

# **BANNER ELK TOWN COUNCIL MEETING**

## **September 9, 2024**

### **MINUTES**

The Banner Elk Town Council met on Monday, September 9, 2024, at 6:00 p.m.

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

Staff present: Town Manager Rick Owen, Chief Kevin Hodges, and Attorney Four Eggers.

#### **Call Meeting to Order**

At 6:00 pm Mayor Lyerly called the regular Town Council meeting of September 9, 2024, 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.

#### **Approval of Minutes**

Councilman Tufts made a motion to approve the minutes of July 8, 2024 with the correction to show that he was in attendance and Councilman VonCanon seconded the motion. The motion passed unanimously.

#### **Approval of Stated Agenda**

Mayor Lyerly asked for a motion to approve or amend the stated agenda. Councilman Lecka motioned to approve the agenda as stated and was seconded by Councilman VonCanon. The motion passed unanimously.

#### **Public Comment**

Patricia VonCanon of 507 Shawneehaw Avenue, wanted to know if the house was in the historic district of Banner Elk. She was concerned about creating a secondary exit for the house and doesn't know how to go about it. Manager Owen said he was happy to meet with her. She wanted to know if there was a new zoning officer and Manager Owen said there was not yet. She asked what the buffer was for the trout stream and Manager Owen told her that it was fifty feet for commercial property and twenty-five feet otherwise.

#### **Woolly Worm Festival Update – Victoria Bowman**

Avery Chamber Chair, Robin, and Woolly Worm Chair, Victoria, wanted to share all the highlights of what is new. She wanted to particularly focus on the partnership with the school leadership at the elementary schools. They have created a new program called Avery Advantage that provides free admission for both students and parents, so families are more likely to be able to attend. The tickets will be distributed the week of October 7. An individual donor will underwrite the cost of that. Woolly Worm will also create more engagement with their mascot by naming the secondary Woolly Worm as the sister, "MistyWeather" which allows more simultaneous coverage. Each mascot will have a handler for crowd control and there will be more mascot swag to support the goal of heightened engagement. To create fanfare for the pre-races, announcers, board members and other leadership will attend to make it a huge event and the winner of these pre-races will get a significant award package that supports them coming

to the festival and having the full experience. There will be special parking opportunities provided in conjunction with Lees-McRae. There will then be Tournament of Champion races on Sunday for student winners and an opportunity for faculty to have a Tournament of Champions and win cash. Four of the elementary schools will have a booth at the festival for school fundraising. Victoria shared that the final piece of the school partnership will be a Woolly Worm Round Up a week after the festival. This will include celebrating top winners from each school, having Woolly Worm stuffies from the BE Shirt Company, a trophy from Yellow Mountain for the winning school, and pizza parties for the top three.

Victoria wanted to share about the relationship being established with Lees-McRae. Nina Fischesser and the May's Wildlife Center will bring animal experiences back to the festival in the children's area. A rope's course for "worm training" will be created in the future and a student team will work with the veterinarian to engage with students on education for conservation and release of worms post-festival. Lees-McRae will provide parking from South Campus that will include space for Avery County residents and Festival volunteers.

There is a new website and after review Councilman Tufts noted that lodging is advertised for both Sugar Mountain and Beech Mountain but not for Banner Elk. Victoria shared that the TDA's for those municipalities had paid for those spots and that Banner Elk's TDA had not been approached. She said that could be changed.

Robin overviewed the site plan for this year's festival. The children's area will now be over in the park. There will be a balloon artist strolling the Festival helping visitors find the area for children. There will be sponsored row signs to help find vendors since the spaces are completely different now. There will be a new official entrance for tickets and the school booths will be highly visible. Visitors leaving for the children's area will get their hand stamped so that they can flow back and forth.

