

BANNER ELK PLANNING BOARD MEETING
MONDAY, 02 MAY 2016
MINUTES

Members Present: Allen Bolick, BR Hoffman, Will Mauney, Martha Laura Miller, Meredith Olan, Joel Owen, Penny VonCanon

Staff Present: Zoning Administrator Cheryl Buchanan

Chairman Joel Owen called the meeting to order at 6:00 pm. The Chairman opened with the pledge of allegiance to the flag and noted that there was a quorum present.

Consideration of the April 4, 2016 Minutes

Chairman Owen asked if anyone had changes to the minutes from April 2016. Penny VonCanon moved to approve the minutes as submitted. Allen Bolick seconded. The vote was unanimous and the motion carried.

CUP Application – Planned Residential Development – Elk Creek of Banner Elk

Chairman Owen began with a question that he had regarding retaining walls. He stated that there wasn't enough information to determine how high these were intended to be. Zoning Officer Cheryl Buchanan interjected that she had already reviewed this with the developer, Angelo Accetturo, that walls over eight (8) feet in height required a certified engineer to approve their installation. None of the proposed walls in this development will be this high.

Chairman Owen said he was concerned that motion light sensors could be triggered by most anything during the night hours. Ms. Buchanan had written a memo to the Board asking that they request another form of light be used on the exterior of the houses as well as a few other items of consideration. The other item was building #12 needs to be 25 feet from the edge of the remaining wetland. Ms. Buchanan said she had been on site with Mr. Accetturo and had walked with him and was assured that this building will be 25 feet away from the wetland area. The last item Cheryl Buchanan mentioned was the choice of a Geotechnical Engineer. Mr. Ramsey has a statement on the plans that he is the chosen Geotechnical Engineer and Ms. Buchanan reiterated for the Board that the ordinance states that the Town can choose who they want as the Geotechnical Engineer and Ms. Buchanan said she was not in favor of Mr. Ramsey being that choice. Angelo Accetturo said that he had hired another Engineer and would like for the Town to check this person out to see if they might qualify. Ms. Buchanan said she would look into it. The issue of needing one right now is not relevant, but the lots 1 through 12 will definitely require a Geotechnical Engineer.

BR Hoffman asked about the row of rhododendron along the edge of the retention pond and asked that they not be removed. Mr. Accetturo said he would try not to disturb them. Will Mauney said that speaking about landscaping he referred to the Mariposa side and said that there

is not complete visual separation as required in Section 704 and asked what was planned to be done about that. Ms. Buchanan spoke to Mr. Accetturo and said that this is something that will need to be addressed once he begins working on that side of the development. Ms. Buchanan told the Board that even though the entire development was being looked at as a whole, Mr. Accetturo's plans are to work on the Bear Run side first and not disturb the other side until he has sold these units and is ready to begin building more. Mr. Accetturo said that he would be willing to add additional landscaping when the time is right to add them.

At this point Mr. Accetturo said that he would like for the Board to address the issue of his and Mr. Mauney's previous confrontation and was under the impression that he would not be a part of this proceeding due to how he had conducted himself previously. Before another argument could form, Chairman Owen said that Mr. Mauney could voice his opinion as any other homeowner but would not participate in the vote. Joel Owen said that if the buffer issue is legitimate, then this can be addressed. Penny VonCanon said that the buffer should be a mixture of trees and shrubs. Tony O'Harrow asked if this same ordinance applies to the Bear Run side. Ms. Buchanan answered; yes, it does. Will Mauney said there are 33 Norway Spruces along the property line on the Mariposa side. Ms. Buchanan said she would be willing to work with Mr. Accetturo if this would help. Mr. Mauney stated that he does not want to see any headlights from this neighboring development. Ms. Buchanan said this would also protect Elk Creek equally from lights coming from Mariposa.

BR Hoffman asked about the house that looks like it is on the wetland but some are not. Ms. Buchanan said that some of the wetlands will be removed per the State and some will remain. The small dots indicate that those are the two that will remain.

