

BANNER ELK PLANNING BOARD MEETING  
TUESDAY, 02 SEPTEMBER 2014  
MINUTES

Members Present: Allen Bolick, BR Hoffman, Will Mauney, Joel Owen, and Penny VonCanon

Staff Present: Zoning Administrator Cheryl Buchanan

Others Present: Angelo Accetturo, Heather Bender, Angelo Bianco, Rebekah Bolick, Dave Coutts, William Berry, Dick Evans, Sarah Evans, Tony Harrow, Janice Hall, Landon Hall, Mr. Hoffman, Kim Hyatt, Ron Kent, Brenda Lyerly, Dave Ramsey, Laura Shomaker, Ted Silver, Charlie B. VonCanon, Jr., John Wright

Chairman Joel Owen called the meeting to order at 6:05 pm. The Chairman noted that there was a quorum present.

Consideration of the July Minutes

Chairman Owen asked if anyone had changes to the minutes from July 7, 2014 and July 8, 2014. Penny VonCanon noted that one statement had been made that she wasn't sure who made it but the comment about the Highlands Union Bank being an eyesore was not a point, the point was that their sign was out of compliance and the Board is not in the habit of making "willy nilly" comments. Other than that, Penny VonCanon made a motion to approve the minutes. Allen Bolick seconded. The vote was unanimous and the minutes were approved.

Welcome New Board Member – BR Hoffman

The Chairman welcomed newest member BR Hoffman and asked the Zoning Administrator Cheryl Buchanan to introduce her. Ms. Buchanan told the Board that Mrs. Hoffman had lived and worked many years in the Blowing Rock area as a realtor. She and her husband are now fulltime residents of Banner Elk, residing in Bear Run, and that Mrs. Hoffman has wasted no time becoming involved in our community. Chairman Owen administered the oath of office and again, welcomed Mrs. Hoffman to the Board.

Request from Town Council to Reconsider the Rezoning Request by Elk Creek

Chairman Owen stated that Town Council has asked for a second consideration of the request for the rezoning of Elk Creek. Chairman Owen asked Allen Bolick if he would like to share the Council's thoughts with the Board. Mr. Bolick said that everyone has the same concerns and there are two developments on either side that will be affected by what happens. Mr. Bolick said that maybe there wasn't an error and the Town didn't want the multifamily there in the first place.

Chairman Owen said that this property is surrounded with so many different zonings and this is what he finds most difficult. BR Hoffman said that she would like to make a comment and gave an analogy of buying a new car but not being allowed to see it until you sign the papers.

Zoning Administrator Cheryl Buchanan said that she had written a memo explaining the differences between zoning and rezoning. Rezoning is a change in the classification and uses of the land. The Zoning Ordinance is the tool that empowers the town to make sure that all the other concerns are covered during development. To rezone a piece of property based on a set of plans that have not been approved would not hold the developer to those plans specifically. Basically, once the property is rezoned, a developer can change plans to anything in that zoning district. To hold a developer to something specific in return for zoning runs terribly close to contract zoning, which is illegal in North Carolina. Ms. Buchanan also mentioned that not allowing a specific zoning but allowing it on a comparable property is also dangerously close to illegal. Joel Owen said that it was also not a guarantee that you will get it. Ms. Buchanan agreed and said that density is not an issue, that there were so many impact fees that were paid for and no more will be authorized; so there is a finite number of taps and that's it. Ms. Buchanan also went on to say that the zoning was not a mistake; that the Town knew that the previous developers intended to build multifamily and that was what the permit was issued for. That's the reason that there are four units already built in Elk Creek and they have been there for at least 5 or 6 years.