#### **Fireman's Relief Fund, Member Appointment**

Manager Owen raised the question about whether it is appropriate for the Council to make the appointment because the position is not connected to a municipality. Although the Council did make the appointment the last time it was brought before them, it is raised as a question again. Attorney Eggers provided information to support the decision making process. He said that it is not clear who has oversight for this appointment because it should be the Avery County Fire Commission but the town does receive benefits from this position. He also stated that the statute specifically says if a member serves on it, that member is not to be paid. Mayor Lyerly offered support for providing the appointment based on the precedent of the previous fourteen years. Councilman Lecka pointed out that since it is voluntary and unpaid the Council is not financially benefitting anyone with their decision. Councilman VonCanon pointed out that the matter is unclear but responding to the request at least supports the effort until another entity might be deemed more appropriate. Councilman Lecka made a motion to make the appointment of Will Treen as recommended and Councilman Tufts seconded that motion. The motion passed unanimously.

#### **Consider On Street Parking Request, Mark Minor**

Manager Owen reviewed the project brought to the planning board last week by Mark Minor for 155 Banner Road, which is on the corner of Banner Road and Central Way. This project was to originally include four buildings but now is designed to have two buildings that are each two stories tall. There are six units in one building and four units in the second providing five retail spaces, four residential units, and one office space. This proposal will require thirty-four parking spaces. Thirty-three of those fall within the parcel of development and an additional thirteen are in or partially in the Town's right-of-way for street parking on both Banner Road and Central Way. Manager Owen asked the Council to discuss

whether Mr. Minor can be allowed to develop parking in the Town right-of-way and whether parking in the right-of-way can count toward required parking for his development if needed. He pointed out that the current parking proposal is based on retail use but if a tenant wanted to come in with a food business, Town ordinances would require an increased number of provided spaces. Manager Owen added that sidewalk would have to be added along the property and would have to be inset to allow for street parking. The setback for the property would then be measured from the new location of the sidewalk. While that would be a loss of developable property for Mr. Minor, both he and the Town would benefit from the additional parking. Furthermore, as proposed, no roadway would be lost on Central Way. Mayor Lyerly asked if the Planning Board had any guidance for the Council and Manager Owen indicated that they agree that additional parking is necessary but that the Council would need to decide if this plan counts towards the parking that he needs. This property is zoned C1P which requires parking for the development. Manager Owen does not see a downside to allowing it to count towards his parking requirement. Councilman Dunn questioned whether it would be public parking and Manager Owen confirmed that it would be public and unmetered.

Mayor Lyerly asked about delivery 18-wheelers blocking the road in that area and if they would block the two proposed parking spaces on Central Way. Manager Owen confirmed that they would. Councilman VonCanon questioned whether allowing this request for on-street parking to provide required parking for development of a lot would then set a precedent. Attorney Eggers explained that the appropriate way to handle this request would be an encroachment agreement that provides those spaces to count for the development and yet are considered public parking spaces controlled by the Town. The agreement would include that this arrangement is carried forward regardless of who owns the property and part of the consideration for the agreement would be whether the Town would include the two spaces on Central Way as parking spaces or have the discretion to convert them to loading zones or other purposes as need be. Councilman Dunn remarked that the concept of those spaces as a loading zone opens potential for increased loading zone traffic if one of the spaces on Mr. Minor's property becomes a food establishment but could also be beneficial for handling that increased activity. Councilman Lecka asked if the other aspects of the plan have been approved, and Manager Owen said that the architectural elements have been reviewed and met the ordinances. He proposed that signage could be placed at the Central Way parking locations that designate the particular hours that it is reserved for loading, leaving it open to the public the rest of the time. Mr. Silvers spoke up on behalf of the Biking and Pedestrian Committee and asked if there would be an effect on the sidewalks. Manager Owen clarified that sidewalks would remain accessible. Attorney Eggers told the Council that at this time they need to draft a proposal to the owner. Councilman Tufts questioned whether the loading zone concept would work for the 18-wheeler delivery trucks and if that should be part of the draft. Manager Owen said that a discussion could be opened with the developer and their civil engineer to see how that area could be modified to address the needs being discussed. Chief Hodges said that being able to reference parking designation for loading would help the police keep the street clear and safe.