Will Mauney noted that on the elevations near his property there is a notation of 3780 which is 90 feet above the surrounding ones. Ms. Buchanan said that she had spoken to the Engineer and he checked his elevations and noted that it was a typo, that it should read 3680. Mr. Mauney noted that towards the rock there are some higher elevation numbers. Ms. Buchanan said that yes, the property goes up towards that rock. Mr. Mauney then asked if the road would be four feet above the elevation there and Ms. Buchanan said she was sure they would have to do some grading before putting in that road and did not believe it would be that way, that the developer was not going to build the road on top of the grade just because the plans show it there. Mr. Mauney expressed that he was worried that this would cause 2 feet of water to stand on his and his neighbor's property. Ms. Buchanan said that was not the case that she was sure they would grade before the road goes in and the pipes at the lowest points of elevation are designed to take that water away from that side of the development and direct it into the retention pond and then back into Elk Creek. Mr. Mauney read a notation on the plans and asked what this means. Ms. Buchanan explained the ditch notation said it is 4 feet in depth and will run along the edge of the property with rock check dams every 50 feet to slow the flow of runoff. Mr. Mauney asked Ms. Buchanan to explain where she was talking about when she expressed concern for his property being affected by additional runoff. Ms. Buchanan said that up near elevation marker 3722, there is a break in the retaining wall and she wanted to know how the water coming from that section of the property was going to affect Mr. Mauney's property. The Town's Engineer said that he felt the ditch was adequate to slow down any runoff with the check dams and the riprap

area at the bottom should be adequate to filter the water into the pipe. There are no concerns on the part of Blue Ridge Environmental with any flooding on that portion of the property.

Will Mauney asked what would the Town do about ground water that comes up on his property? Ms. Buchanan said she would not be doing anything about that. Mr. Mauney said Elk Creek is lower than his property and he thinks it should be in the flood plain like his property. Ms. Buchanan explained that it is the State that makes that determination, not the Town. Angelo Accetturo said that the work that he is going to do should improve any runoff that may have been coming off his property but that he cannot do anything about his property being in a flood plain.

Mr. Mauney complained about having several new neighbors and that he's excited about that. Joel Owen said that everyone has something in their neighborhood they have to live with and that's what you learn to do. Chairman Owen asked if Mr. Mauney had any other concerns that could be addressed with the ordinance. Mr. Mauney replied no.

Penny VonCanon asked about the stability of the bridge that crosses over to Hardees Lane. Angelo Accetturo said he had his engineer look at it and that he feels it is stable. Ms. Buchanan said the concern is that the people buying into the development need to be made aware up front that it might be possible that they could be made responsible for any future problems if they come up. It was agreed that this should be made part of the POA agreement. Penny also asked about trash cans being taken out and those people who don't have a garage and the bears that are prevalent in that area. It appeared listening to those in attendance that most of the developments in town use the curbside service. The cans will have to be put out the morning of the pickup in order to keep the animals out of the trash containers.

Will Mauney stated that he had one more item he wanted to be addressed. He read from Page 6, #17 of the State's 401 permit about the use of rip-rap used for stream stabilization and Mr. Mauney said that some rip-rap has fallen into the existing stream on the property which causes water to back up into his property, causing flooding. Mr. Mauney asked that the rocks be removed from the creek. Penny VonCanon spoke about having experience with moving and placing boulders in the creek and sometimes it is detrimental. Mr. Mauney said that the boulders in the existing creek are what is causing his and Mr. Brown's property to flood. Ms. Buchanan pointed out that this is only his opinion. Ms. Buchanan noted that Mr. Mauney has had people from the state out there to look at this problem and she has too. None of them have said the boulders are the problem and must be taken out. Chairman Owen said that he would caution anyone about taking a boulder out of the creek without the State's permission. Mr. Mauney said they weren't meant to be there, they fell in and they need to be taken out. Mrs. VonCanon was not in agreement with Mr. Mauney. Joel Owen asked if there was anyone present that would like to speak about this request.

Tony O'Harrow from Bear Run said his biggest concern is water runoff from that property affecting his.

Heather Bender from Mariposa asked what construction hours are allowed. Ms. Buchanan said that is part of the Town Code and she cannot recall right now, but it can be looked up on the town's website.

