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BANNER ELK PLANNING BOARD AND LAND USE COMMITTEE
MONDAY, 07 MAY 2012
MINUTES

Planning Board Members: Allen Bolick, John Lavelle, Joel Owen, Dawn Sellars, Ann Swinkola, Penny VonCanon

Land Use Committee Members: Dr. Barry Buxton, Steve Chandler, Joe H. Perry

Staff Present: Cheryl Buchanan, Rick Owen

Others Present: David Bixby, Bret Gardella, Matthew Hundley, Ted Silver, Charlie B. VonCanon

Chairman Joel Owen called the meeting to order at 7:00 pm and opened with the pledge of allegiance to the flag.

Consideration of the March 2012 Planning Board Minutes

With no changes noted, Penny VonCanon moved to approve the minutes as submitted. Allen Bolick seconded. The vote was unanimous and the motion carried.

Chairman Owen called the joint meeting of the Planning Board and the Land Use Committee to order.

Consideration of the Banner Elk Land Use Plan

Chairman Owen deferred to Zoning Officer Cheryl Buchanan to open the discussion for the proposed draft of the Land Use Plan. Ms. Buchanan told the Board that the plan was in a final PDF format complete with the tables, charts, and maps. Ms. Buchanan said that she recognized that there may still be a few text changes and that the document as a whole was a lot to digest at once, but that this document was important to Banner Elk's planning efforts. Ms. Buchanan noted that Table 31 of Section 2.0 is not complete, that the Census data for the county, state and nation had just been released, but is not available for the municipalities. Ann Swinkola asked Ms. Buchanan just how important this document was. Ms. Buchanan said it was the foundation for all the other plans we have as well as the zoning ordinance. That this document would be the legal standing for any position the Town may take in the future, thus the importance of the magnitude of subjects it covers.

Steve Chandler moved to send the draft of the completed plan to the Town Council for consideration. Joe H. Perry seconded. The vote was unanimous and the motion carried.

Conditional Use Permit (CUP) and Variance Request – David Bixby

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Ms. Buchanan introduced Mr. Bixby and reviewed the request. Mr. Bixby is purchasing a current business, aka WRAPS, and wants to add a second auto sales. Mr. Bixby is leasing the property from Trish Daniels. Initially, the first request was for a CUP and while Ms. Buchanan was looking over the application, she discovered that there was an existing 100-foot NCDOT right-of-way, 50 feet from the centerline. The ordinance states in Section 402.1 (c) that parking is not allowed in any public right-of-way and in this matter, the NCDOT r-o-w runs nearly to the front of the building, leaving no room for parking anywhere on the property. The restriction of the ordinance, if literally applied, would deny the property owner use of their property. Because of this new information and the possibility that the property could be rendered useless, the applicant/property owner then became eligible for a variance, as he is able to meet all seven of the conditions imposed by the nature of a variance.

Ms. Buchanan suggested the board review the CUP first (see attached review list.) Mr. Bixby agreed to bring all areas of the property into conformance, such as signage, landscaping, and lighting. Mr. Bixby told the board that the DMV requires an additional signs at the entrance to the auto sales office. There had been some prior discussion about filling in the ditch to the right of the building, but Penny VonCanon said this was a really good stormwater measure and it should stay due to its functionality. Mr. Bixby said he was not pushing to have it filled in. Mrs. VonCanon asked if Mr. Bixby was planning on paving the parking lot. Mr. Bixby replied that he was not at this time, but may consider it later on. Mrs. VonCanon said that if he were not going to pave it, he would need some permanent stops to clarify where parking was located. It was also explained to Mr. Bixby that it was important to maintain a clear sight triangle, 10 feet from the edge of the road and 70 feet up and down the road, for people to be able to see in order to pull out of the parking lot. Penny VonCanon also asked Mr. Bixby to make sure that he maintains the ditch line and keep it free of litter. Mr. Bixby was unclear as to whose responsibility that was, he felt like that would be the property owners responsibility. Town Manager Rick Owen further clarified by stating that clearly, it was the property owner's responsibility, and unless it is spelled out in Mr. Bixby's lease, the board could not make it his responsibility.

As for the variance, the board reviewed the seven items listed in the ordinance under a variance, and found that Mr. Bixby qualified for a variance.

Penny VonCanon moved to recommend approval of the CUP with the following conditions:

1. 11 parking spaces will be defined with concrete blocks or something comparable like railroad ties;
2. All signs brought into conformance;
3. Lighting meets the ordinance.

Dawn Sellars seconded. The vote was unanimous and the motion carried.

Allen Bolick moved to recommend approval of the variance, first of all based upon the above CUP and second, based on the review of the seven items that require compliance for a variance to be issued. Penny VonCanon seconded. The vote was unanimous and the motion carried.