On behalf of the Board of Adjustments, Chairman Fred Schmidt, asked whether the Council would have completed a draft of an agreement and if it would be finalized for the Board to use in their determinations at their meeting next week. Manager Owen responded that while that would be unlikely the Board of Adjustments could still make their determinations based on the eleven spots on Banner Road without consideration of those currently being discussed on Central Way. Chairman Schmidt requested that the Council and Manager Owen explain to the Board clearly all the options and permutations and what their respective implications are to the application being reviewed before their meeting next week. Attorney Eggers and Manager Owen stated that they will write up an agreement to take to the developer about the items discussed by Council to be accepted by both the developer and the

Council. The Board of Adjustment can make an approval of the request with the condition that this agreement be completed.

### **Permitted Use Table Amendment**

Manager Owen asked the Council to call for a Public Hearing about the Permitted Use Table detailed in their packet. He shared that Blaine Hansen, VP for Planning and External Relations at Lees-McRae College, had spoken with him about a recent change in the use of space at Lees-McRae from a relationship with Barnes & Noble to a partnership with Footsloggers. Manager Owen found that this change constituted a change in use of that space from one that was student-driven retail space to one that would be a retail operation more dependent on the general public. Manager Owen explained that he has conferred with Attorney Eggers to see what options Lees-McRae would have to conduct commercial activity in the Medical/Educational district. He directed Council to see the Permitted Use Table in their packet that shows that Medical/Educational zoning does not allow for commercial use. After talking with the Planning Board, the options presented for Lees-McRae were to either look at a rezoning of some parcel of property for this use or for a text amendment that would allow for this activity in their Medical/Educational zoned facilities. The arrangement with Footsloggers is underway at Lees-McRae and the Town Boards are working to expedite the process while still determining the language for a text amendment that ensures safeguards for future development. The concerns included in the special use process need to include requirements for signage, parking, and the set up for general retail spaces. Attorney Eggers stated that insubstantial changes can be made without a second call for Public Hearing but if a change is made to the nature of the district than a second Public Hearing would be necessary. Councilman Dunn asked what the determining factor was that called for this change as opposed to the use in that zone by Barnes & Noble and Einstein Bagels. Manager Owen responded that he saw the business model as being different for the bookstore versus Footsloggers. It would make more sense for Footsloggers to choose to use Lees-McRae College as the Banner Elk location that completes its coverage of Boone, West Jefferson, and Blowing Rock to reach the public and not as a way to serve nine hundred students. Mr. Hansen was present in the audience and shared that Lees-McRae had reached out to Footsloggers as a good fit because they had a focus on mountains and outdoor recreation, and they would be providing Lees-McRae branded clothing and swag. Councilman Dunn clarified that Footsloggers would also be selling their other merchandise and Mayor Lysterly asked if that would then not exceed 25% of the entire floor area. Manager Owen explained that the percent of use pertained to the building in which it was being housed not the percentage of the store itself, but that this question highlighted how changing the wording of the permit could end up having a trickle-down effect.

Mr. Silver spoke up from the audience as a member of the Board of Adjustments, speaking from experience but not as a voice of the Board. He highlighted the uses on the table currently and how they are not ambiguous as to how they fit into the ordinance. He also explained that criteria need to be very clear for understanding and for maintenance so that it doesn't require further guidance outside of the Board nor require a definition to be created by the Board. He requested the most guidance possible, therefore, so that the Board of Adjustments can make the best possible decision. Mr. Schmidt added that the importance of all these discussions and decisions is to be as thorough as possible in the final decision to avoid the need for appeal since appeals to decisions by the Board of Adjustments go to legal channels and not back to the Council.

