Historic Preservation Commission

Regular Meeting

~ Agenda ~

,
http://www.townofboone.net/

Jane Shook
828-268-6960

Tuesday, June 7, 2022 | **3:00 PM** | **WebEx**

This meeting will be held remotely using video conferencing software (WebEx).

For information on how to watch, listen, and/or participate in the meeting, please see the WebEx Video Conferencing Information section at the end of this agenda.

I. Call to Order

HPC Advisory Section

II. Adoption of Agenda

III. Approval of Minutes

May 3 & May 10, 2022 Meeting Minutes

IV. Public Comment

V. Historic District/Landmark Design Standards

Public Art Standards in the Historic District - Draft Text Amendment

Please note: This text is a draft version that the Town Attorney is still reviewing. The language will still undergo revisions by Planning Staff.

Demolition Standards in the Historic District - Draft Text Amendment

Please note: This text is a draft version that the Town Attorney is still reviewing. The language will still undergo revisions by Planning Staff.

VI. Project Updates by Planning Staff

HPC Rules of Procedure - Revised Rules as Presented at HPC Advisory 5/3/2022 Meeting

The revised Rules of Procedure that were discussed at the previous HPC Advisory meeting (5/3/22) were presented by Planning Staff at the last Town Council meeting (5/25/22). The revised Rules of Procedure were approved as presented. See attached for the current Rules of Procedure.

Minor/Major Work - COA Revision - UDO Text Amendment

Planning Staff and Ms. Meade revised the previous draft text amendment following the HPC's discussion and suggested revisions at the last Advisory meeting (5/3/22). Staff continued to modify the draft text amendment for the May Public Hearing/Planning Commission meeting. Planning Staff presented the text at the Public Hearing/Planning Commission meeting on May 23, 2022; the Planning Commission recommended approval as the text was presented. Planning Staff will present this text to Town Council at the June Town Council meeting. See the Revised Staff Report attached for the text Planning Staff will present to Town Council.

Certified Local Government (CLG) Application Status Update

Planning Staff has communicated with the State Historic Preservation Office's (SHPO) CLG Coordinator on submitting a draft CLG application. Staff is awaiting news from SHPO regarding the application. At this time, for the final submission, Staff will include the recently revised Rules of Procedure, all member and liaison resumes, and any other suggestions from SHPO.

VII. Project Updates by HPC Members

Watauga County Jail Local Landmark Designation Report

VIII. HPC Part-Time Employee

Discussion: HPC Part-Time Employee for Historic Landmark Designation Reports

Discussion: HPC Part-Time Employee for Digital Watauga Photography Work

IX. Other Discussion

X. Adjournment

WebEx Video Conferencing Information

WATCH OR PARTICIPATE IN THE MEETING: Individuals who wish to give testimony/evidence with respect to this case may do so through WebEx either online (by computer or smartphone) or by telephone. To do so, please email Jane Shook, Director of Planning & Inspections at jane.shook@townofboone.net or call 828-268-6960 and you will be provided with an email invitation to the meeting. All requests for participation must be completed by 2 pm on the day of the meeting.

Staff will be happy to schedule a test meeting with each participant to ensure that they are able to participate the night of the meeting. Please call Jane Shook at 828-268-6960 if you are interested in this option.

Staff will moderate the WebEx session to ensure all participants have an opportunity to speak. Individuals who require user assistance registering or joining the WebEx event on the day/night of the meeting can call 828-268-6960 for support.

CONCERNS REGARDING PARTICIPATION: Please contact Jane Shook, Director of Planning and Inspections by phone at 828-268-6960 as soon as possible if you are concerned about your ability to participate through the options listed above (online or by telephone) in the "To participate in the meeting" section above.

TOWN OF BOONE
HISTORIC PRESERVATION COMMISSION
MEETING MINUTES
MAY 3, 2022 3:00 p.m.
WebEx Video Conferencing

Historic Preservation Commission Members in Attendance:
Chair Eric Plaag, Vice-Chair Bettie Bond, Rennie Brantz, Izabela Willis and Chuck Watkins

Council Liaisons: Virginia Roseman

Town Staff in Attendance:
Jane Shook-Director of Planning & Inspections, Jessica Mitchell-Long-Range/Special Projects Planner, Christy Turner-Senior Planner, and Brenda Henson-Administrative Support

Others in Attendance: Allison Meade-Town Attorney

Call to Order

Chair Eric Plaag called the meeting of the Boone Historic Preservation Commission, held via WebEx, to order at 3:01 p.m.

