

TOWN OF BOONE
SPECIAL HISTORIC PRESERVATION COMMISSION
MEETING MINUTES
JUNE 5, 2023, 3:00 p.m.
WebEx Video Conferencing

Historic Preservation Commission Members in Attendance:

Chair Eric Plaag, Chuck Watkins, and James Sharp

Student Member: Riley Ziegler

Town Staff in Attendance: Jane Shook-Director of Planning and Inspections, Jessica Mitchell-Long-Range/Special Projects Planner, Christy Turner-Senior Planner, Darrell Pulliam-Building Inspector, and Marlene Crosby-Board Secretary

Others in Attendance: Allison Meade-Town Attorney, Chelsea Garrett-Attorney, Aram and Megan Kevorkian-Applicants, Eric Kevorkian, Bill Dixon and Leigh Blevins-Appalachian Architecture, William Brown, and Jody Feimster

Call to Order

Chair Eric Plaag called the HPC Quasi-Judicial meeting, held via WebEx, on June 5, 2023, to order at 3:06 p.m.

Chair Plaag introduced himself as the Chair of the Historic Preservation Commission and Member Chuck Watkins, Member James Sharp, and Student Member Riley Ziegler.

Chair Plaag introduced the Staff members as Ms. Jessica Mitchell, Long-Range/Special Projects Planner, Ms. Christy Turner, Senior Planner, Ms. Marlene Crosby, Board Secretary, and Ms. Allison Meade, Town Attorney.

Approval of Minutes

Chair Plaag requested that the approval of the May 9, 2023 meeting minutes be tabled to the next Historic Preservation Commission Quasi-Judicial meeting. There was no objection from the other HPC members to table these minutes.

CASE Z06553-032323 – Southend Brewing Co., LLC – COA – Addition and Patio Improvements

Aram Kevorkian, on behalf of Edakco, LLC (Southend Brewing Co.), has filed an application for a Certificate of Appropriateness for Major Work for 747 W. King St. for an addition and patio improvements on the secondary elevation at the rear of the property. This property is located within the Downtown Boone Local Historic District. (Watauga County PINs 2900-79-8447-000, 2900-79-7377-000, 2900-79-8421-000, 2900-79-7368-000). The COA request includes patio improvements which consist of work to the existing deck and stairs, adding a second level deck and corresponding emergency exits, installing pavers for a patio area, modifying an existing retaining wall, and screening for existing containers on site. The COA request also includes the addition of a storage container as a bar for the principal restaurant use.

Chair Plaag opened this case and continued from the May 16, 2023, quasi-judicial hearing. He explained that this continuation would address specific aspects of this application that needed to be fully considered at the May 16, 2023, hearing.

Chair Plaag swore in Ms. Turner and Ms. Mitchell.

Chair Plaag asked the Historic Preservation Commission members if any commissioner had a fixed opinion about the case that is not susceptible to change; if any commissioner had a conflict of interest regarding this case, including any financial interest in the outcome of the case or a close familial relationship with any person affected by the outcome of the case. There were no answers in the affirmative.

Chair Plaag asked if any commissioner had engaged in any undisclosed ex-parte communication regarding the application. There were no answers in the affirmative.

Chair Plaag confirmed that Ms. Chelsea Garrett represented the applicant in this hearing; Ms. Garrett replied in the affirmative.

Chair Plaag asked Ms. Garrett if she objected to the revised staff report and the original and additional materials submitted by the applicant in the meeting packet regarding this case. Ms. Garrett said she did not have an objection to the information.

Chair Plaag opened the floor for Ms. Garrett to provide an opening statement. As stated in the application, Ms. Garrett explained that the goal for this meeting was to request approval for a patio bar. She said the proposal is to place the patio bar next to the previously approved patio area. She said the proposed location of the patio bar was in the tertiary elevation at the back or south side of the building that faces Howard Street. She mentioned the issue encountered at the last hearing was that no language in Appendix D specifically addresses a shipping container building of this type being used as a patio bar.

Ms. Garrett said that Mr. Aram Kevorkian and Ms. Megan Kevorkian had reviewed what they thought were the applicable standards for this proposal with Mr. Bill Dixon, Architect on the project. She referenced Appendix D, Sections 1.17 and 5, which discuss accessory buildings.

Design Standards for Historic Streetscapes, Landscapes, Monuments, and Other Resources in the District, 1. Streetscapes

Section 1.17 New accessory structures should be complementary to the scale, form, materials, and details of surrounding historic buildings but built so that they do not convey a false sense of historical association. New structures should be located at the rear of historic properties so they do not intrude upon the historic streetscape.

Section 5.2 Construct new garages and accessory buildings that are compatible with historic Outbuildings in the District in terms of roof form, materials, size, scale proportion, and architectural details.

Section 5.6 It is inappropriate to introduce features and details to an outbuilding that will create a false sense of historical development. For example, it would be inappropriate to add Art Deco features using historical materials to a newly constructed accessory

building, as doing so might inappropriately suggest that the accessory building was constructed during the 1930s.