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Zoning Ordinance Text Change – Incubators

Ms. Buchanan began by stating that in order to address the incubator in the ordinance, it would need to be clearly defined. The Town's Attorney reviewed the proposed text and Ms. Buchanan had made changes based upon his recommendation. The proposed text changes to the ordinance include a definition for Section 200, an entry into the Table of Uses in 308-1, and some defined parameters in the newly created Section 922 (see attached.)

Avery County Economic Development Director Bret Gardella stated that he was not happy about the list of uses; that he did not want to have to address future conditional uses as they come up and that he understood that the list of permitted uses, even though they were being expanded, could not be all-inclusive. Mr. Gardella suggested adding massage therapist to the list of personal care services and used this as an example of how this list could change from time to time. Ms. Buchanan then went over the material once more so that everyone could see how each portion fit into the existing ordinance.

Penny VonCanon moved to recommend approval of the text changes to the ordinance for a definition for Section 200 and to request Town Council call for a public hearing. Dawn Sellars seconded. The vote was unanimous and the motion carried.

Penny VonCanon moved to recommend approval of the text changes to Table 308-1 to add an incubator and to make it a conditional use and to request Town Council call for a public hearing. Allen Bolick seconded. The vote was unanimous and the motion carried.

Penny Von Canon moved to recommend approval of the text changes to add Section 922 to the ordinance with the addition of a massage therapist under personal care services and to request Town Council call for a public hearing. Ann Swinkola seconded. The vote was unanimous and the motion carried.

In summary, a new definition for an incubator for Section 200, an addition of an incubator as an entry in Table 308-1 as conditional, and a new section in the conditional use standards, Section 922 Incubators with subsections 1- 13 being recommended to the Town Council as a text amendment to the ordinance. This recommendation requires a public hearing before Town Council can vote on the amendment.

Discussion on Solar, Wind, and Hydroelectric Power Ordinance

Ms. Buchanan advised the board that Town Council had passed a moratorium on these types of energy sources until the town has had time to craft an ordinance addressing the town's concerns regarding these types of requests. Her request tonight was to get an idea of how the board feels about residential and commercial alternative sources of energy, more specifically, solar, wind and hydroelectric. Ms. Buchanan cited some examples of local areas and how they handle these types of energy sources. None of the local regulations address hydroelectric and more than likely it would take a larger stream than the Elk River to be able to generate sufficient power. Boone only ensures that the solar panels do not exceed their height restrictions and can be buffered. Wind energy sources are few and are not strictly regulated. Hendersonville does not allow any solar or wind

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devices in the town limits, only in the county. Asheville allows them but does not regulate them. Granville County allows solar farms but only in their agricultural zoning districts. As you can see, there are not a lot of proactive endeavors addressing these alternative energy sources. Ms. Buchanan also reviewed the statutory protection of residential use of solar power for the board to consider as they outline some parameters to work within.

Penny VonCanon stated that she felt we have two responsibilities; one to be responsible about clean energy and the second is to protect our viewshed. Ms. Buchanan stated that she was concerned about being able to buffer a solar farm placed on a steep hillside and was grateful that the ordinance allows for protecting the viewshed. Allen Bolick brought up the issue of locations for wind power and the need to consider the “fall zone”. Mr. Bolick referred to the presentation by Dr. Scanlin from Appalachian State University (ASU) in the February 2012 meeting. Mr. Bolick also suggested that we might want to consider prohibiting any type of this activity within a radius distance from the center of town, for example, 1 mile.

Allen Bolick commented that the Great Train Robbery project turned out to be a good project and he would not be opposed to seeing more flat roofs take advantage of this type of additional use, but they he would not want to see large solar farms used for harvesting solar energy on Banner Elk’s hillsides, that one of the Land Use Plan’s goals was to protect green space. He cautioned that instead of being against these types of activities, perhaps restrictive would be a better word choice. Mr. Bolick offered that perhaps there could be some sort of “benefit” for developments whose design included alternative energy in a creative/protective sort of way. Ms. Buchanan thanked the board for their guiding comments and said she would begin working on an ordinance for their review.

Chairman Joel Owen asked if there was any other business before the board? Ms. Buchanan said she had one more item – trees. She cited a situation this week in which a development in the ETJ had a homeowner that cut down or topped all their trees. The current ordinance addresses new development, and only existing trees that are on the protected list. Chairman Owen said he would like to see an ordinance that is more restrictive, i.e. Beech Mountain’s tree ordinance. Ms. Buchanan said she hoped to have some more guidelines for them to choose from at the next meeting.

With no further business, Penny VonCanon moved to adjourn. Ann Swinkola seconded. All were in agreement and the meeting came to a close.

Respectfully submitted,
Cheryl Buchanan, Secretary to the Planning Board