Chairman Owen said that he agrees with what was done before and will probably vote for it again. Councilman Bolick asked if the former plan is a lot like the new proposed plans. Ms. Buchanan answered somewhat, that the units were to be in the bottom and up the sides of the road. Mr. Bolick asked if they had planned to put units in the wetlands before. Ms. Buchanan said there were no wetlands before that a lot of the trees were chopped up and then the mulch was left to rot in the ground, which caused the wetlands. Mr. Bolick commented that now they plan to build in the wetlands. Ms. Buchanan said yes, that they had obtained a 404 permit from the Army Corps of Engineers which will allow them to mitigate the wetlands. The mitigation includes carrying out the old dirt and replacing it with more compact dirt suitable for building. Mr. Bolick referred to a previous version of plans and the units being built on stilts. Ms. Buchanan said she wasn't sure of that, that she thought this had changed, to which Mr. Accetturo said that was correct, there would be no stilts. Mr. Bolick said that was his concern; that he doesn't know what is going to take place. Ms. Buchanan said that is the whole point, that's what the zoning ordinance is for, to work out all those details before the plans are approved. Chairman Owen said that's putting a lot of faith in our zoning ordinance.

Ms. Buchanan said that she has one more issue that needs attention. She expressed concern for Mr. Mauney voting on an issue that he is so closely and so openly involved in. When Mr. Mauney came into town hall to get information on a protest petition, he stated he could get signatures on the petition that day, I realized that he might not be able to remove himself far enough to make an unbiased decision based on the town's ordinances. Chairman Owen said that he could see the reasoning on this but they might not be able to vote without Mr. Mauney. Zoning Administrator Buchanan said that the Town's Attorney believes four can vote as long as the topic passes by super majority. Several in the audience asked to speak and the Chairman gave them some brief time.

Mr. William Berry spoke against the rezoning. Mr. Berry lives in Mariposa.

Mr. Ron Kent spoke in favor of the project as the previous developer and as a realtor that can confirm that the market is supporting multifamily right now.

Mr. Dick Evans spoke against the rezoning and has concerns about storm water runoff. Mr. Evans stated that Ms. Buchanan said to him that the city could be walking on thin ice and be open to a lawsuit if they didn't approve this but he'd like to see what the Town's lawyer says about this.

Penny VonCanon said that we've talked about the zoning ordinance, about plans or no plans, but we haven't spoken about what this is all guided by and that's the Land Use Plan. Mrs. VonCanon said she had been on the planning board since 2005 and remembers all this when it happened. Mrs. VonCanon reviewed the history of development in Banner Elk and how hard the Planning Board has worked on defining the zoning ordinance and that all the members are very passionate about the ordinance. Mrs. VonCanon said she had made a list of the concerns during the Public Hearing and she has answers for everyone. She referred to the Steep Slope Map and how that relates to density. As for crime and tranquility, Mrs. VonCanon said that they live in the center of Banner Elk and if there's a problem just pick the phone up and call the police department. Mrs. VonCanon said that the Bann Elk Police Department is a very efficient organization and will be happy to help anyone. Light pollution, blocking the view of Beech Mountain, traffic control, and if you look at Banner Elk as a whole, you will see businesses downtown, then as you spread out housing should be gradually spreading out. Mrs. VonCanon said there has to be a place for all these scenarios. Mrs. VonCanon said she's not anyone's side and that this must fit into a plan.

Mrs. Hoffman said that the increase of traffic should be of concern for the town. Ms. Buchanan said the same could be said for Bear Run since it has many empty single family lots that will also have impact once developed.

Chairman Owen said that this board is pretty clear as to what they can do on this level.

Mr. Angelo Accetturo is the developer and part owner of the property in question and is requesting the rezoning. Mr. Accetturo brought to the Board a recording from Mr. Mauney and Mr. Accetturo would like to play it for the board. Mr. Accetturo stated that he believes Mr. Mauney should resign. Chairman Owen said he would prefer not to play it since Mr. Mauney has already been recused from a vote on this topic. Mr. Accetturo says that Mr. Mauney should be heard by the Board and he should resign, that he is a poor representative of the Town. Chairman Owen suggested that the meeting take a short break and the members can go to the back and make their decision.

The Chairman called the meeting back to order. It was decided that the recording would not be played before the room tonight. Chairman Owen asked if there were any more questions or conversation before a vote on a recommendation. Penny VonCanon between Elk Creek's development and now, several other developments have come along and the ordinances are now much stricter. The ZO has been tightened up considerably.

Penny VonCanon moved that based on the LUP and the surrounding properties that this property be rezoned R-2. Joel Owen seconded. The vote was two for (Joel Owen and Penny VonCanon) and two against (Allen Bolick and BR Hoffman). No majority vote but Penny VonCanon said that the Planning Board is voting to suggest that Town Council rezone the property, even though it did not pass.