Ms. Garrett noted that the reference to accessory is distinct from the Unified Development Ordinance, which talks about accessory buildings only in the context of a dwelling unit which is not applicable. It is not as limited in Appendix D. She spoke of two other options the applicant had considered for the patio bar; the options were to view the patio bar as a new addition to a historic structure or as new construction. She said the proposal does not fit into the provisions of Appendix D, and that much of the discussion on new construction and additions referred to the building being visible from the secondary or primary elevations. She realized that the shipping container was a unique building. She said discussing whether the shipping container is temporary or permanent is relevant. She found it challenging to consider the shipping container as new construction as you would if it was a brand-new building because the shipping container is not being built. She added that the shipping container would be brought in and could be taken out. She said the shipping container would not allow restaurant patrons inside it, nor would it have facilities, and it would be seasonal. She said she felt it would be considered an accessory use for these reasons. She noted that the applicant had provided a specific proposal and options for the HPC to review.

Chair Plaag asked the staff to give a specific statement beyond what is stated in the staff report to explain the Town's position for this case to whether they thought it was new construction, an addition, or an accessory building both in terms of the UDO as it applies to the B1 Downtown-Core and also as Appendix D applies to the historic District.

Ms. Turner responded that staff had discussed the shipping container, and they believed that it is not an accessory structure because it would have electrical and plumbing underneath the structure to facilitate the bar operations within the structure. She explained that there are some conflicting points within Appendix D and the UDO on the use of materials. She pointed out that Appendix D does not specifically talk about wood. She said in UDO Article 14 that the text does not list wood as an allowed material, so if a material is not listed, it is prohibited under those two sections.

Ms. Allison Meade, Town Attorney, asked Ms. Turner to explain the connection between staff concluding the shipping container not to be an accessory structure and having electricity and plumbing. Ms. Turner said staff thought since the shipping container would have electricity and plumbing underneath, it would make it a more permanent structure. Ms. Meade interjected that what Ms. Turner just described was conflating temporary versus fixed with accessory. She agreed with Ms. Turner that, from a legal perspective, the shipping container is fixed because it has utilities. She said that the accessory structure needs more explanation. She pointed out that the basic shed or garage, with or without electrical service, would have called it an accessory structure. She noted that Ms. Garrett had stated that the shipping container is not an accessory dwelling. Ms. Meade did not agree with the suggestion that the container was not an accessory structure.

Ms. Meade referred to Appendix D, Section 1.17:

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Section 1.17 New accessory structures should be complementary to the scale, form, materials, and details of surrounding historic buildings but built in such a way that they do not

convey a false sense of historical association. New structures should be located at the rear of historic properties so they do not intrude upon the historic streetscape.

Ms. Turner said someone could look at that section and consider it as an accessory structure. She added that there are no setbacks for either an accessory structure or a primary structure in the B-1 District. She pointed out that there are other differences in the other zoning districts; for instance, she said in the R-1 District, for an accessory shed, the setback would be seven feet from the property line as opposed to 14 feet from the property line.

Ms. Meade stated there needed to be more clarity on the topic of the accessory structure. She thought the HPC should consider “accessory” for the rest of the UDO and “accessory” for Appendix D and the historic district standards.

Ms. Meade reiterated what Ms. Turner had said that the accessory building within the UDO does not create an issue because there is no setback issue. In her view, she thought what mattered was the term “accessory” within Appendix D. She explained that her understanding was the proposed shipping container was new construction and an accessory structure that is permanently affixed. She wanted to know if the applicant disagreed with anything she pointed out. She suggested that the HPC review new construction and accessory within the meaning of Appendix D to see which standards to apply. She said some standards may not apply; however, it is new construction of an accessory structure, and there may need to be some give and take between certain standards.

Chair Plaag asked Ms. Garrett if she had any comments on what Ms. Meade just stated. Ms. Garrett agreed that once the shipping container was put on the concrete slab it would be fixed once electricity and plumbing were added to it. She used the example of a mobile home, when they become fixtures compared to when they stay a vehicle. She used this example to explain when the shipping container would be less fixed than her example. She said the applicant believed the shipping container was a new accessory structure. She said if the HPC is willing to agree with what Ms. Meade stated and give some flexibility, the applicant would agree with Ms. Meade as well.

Chair Plaag told Ms. Garrett that he urged caution in her comparing the shipping container to a mobile home because a mobile home would not be allowed in the historic district. However, Chair Plaag said he understood Ms. Garrett was not saying the shipping container was like a mobile home. Ms. Garrett confirmed with Chair Plaag that she used the mobile home term as an analogy. Ms. Meade added that if anyone were thinking about wanting to use supposedly non-fixed buildings to get around the standards, it would not work. In her view, she stated it would be relevant to the interpretation of the standards.

Chair Plaag asked Ms. Turner if staff had other comments about the accessory structure or new construction. Ms. Turner did not have other comments on the said topics.

Chair Plaag swore in Mr. Bill Dixon, Mr. Aram Kevorkian, and Ms. Megan Kevorkian.