Gary Brown from Mariposa asked if Mariposa is in the town proper or outside. Ms. Buchanan said it is in the Extra Territorial Jurisdiction (ETJ). Mr. Brown asked if the rules are different for those in than those out. Ms. Buchanan answered no, they are the same for both. Mr. Brown said he felt most of the consideration was being given for Bear Run and not Mariposa. Ms. Buchanan said that the development as a whole is being considered tonight.

With no further comment from the board, Penny VonCanon moved to recommend approval to the Board of Adjustment with the following conditions:

1. A Geotechnical Engineer agreed upon by the Town of Banner Elk;
2. The matter of maintenance of the bridge should be addressed in the POA Agreement with full disclosure;
3. Approved additional buffering with a mixture of trees and shrubs;
4. No motion sensor lights; and
5. Unit #12 must stay 25 feet off of the wetland area.

BR Hoffman seconded. The vote was Penny VonCanon, Allen Bolick, Meredith Olan, Martha Laura Miller and BR Hoffman for. Joel Owen abstained due to a conflict with some work he had done at the Banner Elk Vineyard and Will Mauney was recused from the vote. The motion passed with a majority voting in favor.

CUP Request for an Additional Residential Use in the C1-P Zoning District – David Burns

Chairman Owen told Mr. Burns that the additional drawings were helpful in determining what he was requesting a CUP for. Mr. Burns told the Board that his business was winding down and he still wanted to be able to use the property to its fullest potential. There is adequate parking for both uses and trash will not be a problem. Meredith Olan moved to recommend approval with no conditions. Martha Laura Miller seconded. The vote was unanimous and the motion carried.

Civic Zoning District and a Closer Look at its Uses

The Town Council had requested the Planning Board look at the uses listed in the CZD and perhaps consider the list of permitted and conditional uses and how that fits in those zoning districts. After much discussion Meredith Olan moved to request Town Council call for a Public Hearing to consider changing the following uses from permitted to conditional:

Offices,
Private kindergartens and to change Nursery school to Day Care,
Antique and Consignment Shops,
Dry Cleaning and Laundry Services and to add “for pick up only”,
Fitness Center,
Food Trucks,
Florist,
Gift Shop, Lock Smith, Office supply and equipment – sales and service,
Parking lot as a principal use,
Pawn Shops, Personal Care services,
Pharmacy,
Photographic studios and camera supply store,

Indoor Theatre,

And to add memorial Gardens and playgrounds.

A Memorial Garden was defined as a place for reflection with no remains. Additionally Art Studio was added to the list of Music and Dance Studio.

Allen Bolick seconded the motion. The vote was unanimous and the motion carried.

The Banner Elk Chamber and Sandwich Board Signs

Joann McMurray came before the Board to request a revisit of the topic of Sandwich board signs that was brought up in the November 2015 meeting. Joann McMurray told the Board that wood and resin were the only examples she could find on the Internet. She said she felt the wood ones were too light and would blow away. After much discussion, the Board recommended wood with a chalkboard area for messages. Angelo Accetturo said he would be happy to build one for about the same price as the resin boards and bring it back to the Board for review. Locations and how often were considered as well. It was decided that the Boards should be kept within 10 feet of the business using the sign and that they could not be located in a right-of-way, easement, on the sidewalk, or close to the road, that they must be kept on private property. Only one per business and the size was limited to 2' x 3' with a permit and a fee being required to use them. There was some discussion about allowing them on a trial basis during the summer to see how this works. The Board directed Cheryl Buchanan to look into this with the Town's Attorney to see if there was a way to do this. Ms. Buchanan said she would talk to the Attorney and get back to the Board.

Miscellaneous Questions

Ms. Buchanan asked the Board for their opinion on the intent in the zoning ordinance as to whether a gunsmith could also sell guns. She compared that to a locksmith for insight. Most felt this could be possible but did not want them located in the Heritage Overlay District. Ms. Buchanan said she would check with the Town's Attorney on this also.

With no further discussion, Martha Laura Miller moved to adjourn. Meredith Olan seconded. All were in agreement and the meeting came to a close at 9:28 pm.

Respectfully submitted,

Cheryl Buchanan, Zoning Administrator, Town of Banner Elk