#### Blue Ridge Realty and Investments – Sign Approval

Sarah Evans and Laura Shomaker from Appalachian Signs were present to represent this request. The signs are proposed to be mostly black and white. Ms. Buchanan asked about the yellow in the blue sign to which Ms. Evans said it is called “bananas”, which might be too bright. Ms. Shomaker said that she had noted the website for the century colors and will make sure they match. Penny VonCanon noted that the wall sign is 2.5 feet too large and it will need to be shortened. Ms. Evans said she had no problem doing this that the sign needs to be refinished anyway.

Allen Bolick moved to approve the sign permit as long as the sizes and colors are in compliance with the ordinance. BR Hoffman seconded. The vote was unanimous and the motion carried.

#### Changes to the Landscaping Plan for Lees McRae College’s Nursing School

Ms. Buchanan said that the first consideration is the relocation of two of the benches. The bench at the back of the property is proposed to be moved to a parallel position along Highway 194 and the bench at the right front end to be turned parallel to Maple Court. The Board’s feeling was that the one along the back could be brought forward and placed between the steps and that the right front end position should remain parallel to Highway 194 and not run parallel to Maple Court. Joel Owen said not to tear out the other foundations for the benches and the Town will find someone to buy a bench.

Additionally, Ms. Buchanan noted that she had received some complaints to the recent plantings. It is her understanding that the first plan was just a guide and that a second final plan would be submitted to this office for final approval. Ms. Buchanan reviewed the current landscaping that is being put in to illustrate that some of the current newly planted items were not on the previous plans. Allen Bolick asked how we might get them to look at it. Joel Owen said the landscape architect has drawn it and we’re getting run over like we always do. Penny VonCanon noted that the landscape architect is from South Carolina and wanted to know if he came up with this plan. Chairman Owen answered no, it was someone local. BR Hoffman said she was a Master Planter and that she thinks it is a not a good plan. Ms. Buchanan said she had no problem calling these people and tell them that we do not approve the changes and would like to have it put back like it was originally supposed to be. Chairman Owen said he had received numerous complaints on what has been installed already. Ms. Buchanan stated that they have planted the plants before they asked for the approval to change and she has no problem telling them they cannot continue. Joel Owen said that several people at a table might be able to come to a better determination about what needs to be put on the plan.

Allen Bolick asked where the clock tower would be going. Ms. Buchanan pointed to the area where it has already been constructed. Joel Owen suggested that landscaping boulders in front with some landscaping in them would fit well in that area. Ms. Buchanan said that was a good idea and she will be mentioning it to Mr. Gray when she calls him tomorrow.

*Moon Valley Local Harvest – Proposal*

Zoning Administrator Buchanan stated that the Halls had bought this property on Orchard Lane at an auction and were looking at putting a barn type structure on the parcel and using the building for an indoor farmers market. Mr. Hall has connections to a lot of people who grow locally and would like to promote that concept. Additionally, the Halls would like to put in a snack bar that would serve baked goods and possibly sandwiches to go. Currently they are not planning on having seated dining.

Chairman Owen commented that this looks like a much better use for the property than what was designated to go there before it fell through the cracks. Joel Owen also mentioned that the Planning Board might need to look at signage along the Highway 184 corridor there since it could possibly get junky with too many signs.

*Mt. Calvary Baptist Church – Off Premise Signs*

Ms. Buchanan said that she had been approached about putting some off premise signs along Highway 194 advertising the “Christ’s Tomb” site. Ms. Buchanan did not feel that the ordinance would allow this since the church already has exposure along a major thoroughfare and off-premise signs are for businesses or attractions not located along a major thoroughfare. Ms. Buchanan had suggested that a two-sided sign in front of the tomb across the street with an arrow might be able to get people’s attention if the rather large structure was unable to do that. The Board could think of no other solution for this request.

With no further business, Allen Bolick motioned to adjourn. Penny VonCanon seconded. All were in agreement and the meeting came to a close.

Respectfully submitted,

Cheryl Buchanan  
Zoning Administrator, Town of Banner Elk