Ms. Garrett asked Mr. Dixon to describe the proposed design for the patio bar. Mr. Dixon referred to packet page 53 and explained that the applicant proposed to screen the outdoor patio bar with a similar screening as they would for the dumpster and grease container enclosure. He said the screening would

be taller than the dumpster and grease container enclosures and extend four or five feet beyond the enclosure. From Howard Street, he said that looking at the proposed project, people would see a series of screened walls hiding the patio bar and dumpster and grease container closures. Ms. Garrett confirmed with Mr. Dixon that the proposal was to screen the patio bar and not to clad the patio bar. She added that the patio bar would remain metal and not be covered. She confirmed with Mr. Dixon that the view from the patio area and the restaurant would be of the shipping container.

Ms. Garrett asked Mr. Dixon to describe the view from the patio area. Mr. Dixon referred to packet page 54, and he explained that there would be a service opening in the shipping container for patrons facing the tertiary elevation of the building that would not be visible from Howard Street. The service opening would have two full-length doors cut from the container. It would open to provide an approximate six to eight-foot opening, a movable bar top that can be pulled down for service and pulled up for entry of staff, and staff would enter the container on the tertiary side of the container that would be to the left and hidden from view due to the wooden dumpster enclosure. Ms. Garrett confirmed that there would not be an awning on the container.

Ms. Garrett pointed out in UDO Article 14, Section 4, Material List. She asked if that list of materials was incorporated by reference into Appendix D. Mr. Dixon said the UDO list of materials was referred to in Appendix D. Ms. Garrett asked Mr. Dixon if that list of materials talked about metal, and Mr. Dixon replied yes, as in allowable trim material. Ms. Garrett confirmed with Mr. Dixon that metal was not an allowable field material. Ms. Garrett asked if there was an exception for the metal in Article 14, and Mr. Dixon replied yes and read aloud from the UDO Subsection 14.19.06 (H)(4)(b)(iv), regarding exceptions to prohibited materials. Ms. Garrett asked Mr. Dixon if there was metal on the building, and he replied there were miscellaneous metals on the building in downspouts, gutters, patio roofing, and eaves.

Mr. Dixon explained that one of the reasons that the applicant picked out a wooden screening enclosure was because it was a similar material with a board and batten type finish that was previously approved by the HPC and installed on the old Wilcox Emporium building. Chair Plaag pointed out to Ms. Garrett that he was somewhat uncomfortable with Mr. Dixon spending a lot of time on the UDO requirements because they are outside the purview of the HPC. He asked Ms. Garrett to focus on the historic district standards. Ms. Garrett acknowledged Chair Plaag's comment, and stated that she only intended to point out that the applicant acknowledged the fact that they would not be constructing the face of a new building with metal, which is more of a trend type of use.

Ms. Garrett asked Ms. Kevorkian to discuss the standards supporting the shipping container's compatibility with the historic district. Ms. Kevorkian referred to Appendix D. Section 1.17. She thought this section was supportive because it was about the accessory and new structures. She added that with the patio bar that they are proposing, they are not in any way trying to make it appear historic. She was looking at the patio bar as an accessory structure that they could obscure, and it is in no way competing with the historic building's scale, form, and materials.

Ms. Kevorkian referred to packet page 51 and Figure 1. She stated that from the view from Howard Street, it is difficult to see where the container bar would be because of the existing dumpster enclosure, and added that the proposed enclosure would be about another four to five feet from the existing dumpster enclosure.

Ms. Kevorkian read Appendix D, Sections 5.2, 5.3, and 5.6:

Design Standards for Historic Streetscapes, Landscapes, Monuments, and Other Resources in the District, 1. Streetscapes

5. Garages and Accessory Buildings

Section 5.1 Original structures should be retained and preserved if at all possible.

Section 5.2 Construct new garages and accessory buildings that are compatible with Historic outbuildings in the District in terms of roof form, materials, size, scale, proportion, and architectural details.

Section 5.3 Garages and outbuildings for residential properties should ALWAYS be located to the rear or side yards and in traditional locations in relation to the main residential building.

Section 5.4 If it is necessary to replace a historic outbuilding, replace it with a design based on documentary evidence of the original outbuilding, or with a new design similar in form, scale, size, materials and detail as other buildings in the District. Design and construction of the new structure shall be in proportion with other outbuildings of its type within the District.

Section 5.5 It is inappropriate to introduce gazebos adjacent to primary or secondary elevations without documentary evidence to support their existence in the District during the period of significance. If constructed adjacent to the tertiary elevation, gazebos should not be visible from the public right-of-way and must meet the other standards for outbuildings and accessory buildings.

Section 5.6 It is inappropriate to introduce features and details to an outbuilding that will create a false sense of historic development. For example, it would be inappropriate to add Art Deco features using historic materials to a newly constructed accessory building, as doing so might inappropriately suggest that the accessory building was constructed during the 1930s.

Section 5.7 Consult the Town of Boone UDO for setback requirements and lot coverage limitations for all accessory buildings. As a general rule, no accessory building may be further forward to the street setback line than the front-most point of the principal building.

Ms. Kevorkian noted that taking the false sense of development into mind, she and Mr. Kevorkian were concerned with cladding the container in brick, stone, or stucco because it would draw more attention to the new construction or accessory structure, whichever name is used to describe it. She said if a fence were put around it, it would blend nicely because it is close to the dumpster enclosure, and it would not compete with the original brick or take away the focus of the historic building.

