- Susy Rein of Crook Creek addressed the Council by stating that she is opposed to the C-3 district. She believes that things can be accomplished within the existing districts. She explained that if the Council were to move forward, that she recommends consulting a Planning Engineer for expertise, require a water and sewer capacity study and consider the emergency personnel opinions regarding future growth.
- Joel Owen, the Chairman of the Planning Board, addressed the Council and members of the public by explaining that the C-3 district that is being proposed is much more restrictive then the Avery County requirements and would be very difficult for any developer to actually build on. He stated that the Town should have the option to allow for taller buildings while also controlling and requiring more green space, less density, and larger setbacks.
- Robert Marmesh of Crooked Creek briefly stated that if development is going to happen, the Town should be the ones to control it. He believes C-3 will allow the Town to have more control over future development on the outskirts of Town.
- Wayne Huot of Crooked Creek stated that the restrictions in the C-3 ordinance make it almost economically impossible for any developer to consider a project, and that it protects the Town from unwanted growth.

With no other comments from the Public, Councilman Tufts addressed the concerns by explaining that growth will occur on the corridors coming into Town and that the Council believes that the growth needs to be responsible and managed properly. He stated that there might be a need for a four-story building going out of Town and that this ordinance would allow for that if all of the other restrictions were met. Attorney Four Eggers briefly explained that if the C-3 district were approved, any parcel wanting that designation would have to come to the Planning Board and then Town Council to receive rezoning approval.

With no further comments, the public hearing was closed.

The were no individuals who spoke for this public hearing.

Public Hearing for Proposed Financing and Construction Project for Historic Banner Elk School

Mayor Lyerly entered the public hearing with a motion by Councilman Tufts and a second by Councilman Dunn.

Town Manager Rick Owen began the public hearing by giving an overview of the project. He explained that the site plan development for the Historic School will require the Town to borrow funds to complete. The project is estimated to cost roughly \$2 million and the Town plans to fund half of the anticipated cost through current reserves and TDA contributions. He explained that the \$1 million loan will be repaid over a ten-year period with a 4.58% interest rate. He stated that the project will preserve and improve the green space and open field in front of the school while improving the drainage, improve and increase public parking and create pedestrian connections through the property to the park and Town Hall. The following comments were made by the public:

- Bob Mayland from Crooked Creek stated his support for the project and believes the site plan and vision look great and will benefit the Town.
- Fred Schmitt of Crooked Creek also stated his support and endorses the project, believing that it will help downtown Banner Elk to continue to grow.
- Tom McMurray, a TDA member, is in favor of the project, stating that it will greatly improve the need for public parking while also keeping the green space in front of the school. He believes the project will serve the community well.
- Ted Silver of Crooked Creek read a statement to the Council showing his support. He stated that the project provides much needed parking, car charging stations, the potential for E-bike stations, bike racks and the opportunity for pedestrian connectivity. He stated that this is a responsible project by the Town that will help benefit existing businesses and provide parking for future ones.
- Justin Chapman of Ensemble Stage addressed the Council by showing his support for the project. He stated that Ensemble Stage is an anchor business in the Historic School and that this project will greatly improve their patron experience and hopefully draw in new visitors.

With no further comments from the public, the public hearing was closed.

Approval of August 14th and August 24th 2023 Minutes

Mayor Lyerly asked the Council to review and approve the minutes from the August 14th regular meeting. With no changes made, Councilman VonCanon motioned to approve the minutes as presented with a second by Councilman Dunn. All were in favor of the motion. Mayor Lyerly then asked the Council to review and approve the minutes from the August 24th workshop. With no changes made, Councilman Tufts motioned to approve the minutes as presented with a second by Councilman Dunn. All were in favor of the motion.

Approval of Stated Agenda

Mayor Lyerly asked if there was a motion to approve the stated agenda. Councilman Lecka motioned to approve the agenda as stated and was seconded by Councilman Dunn. The motion passed unanimously.

Public Comment

There were no individuals signed up for public comment.

C-3 Zoning District

Mayor Lyerly opened the discussion for the proposed C-3 district. Councilman Tufts began by thanking the public for their comments and opinions. He stated that the Council will continue to take their concerns into consideration and will make the best decision for Banner Elk.

Councilman Lecka began by saying that people will continue to come to Banner Elk and the Town will continue to grow. He believes the Town has been responsible in that growth and will continue to be responsible for future growth. He stated that he believes the Council is not prepared to vote on the matter yet.

Mayor Lyerly stated that she believes the current C-3 district is a good proposal and is very stringent and protective to the Town and any potential future growth. She thanked the Planning Board for all of their hard work.

Councilman Dunn believes that there are uses that can arise in the C-3 district that could be beneficial to the Town such as a hospital. He believes that the proposed C-3 district could allow for future beneficial buildings and uses while still being protective enough to limit tall buildings and unwanted consequences.

Councilman VonCanon echoed the comments of his fellow Council and believes that they are moving in the right direction.