Councilman Tufts asked to revisit the other option of rezoning as opposed to a text amendment. He felt that it would be a more appropriate response to how that space is continuing to be used and avoids the intricacies of trying to cover all the contingencies with amending the text. Councilman Lecka asked Attorney Eggers if he was familiar with similar circumstances and Attorney Eggers replied that this seemed to be a unique situation thus far among the colleges he had reviewed. Councilman Dunn stated

that he also felt that it could close more loopholes by rezoning. Councilman Lecka asked how the rezoning would be done and Attorney Eggers stated that it needed to be by parcel. Manager Owen showed the parcel to be large and to include the student center, the cafeteria, the auditorium, and parking. Attorney Eggers mentioned that another option for Lees-McRae then could be to subdivide its parcel. Manager Owen stated that there are probably ways to narrow the zoning aspect to allow for a shop on campus but it wouldn't be easy and it could open the door to more commercial activity. Councilman Dunn said that with his new understanding of the location of Footsloggers being inside the Student Center and not in the small outer business, he would not be in favor of rezoning. Councilman Lecka referenced his retail background and projected that Footsloggers are likely intending to gear their market towards the college students and there was discussion about how the location was not easily accessible to the public. Attorney Eggers reminded the Council that they have a large Medical and Educational district, and they need to consider wording carefully so that it applies to all instances that would occur in the zone and not just this one.

Councilman VonCanon directed the Council to the section of the packet that they had been looking at when the conversation began and reread the wording. Attorney Eggers fielded questions on how restrictions to size within space could be made but reminded the Council of the potential unintended consequence of a future business owner creating an extra-large building to allow for a larger included retail space. Mr. Silvers referenced a previous case and how the same language allowed for an interpretation of totality of use within a space versus a space within a building. Attorney Eggers suggested that if the Council feels comfortable with the proposed wording minus some other wording refinement, they make a call for a Public Hearing. Councilman Tufts said he was not comfortable with that until the language was more finalized. Attorney Eggers said that minor changes can be made without a second Public Hearing. Councilman Dunn suggested that the public needs to be aware of what building is being referenced and what is being discussed. He feels that things need to move forward. He made a motion to call for a Public Hearing to amend the Permitted Use Table and Councilman Tufts seconded the motion. Councilman Tufts explained that he had stated his concern, but he wanted to see this move forward. The motion passed unanimously.

### **Lees-McRae College Rezoning Request**

Manager Owen stated that Lees-McRae is selling 175 Hall Court – both the residential structure and some acreage. Manager Owen has recommended that the property be rezoned to R2 which will match the surrounding properties. There will also be some recombination of property. Manager Owen explained that privately owned properties should not be zoned medical/educational and with recombined properties it makes sense that they then take on the R2 zone. This would include four separate parcels. Two would be recombined with the Sellars' adjoining property and one would be recombined with Emerson Ham's adjoining property. The final parcel would stay with the original residence. His recommendation is that prior to this rezoning there needs to be a meets and bounds description and the Council needs to call for a Public Hearing. Councilman Lecka called for a Public Hearing for rezoning the affected areas to R2 and Councilman Tufts seconded the motion. Councilman VonCanon asked about maintenance of the roads and about water and sewer for the residence. Manager Owen said that information is still being verified. The motion passed unanimously.

### **Manager's Update & Staff Reports**

Town Manager Owen reported that landscaping was completed at the Historic Banner Elk School last weekend.

He shared that there are four special use permits being considered by the Board of Adjustments next month. The first will be the commercial development on Mark Minor's property in the center of town.

The second will be John Turchin's request to increase indoor storage at the Great Train Robbery building since he will not restore the restaurant or retail space. Another will be a request for an indoor golf simulator at the retail center owned by Eggers out at Dobbins Road. There aren't currently any provisions for this type of business, so it automatically becomes a special use permit. Finally, there is a request for an accessory use for residential use within the building that had been operating as a hostel since it is no longer operating as a hostel.

**Other Business**

Councilman Tufts asked for a gathering of reservations for High Country Municipal Government Banquet and discussion ensued.

**Adjourn**

With no further business, Councilman VonCanon motioned to adjourn and was seconded by Councilman Dunn. The motion passed and the meeting was adjourned.

The meeting ended at 8:00.

Approved: \_\_\_\_\_  
Mayor Brenda Lyerly

Attested: \_\_\_\_\_