Ms. Garrett mentioned the following UDO Subsections in reference to support Ms. Kevorkian's presentation, UDO Subsection Article 15.50.01 [Outdoor Storage (Accessory)], and UDO Subsection Article 31.06.05 [Loading Docks, Screening of Solid Waste and Recycling Container Areas, Outdoor Storage Areas, Utility Structures, and Rainwater Harvesting Systems].

Ms. Kevorkian referred to Appendix D, Section 12 for Additions to Existing Buildings in the District in which this section is from the Residential Properties section, she clarified her references to be from Appendix, D, Section 13, Additions to Existing Buildings in the District, from the Commercial Properties section. Ms. Kevorkian referenced Sections 13.1 – 13.3:

Additions to Existing Buildings in the District

Section 13.1 New additions should be compatible with the original building in scale, placement, proportion, and design, including roof shape, materials, color, location, and design of windows and doors, cornice heights, and other design elements. Synthetic, non-traditional materials are not permitted in alterations to existing buildings, and the use of the highest-quality, historically appropriate, exterior-facing materials is encouraged.

Section 13.2 New additions should NOT imitate an earlier historical style or architectural period. Still, they also should not differ from the earlier historical style so much as to be a distraction from or incompatible with the historic design.

Ms. Kevorkian said she and Mr. Kevorkian would in no way want to cause permanent damage to the building or take away from the historicity of the building. She noted that the shipping container and the dumpster are not historic.

Section 13.3 Additions should be differentiated from the original by the use of setbacks or other devices. Additions should be located to the rear (tertiary elevation) or in an inconspicuous location on the side (secondary elevation) of the original building. They should never be attached to the front of the historic property. Additions such as rooftop penthouses or additional stories should NOT be constructed unless there is documented historical evidence (such as the prior removal of a similar historic feature) to justify the change.

Ms. Kevorkian said she and Mr. Kevorkian would not want to make the shipping container look historical or a permanent distraction or destruction to the building. She added that they are proposing to obscure it similarly as defined in the guidelines for dumpster enclosures.

Chair Plaa asked Ms. Garrett if it was their argument that what was proposed was an addition to an existing building or was it their intention to enumerate the ways that it meets the standards for an existing building. Ms. Kevorkian responded that she was trying to enumerate the ways that it meets the standards for an existing building. Chair Plaa asked Ms. Kevorkian if she was claiming the proposal was an addition or addressing it just in case the conclusion was that it is an addition to an existing building. He told Ms. Kevorkian it would later help the HPC to know which argument she was making. Ms. Garrett added that they did not want to fully commit to saying it is or is not. She said the standards do not specifically state that an addition is attached. She said the shipping container was more like a new stand-alone structure; further stating, as it is an outbuilding and accessory building, therefore, it would be new construction. In their deliberations of this case, she asked that the HPC be open to other sections of Appendix D to see if there was a fairer approach because she felt that new construction had more difficult standards. She said the shipping container was seasonal and would have electrical and plumbing. She also noted the features of the shipping container were something other than a new construction building in a more traditional sense. She agreed that the applicant thought it was an accessory for new construction. She asked that the HPC try to be flexible in their interpretation because the text in Article 13 may help with it.

Ms. Meade said from her point of view, it is not about the HPC being flexible in their interpretations, but about the HPC exercising discretion and serving the principles and intent behind the standards. Chair Plaa added that the standards are important and help guide the HPC to make decisions, but it comes down to the question of congruity of what is proposed with the District as a whole.

Ms. Garrett agreed with Ms. Meade and Chair Plaa about the HPC using discretion and serving the intent behind the standards.

Ms. Garrett asked Ms. Kevorkian to go over Section 14 New Construction, and referenced specifically Sections 14.1.

New Construction of Commercial Buildings within the District

Section 14.1 New commercial construction within the District should refrain from seeking to duplicate historic buildings in the District or mimic their appearance. That said, new construction should strive to be sensitive to and compatible with the character-defining features of the commercial properties in the District. Thus, new construction should employ an architectural design that reflects its current time, place, use, and culture, provided that this design is compatible with the character of the District.

Ms. Kevorkian said she and Mr. Kevorkian knew that what they had proposed had not been a part of the Town's history: a patio bar in a shipping container on the tertiary elevation of a building. She said the code allows new construction and modern times to infiltrate the Downtown Core appropriately. She and Mr. Kevorkian do not want to give a false sense that the shipping container is old. She said if it were clad in brick, it would look older. She said if it were clad in stucco or stone, it would be like they were trying to replicate the past, but they are not trying to do that to the shipping container. She was sensitive to the appearance of the rest of the tertiary elevation. She said because they want to enclose the dumpster, they have the opportunity to extend the height of the enclosure so the roof cannot be seen, which makes it so they do not have to put a secondary roof which would block the view even more.

Chair Plaag said there used to be a building near the proposed project called the "Boone Recreational Parlor." It was built in the 1920s as a bowling alley with two lanes inside it. He said the entire exterior of the building was clad in tin. He said with that in mind, knowing that a building in the District was clad in metal, that it may not have been meant to stay there forever, and yet is one of the oldest buildings in the downtown district. He asked Ms. Kevorkian if she knew about that building and how that would have changed her argument for the suitability of the materials being proposed for the shipping container.