With no further comments, Councilman Lecka motioned to table the discussion until their October meeting. The motion was seconded by Councilman Dunn and passed unanimously.

Annexation Request for Parcel 1849-00-93-8430

Zoning Administrator Riley Pudney explained again that this request was for a contagious annexation for a 13.6-acre parcel next to The Vistas. The parcel is requesting Town water and sewer for a future development. Town Manager Owen stated that he believes more information needs to be gathered before the Town approves the annexation such as development plans and the potential for a well site. He recommended the Council to table the discussion until their October meeting so that the developer could provide additional information.

With no further questions or comments, Councilman VonCanon motioned to table the discussion until their October meeting and was seconded by Councilman Dunn. The motion passed unanimously.

Annexation Request 1858-1552-2667

Zoning Administrator Riley Pudney informed the Council that this request was for a non-contiguous annexation of roughly 13 acres next to the Lowe's Hardware. She explained that the site would potentially be a hotel and would need Town water and sewer. She also informed the Council that the Town was working with the developer to have a well site on the property. She asked that the Council call for a public hearing if they wish to move forward with the request.

With no comments or questions, Councilman Tufts motioned to have a public hearing and was seconded by Councilman Dunn. The motion passed unanimously.

Review Bids for Site Plan-Historic Banner Elk School

Town Manager Rick Owen addressed the Council by stating that they are not ready to review the bids. He explained that the original process only brought two of the required three bids, and that the Town had to readvertise the project. The advertisement will be in the paper on Wednesday the 13th and the Bids will be accepted on Thursday the 21st in the morning. He asked Council to recess this meeting until the 21st so that they can review and select a bid to meet the LGC deadline of October 3rd. The Council agreed to meet Thursday the 21st at 5:30 to review the bids.

Consider Financing Agreement

Town manager Rick Owen stated that this item goes along with the Bid reviews and cannot be voted on until a bid is selected. He shared a Resolution Approving Financing Terms with the Council. This resolution will approve the Town entering into a financing agreement with First National Bank for a \$1,000,000.00 loan at 4.58% for a term of 10 years as proposed in a revised summary 9/1/2023. He asked the Council to consider this item in their Thursday meeting as well.

Manager Updates

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

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

-Piedmont Natural Gas work is completed, and traffic will return to normal.

-He stated that he and Attorney Eggers were finishing the McGill contract for the water and sewer projects and will have that to them by their next meeting.

Other Business

Mayor Lyerly thanked Town Manager Rick Owen and staff for their hard work on the Art on the Green shows.

With no further comments or questions, Councilman Tufts motioned to recess the meeting until the 21st and was seconded by Councilman Dunn. The motion passed unanimously, and the meeting was recessed at 7:40 p.m.

THURSDAY SEPTEMBER 21st RECONVENED COUNCIL MEETING

The Banner Elk Town Council met on Thursday, September 21, 2023, at 5:30p.m. in person for Council, staff, and public participation.

Council Members present: Mayor Brenda Lyerly, Charles VonCanon, Mike Dunn, Robert Tufts and, David Lecka

Staff present: Town Manager Rick Owen on the phone, Attorney Four Eggers, and Zoning Administrator Riley Pudney.

Call Meeting to Order

At 5:30 p.m. Mayor Lyerly reconvened the Town Council meeting of September 11, 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.

Review Bids for Site Plan-Historic Banner Elk School

Attorney Four Eggers explained to the Council that during the initial bidding process, the Town only received 2 of the required 3 bids. The Town readvertised the project and received 1 bid

from M&M Construction for \$1,131,000. After review, the Engineer and Town Attorney believe it is a responsible bid and recommend the Town to accept and move forward with a contract.

Councilman VonCanon motioned to accept the bid contingent on an accepted contract drafted by Attorney Eggers and was seconded by Councilman Lecka. The motion passed unanimously.

Consider Financing Agreement

Attorney Eggers explained that this Resolution Approving Financing Terms will approve the Town entering into a financing agreement with First National Bank for a \$1,000,000.00 loan at 4.58% for a term of 10 years as proposed in a revised summary 9/1/2023. This resolution will also be sent to the LGC for their application approval for the project.

With no questions, Councilman Dunn motioned to accept the agreement and was seconded by Councilman Tufts. The motion passed unanimously.

Excerpt Minutes of Public Hearing on Proposed Financing and Construction Project

Attorney Eggers explained that the minutes from the last meeting that pertained to the public hearing on the school project need to be included in the application to the LGC. He stated that the minutes presented to the Council were solely of the public hearing regarding the financing and construction project of the historic school.

With no questions, Councilman Lecka motioned to approve the excerpt minutes and was seconded by Councilman VonCanon. The motion passed unanimously.

With no further business, Councilman VonCanon motioned to adjourn the meeting and was seconded by Councilman Tufts. The motion passed unanimously, and the meeting was adjourned at 5:42 pm.

Approved: _____
Mayor Brenda Lyerly

Attested: _____
Town Clerk, Riley Pudney