Ms. Garrett responded to Chair Plaag's question about how the applicant might have changed their argument based on the exterior material of the Boone Recreational Parlor building. She referred to Appendix D. Section 5.4 and stated they are not replacing a historic outbuilding. Still, she continued that it does reference designing based on documentary evidence of the original outbuilding or with a new design similar in form, scale, size, materials, and details to other buildings in the District. She talked about how the proposed building would have similar materials to the Boone Recreational Parlor building. She said it would be design and construction would be in proportion with other outbuildings of its type in the District.

Ms. Garrett referred to Appendix D. Section 14 and stated that she did not think that a shipping container would attempt to duplicate a historic building because it is not a tin that is being clad over it. She felt the new construction strives to be compatible with defining features of commercial properties within the District. She said it is not a contemporary substitute material.

Chair Plaag explained that going by the standards, we have a building in the District clad in metal. He said it was meant to be temporary even though it had been there for a long time, and it was an independent building.

Chair Plaag explained that part of what he was concerned about, given the circumstances of the proposal, was the applicant's efforts to screen it from view from Howards Street, and the intent to make this a private accessory building, he thought it took on a different character than it might in other circumstances. He said the reason he asked this question was because he wanted to know how the details fit with the intent of the standards.

Chair Plaag stated that he appreciated Ms. Kevorkian reviewing the brick and wood materials for the dumpster enclosure and the shipping container. He stated her explanation of all of the materials mentioned may have been acceptable with the standards depending on the design of the architecture. He explained that some of the features would make a building look of its time yet be compatible with the district. He said using these materials and features is alright for the applicant to propose. He said it is finding that difficult place to make the design different enough but not so different that it is a glaring distraction.

Chair Plaag asked Ms. Garrett if the applicant had more information to present. Ms. Garrett replied that the applicant did not have more information to present.

Chair Plaag asked the HPC if they had questions or concerns to discuss. Member Watkins reiterated his concern: he felt that the HPC was being asked to approve a hypothetical design with no rendering showing the final appearance of the shipping container. He asked Mr. and Ms. Kevorkian since utilities was being installed and a foundation would be prepared even if it is just gravel, why did they not choose to build a small building instead of a shipping container?

Ms. Garrett responded to Member Watkin's statement about not being provided with a rendering of the final appearance of the shipping container. She said a rendering was submitted, and it was in the original meeting packet and on packet page 48 of the current meeting packet. Chair Plaag pointed out a conceptual rendering on packet page 49 that showed the shipping container and the screening. Ms. Meade pointed out another rendering on packet page 53 that showed the fencing at the back of the shipping container. After reviewing the stated renderings, Member Watkins said he saw a shipping container in the renderings. Ms. Garrett confirmed with Member Watkins that a shipping container was what the applicant proposed to put on the site that would be screened with wood. Ms. Garrett also pointed out the rendering of the side of the shipping container where the patrons would order their food and drink.

Member Watkins said a small building could be built in the space where the applicant was proposing to put the shipping container. He confirmed with Ms. Garrett that the applicant wanted the appearance of the shipping container. Ms. Garrett said that the shipping container would be recognizable from the bar side. She explained that the applicant was trying to obscure the shipping container from any public view by surrounding it with the wooden fence, essentially an extension of the dumpster enclosure fence. She stated that you could tell it was a storage container, but it would be private and only visible as a shipping container from the restaurant's backyard. Member Watkins asked Ms. Garrett about other buildings with metal components. Ms. Garrett said that Mr. Dixon had noted that this building had metal trim components around the deck. Member Watkins asked Ms. Garrett if the applicant was aware of other shipping containers in the Historic District. Ms. Garrett replied no, and Chair Plaag mentioned the Boone Recreational Parlor having metal components.

Chair Plaag asked Ms. Garrett if she had completed the testimony phase of the hearing for this case, and she replied yes. She stated that for any reason, the concealing of the shipping container is found less attractive to the HPC than cladding it, she thought the applicant would be willing to consider it, and she asked the HPC to ask the applicant about it rather than disapprove the proposal because of the concealing it versus cladding it. She noted that the applicant felt the use of the shipping container made it uniquely appropriate for the courtyard space, a great addition to the patio area, and it would not impact the public view of the historic structure.

Ms. Meade added two things to the HPC's consideration of this application. She said the HPC's decisions are not precedential, which is crucial because every case is specific to the site and circumstances. She said the limitations, in this case, are important for what the applicant seeks to do with the size and the site's space. She pointed out that this type of structure was a modern technology that could present challenges for the HPC.

Chair Plaag asked staff if they had other evidence to present on this application; Ms. Turner replied no, and that staff was open to questions.

Chair Plaag asked the HPC if they had other questions for the applicant or staff. In Ms. Turner's opening statement, he pointed out some questions about the Town's position on what was proposed, and some of those questions have already been addressed by Ms. Meade.

Chair Plaag asked Ms. Turner if the wood was acceptable in the Historic District. He explained that it is not the HPC's purview to make judgments based on the requirements of the B-1 Downtown Core. He said the HPC is bound by the historic district standards. He continued that there might be some issues with what is proposed where the HPC issues a Certificate of Appropriateness (COA) that approves something, but what is approved in that COA does not meet the B1-Downtown Core requirements. He added that if the applicant wanted to pursue those requirements, they could go to the Board of Adjustment on that particular issue. Ms. Turner said that Appendix D trumps the UDO in any COA case. She added that she did not see the UDO being an issue in this case.

Ms. Jane Shook joined the meeting at approximately 4:24 p.m. Chair Plaag swore in Ms. Shook.

Ms. Shook clarified why the standards were in the staff report. She explained that the standards in Appendix D supersede where they conflict or if it is not clear there is a conflict, and where the standards are vague, the staff included those standards for the HPC to discuss.

Chair Plaag asked if there were other questions for staff on the position of the Town on the standards.

Chair Plaag asked if there was any other interested party to speak or present evidence supporting the application; if there was any non-party witness to speak or present evidence supporting the application; if there was any interested party to speak or present evidence in opposition to the application; if there was any non-party witness to speak or present evidence in opposition to the application. There were no answers in the affirmative.

Chair Plaag asked Ms. Garrett if the applicant wished to rebut the presented Town evidence, and Ms. Garrett replied that she had no rebuttal to present.

Chair Plaag asked Ms. Garrett if she had a closing statement to present or if she wished to defer until the staff made their closing statement. Ms. Garrett stated that the applicant would like to defer until after the staff gave their closing statement. Chair Plaag asked Ms. Turner if the staff had a closing statement to present, and Ms. Turner replied that the staff had no closing statement.

In closing, Ms. Garrett stated that the applicant thought the proposed patio area and patio bar addition would be a contemporary, unique, attractive use for the tertiary elevation of this property. She confirmed that the proposed shipping container and patio area would not be visible from the public view except to the restaurant's patrons. She thought the shipping container being reused for the patio bar was modern and creative. She said the dimensions of the shipping container are not different than if it was built from brick or wood. She asked the HPC to consider the shipping container to be compatible and that it does not impact the historic District. She noted that Ms. Meade had stated that no precedent was being set with the shipping container proposal. She felt approving a shipping container would not be an issue for other property owners wanting to add them to their properties. She thanked the HPC for their time in this manner and asked them to approve the proposed application.

Chair Plaag closed the testimony phase of the hearing.

Chair Plaag opened the floor for the HPC to discuss the evidence at hand, he reminded the HPC to limit their discussion to the proposal and its relationship to the standards applicable to the case. Member Sharp considered the proposal to be new construction of an accessory use. He referred to Appendix D:

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5. Garages and Accessory Buildings

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Section 5.3 Garages and outbuildings for residential properties should ALWAYS be located to the rear or side yards and in traditional locations in relation to the main residential building.

Section 5.4 If it is necessary to replace a historic outbuilding, replace it with a design based on documentary evidence of the original outbuilding, or with a new design similar in form, scale, size, materials and detail as other buildings in the District. Design and construction of the new structure shall be in proportion with other outbuildings of its type within the District.

Section 5.5 It is inappropriate to introduce gazebos adjacent to primary or secondary elevations without documentary evidence to support their existence in the District during the period of significance. If constructed adjacent to the tertiary elevation, gazebos should not be visible from the public right-of-way and must meet the other standards for outbuildings and accessory buildings.

Section 5.6 It is inappropriate to introduce features and details to an outbuilding that will create a false sense of historic development. For example, it would be inappropriate to add Art Deco features using historic materials to a newly constructed accessory building, as doing so might inappropriately suggest that the accessory building was constructed during the 1930s.

Section 5.7 Consult the Town of Boone UDO for setback requirements and lot coverage limitations for all accessory buildings. As a general rule, no accessory building may be further forward to the street setback line than the front-most point of the principal building.

Member Sharp noted that he agreed with Ms. Meade's statement regarding not setting a precedent in the District and asked if what she stated was in conflict with Section 5.2.

Member Watkins still thought that the HPC knew very little about the shipping container's appearance, including its color, even from the renderings that the applicant provided. He referred to the conceptual images for the proposed shipping container bar with wood-clad options that were submitted. He added that he learned in this hearing that the wood was to screen the building and not clad the building. Chair Plaag pointed out that the meeting packet for this hearing contains a number of revisions that were originally submitted. He said one of the proposed changes by the applicant was to abandon the wood cladding of the shipping container because Ms. Kevorkian was concerned that the wood cladding would make the shipping container look too much like a historic building. He said the applicant thought a way around this was to propose the removal of the wood cladding and use the wood screening to deal with the issue of it being visible from the public view from Howard Street.

Chair Plaag talked about certain buildings and materials that are visible in a secondary elevation from an adjoining street. He said that after further consideration, the Town had taken the position that, in this particular case, this is a tertiary elevation, and that particular standard would not apply to it. Ms. Shook clarified that it is not just on this application. She felt that the way the standards were written, the secondary elevation definition could have been applied; however, she continued that based on the use of the terms throughout the standards, this application would be a tertiary elevation. Member Watkins said that he had read those changes and understood what Ms. Shook stated about them.

Member Watkins stated that the HPC was not being asked to approve building materials but to approve a shipping container as a building surrounded by fencing. He said it is still a shipping container and questioned if it is appropriate to have it in the historic district.

Chair Plaag pointed out that one challenge for this case was that all over the Downtown area, there are dumpsters, some of them in scale, but they are identical in material to the shipping container. He explained that, in his view, it is a weird problem to have dumpsters with the same material being proposed for a shipping container to be used as a patio bar. He added that he needed to determine the right decision for this proposal. He stated that he partially agreed with Member Watkins about a shipping container does not belong in the historic District.

Chair Plaag continued his statement and described the shipping container as a seasonal structure that the applicant is willing to put up a wooden fence so it is not visible. He said the crafty approach that the applicant used, has him second guessing what the shipping container was because it is seasonal and not heated or cooled as a building would be. He said it is similar to a garden shed with maybe electrical and not meant to be used year around. He noted that these types of structures are in the Charleston, South

Carolina, area adjacent to buildings and used as outdoor bars. He concluded that his point was that shipping containers were not new because they are being used in historic districts in other locations.

Member Watkins asked Chair Plaag to confirm that shipping containers are being used as outbuildings in the Charleston historic district. Chair Plaag noted that he would have to check the Charleston historic district's boundaries to ensure the said outbuildings are being used there. He said they are in courtyard areas and screened behind the buildings. Member Watkins said in that case, he agreed to have a shipping container in the Boone historic district. Student Member Ziegler said she thought the Asheville, North Carolina, historic district does the same thing with shipping containers and a bus that is being used as a restaurant and is screened.

Ms. Meade added that the HPC could look at this type of shipping container as extending and preserving the economic viability of a historic district. She said that if a historic district does not have ways to modernize, grow, and meet economic needs, it starts putting large pressure on itself to demolish buildings. The current proposal represented a way to get more economic utility out of current buildings without destroying them. She said, in her view, this is all for the good of a historic district.

Student Member Ziegler stated that, as the applicant pointed out, the shipping container does not impact the patio area. She continued that it could be removed if it became a future problem if other property owners wanted to start proposing other shipping containers in the Historic District.

Member Sharp stated that adding the proposed patio bar would add to the activation of what was a dead space. He stated that this proposal is not creating a new storefront seeking to attract pedestrians or motorists from the tertiary elevation of the building. He supported this proposal because of its internal function and being screened from the public view.

Member Watkins said he understood the applicant and what they are trying to do by extending the business into the courtyard in the back of the building. He said he did not have a problem with that part. He stated that if the HPC was willing to accept a shipping container into the historic district, the HPC does not have much control over the historic district. He added that if the majority loved the idea of the shipping container, he could love it too.

Chair Plaag said that he took Ms. Meade's point that this proposal would not be precedential. He said if this proposal is something that the HPC is inclined to approve, it does not mean that the HPC has to approve it on a subsequent case. He said if it turns out that the HPC or a large percentage of the town does not like it, the HPC will hear the concerns. He added that it is also possible that the applicant might use the shipping container for a couple of years and decide to keep it year-round or remove it.

Chair Plaag noted that the HPC does not regulate color. However, he suggested that the applicant use a color that would blend into its surroundings as opposed to standing out in its surroundings. He stated that the HPC could not impose the color choice as a condition, but it would go a long way in making the community more welcoming of this experimental form as a new accessory structure.

Chair Plaag asked if there were other concerns or questions of the HPC, and hearing none, he moved on to the motion and vote for this case. He asked for the HPC, when they are crafting their motion to refer to the specific standards that they believe justify the motion for or against what is proposed. He also

encouraged the motion to include a statement that indicates that this motion is specifically in relation to the proposed outdoor shipping container accessory building and that it does not address or affect any of the other components of this case that the HPC has already heard.

Chair Plaag asked if there was any disagreement that the proposal was not an addition to an existing historic building. The HPC agreed that the proposal was not an addition to an existing historic building. Chair Plaag referred to Appendix D Section 13 and noted that this section would not apply to the proposal. He said the HPC seemed to agree that the following standards that support this proposal were Appendix D Section 14, New Construction of Commercial Buildings with the District, and Sections 1 and 5 of the Design Standards for Historic Streetscapes, Landscapes, Monuments, and Other Resources in the District, Streetscapes.

Chair Plaag asked if there were other concerns or questions of the HPC, and hearing none, he moved on to the motion and vote for this case.

Motion and Vote:

Member James made a motion, seconded by Student Member Ziegler, to approve the request for the accessory storage container structure to be constructed at the rear of the property supported by Appendix D Sections 1, particularly 1.17, Section 5, particularly 5.6 and Section 14 for New Construction. This proposed motion has no impact on the earlier conditioned approval on separate aspects of this COA case, and includes the following conditions:

- Where there is a conflict between the application information and the plans (initial submittal on April 26, 2023 and revised submittal May 20, 2023)), the plans control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
- Any commitments and representations concerning the proposed exterior modification made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit and a basis for a stop work order and/or permit revocation if violated.
- The applicant shall submit the necessary applications, plans, details, and specifications which meet the requirements of the Town Code, UDO, Building Code, and any other applicable codes for review and approval necessary to issue Zoning and Building Permits.

Vote: Aye – All

Nay – None

The motion passed.

Chair Plaag recapped that the COA approval was for a shipping container with the screening described in the meeting packet. He said the shipping container would be screened, so it would not be visible from Howard Street. He encouraged the applicant to use paint color that would blend into the historic District. Ms. Garrett confirmed with Chair Plaag that he was referring to the container itself and not the wood on the paint color.

Chair Plaag asked Ms. Meade if the motion for approval should include that the shipping container proposal was congruous with the special character of the historic District. Ms. Meade said yes, the motion should have whether the proposal is congruous or incongruous with the Historic District.

Chair Plaag asked Member Sharp to amend the motion to include the proposal was congruent with the special character of the historic District. Member Sharp amended the motion to include that the proposal is congruous with the Historic District. Student Member Ziegler accepted this amendment to the motion. Chair Plaag asked the HPC to vote again on the amendment to the motion.

Vote: Aye – All

Nay – None

The motion passed.

Ms. Meade asked if the HPC and the applicant needed to further discuss paint color. Chair Plaag noted that the HPC does not regulate color. Therefore, he didn't know if the HPC could impose any color on the applicant. Ms. Meade said the HPC could prohibit neon colors. Ms. Garrett said the applicant did not have an issue considering a range of colors to be used. She said the applicant intends to use a color that makes it blend into its surroundings. Ms. Kevorkian stated that she was looking at using gray or earth-tone colors. Ms. Garrett asked the HPC to tell the applicant if they had a strong suggestion for color. Chair Plaag replied that neon or other colors, such as burnt orange or fire engine red, would not be acceptable under the UDO standards. He agreed that grays or earth-tone colors would be a more appropriate paint color for this type of proposal. He added that painting letters on the top of the shipping container that can be read from the air would probably not be accepted.

Ms. Garrett asked Ms. Turner to clarify the use of deck flooring from a previous discussion with the applicant. Ms. Turner explained that the applicant had discussed with her if the deck's flooring needed to be actual wood or if it could be a Trex board. Ms. Turner explained that this type of board would last longer and that the applicant wanted to use these as the boards to walk on. She said that she did not see in the UDO or Appendix D where this type of board was an acceptable building material. She asked the applicant to ask the HPC about using the Trex board. Chair Plaag pointed out that he was uncomfortable discussing the Trex board without seeing how it would be attached to the building. He said that he would have preferred that the proposal had been described in the meeting packet for the HPC's consideration.

Chair Plaag talked about the 828 Real Estate COA case and how the back of that building involved a Trex-like board placed on a dropped-down grid that was not visible from secondary elevations or attached to the roof of the building. It could only be viewed if you were standing on the deck of the building. He said it was approved by the HPC because it was not affecting any part of the structure of the building. He said this case was an example of how the HPC had acted on using the trex board in the past.

Chair Plaag said he was open to continuing this hearing if the applicant wanted to continue discussing it. Ms. Garrett said the applicant is not bringing up the trex board because they felt like they needed to, they just wanted to be cautious and make sure that they get it right. She asked Chair Plaag does the trex board need to be considered by the HPC if it is visible only if you are standing on it.

Ms. Meade responded that it was her opinion that the Trex board was not a consideration for the HPC because it had nothing to do with what you could see of the building, was not attached, and did not disturb the historic building. She stated that there was a limit to the HPC's jurisdiction regarding additions of this type. She said this is not clear cut, and an argument could be made either way. She also stated that when the deck system and the patio are clearly an add-on and not part of the historic building that at some point, it would need to be discussed administratively.

Chair Plaag added that since this is a brand new topic for the HPC to consider, he would need to research the minor and major distinctions and whether this would fall into something that the HPC would need to consider. Ms. Meade said that she had not been asked to give an opinion on the deck flooring, and in her view, this type of thing should have come to her first before it went to the HPC for their consideration just for the consistent application of the standards.

Chair Plaag told the applicant that the HPC did not respond to the deck flooring topic like they wanted it to, but he hoped the applicant understood why the HPC could not respond at this time. Ms. Garrett responded that she did not know how the deck flooring topic would be discussed, so she brought it up for the HPC's consideration. Ms. Garrett said there was an opportunity for staff to stop the applicant if the way the deck flooring was applied appeared to be visible; then, the applicant could bring the deck flooring topic back to the HPC for further discussion. Chair Plaag asked Ms. Meade if she approved what Ms. Garrett suggested to handle the deck flooring, and Ms. Meade replied yes. Chair Plaag asked Ms. Turner if she understood what Ms. Garrett suggested about the deck flooring, and Ms. Turner replied yes.

With no further discussion, Chair Plaag closed this case.

Adjournment

Student Member Ziegler made a motion, seconded by Member Watkins, to adjourn the meeting at 5:09 p.m.

Vote: Aye – All

Nay – None

The motion passed.

Eric Plaag, Chair

Marlene Crosby, Board Secretary