Chair Plaag pointed out that it was agreed upon at the last HPC meeting to begin in May of 2022 to have an advisory meeting on the first Tuesday of the month; if there are Certificate of Appropriateness cases (COA), they would be heard on the second Tuesday with both meetings being at 3 p.m. He confirmed with Ms. Jane Shook, Director of Planning and Inspections, that the second monthly meeting would be canceled if there was no COA case on the agenda.

Adoption of Agenda

Chair Plaag suggested adding the following two topics under the Other Discussion section of the agenda: Discussion on the Local Landmark Designation of the Jones House and the RL Clay House (Rivers House) and adding under Agenda Item 6, Minor Work and Major Work: Discussion of alterations to buildings within the Historic District or to a landmark that do not appear to have been reviewed by the HPC.

Member Brantz made a motion, seconded by Vice-Chair Bond, to adopt the agenda as amended.

Vote: Aye – All
Nay – None
The motion passed.

Approval of Minutes

Member Watkins made a motion, seconded by Member Brantz, to approve April 12, 2022, meeting minutes as written.

Vote: Aye – All
Nay – None
The motion passed.

Public Comment

No individuals requested the opportunity to speak during public comment.

HPC Rules of Procedure

Chair Plaag noted he had reviewed the draft HPC Rules of Procedure document (permanently on file) and the proposed changes discussed at the previous meeting had been made.

Ms. Meade noted that she had addressed the following list of topics that she had received from the Planning Staff. The topics are as follows:

- Ability to change to remote meetings rather than to an in-person meeting
- Who would serve as Chair or Vice-Chair
- Subpoenas and the Power of the Chair
- Ex-parte contact with consultations which is currently being addressed by a formal UDO amendment
- Guidance from the HPC to the applicant requesting additional information
- Time limitations
- Dealing with the non-attorney party

Discussion ensued on time limitations for witnesses. Ms. Meade said it is not generally necessary, and is not a good business practice to have a time limit of three or five minutes for a witness to speak at a hearing unless there is a need, which there rarely is.

Discussion ensued on non-attorney party hearing participants. Ms. Meade pointed out that non-attorney parties should not be conducting cross-examination or asking other witnesses questions. The witness should be asked to give their narrative and any evidence, and they should not provide an opening statement, which is generally an attorney's function.

Discussion on the use of the HPC Quasi-Judicial Hearing Script in the hearings. Ms. Meade said that she felt the use of the script was crucial for the Commission, the public, and the participants. Ms. Shook asked Ms. Meade and the Commission if it would be helpful to publish the script. Ms. Shook said having the information available for the applicants might help provide a better framework for the meeting or hearing. Chair Plaag and Ms. Meade agreed.

Ms. Meade reviewed the following proposed changes made to the draft document:

- Page 6, Number 3 – Changed the language to reflect the meeting date, time, and place (or method) of regular monthly meetings that are subject to change at any time and subject to the notice requirements of open meetings law and any other limitations or requirements of applicable law
- Added a clause to Page 11, Number 9 – at the request of a party
- Concern of the power of the Chair, when issuing subpoenas, the power comes from state statute. On-Page 11, Number 11 – this procedure makes it clear that the Chairs decisions are subject to appeal by a majority vote of the Commission if there is disagreement
- Discussion on if the Chair or Vice-Chair is not present, the majority shall elect a serving Chair; this topic is also addressed in Article 2.01.04 of the UDO
- Page 20, Number 3F – Removing the last sentence of the paragraph

Discussion ensued on having HPC alternates. Council Liaison Roseman asked if it would be helpful to have alternates like the Board of Adjustment. Ms. Shook said that she supports the idea of having alternates for the COA cases; she felt it would be more difficult to have alternates when we are having difficulty getting regular Commission members. Chair Plaag explained that there are five members on the Commission at this time, and if he and Vice-Chair Bond were absent, there would still be a quorum. Ms. Meade pointed out that if a member is recused, a provision in the UDO can help with the quorum. Ms. Meade said that theoretically, in the right case, there could even be a quorum with two members if there was a conflict of interest.

Motion and Vote:
Member Brantz made a motion, seconded by Member Watkins, to approve the revised HPC Rules of Procedure draft document, including the information in the meeting packet and the revisions reviewed at this meeting by the Town Attorney.

Vote: Aye – All
Nay – None
The motion passed.

Ms. Meade noted the revised Rules of Procedure would be sent to Town Council for approval.

Historic District/Landmark Design Standards

Public Art Standards in the Historic District – Draft Text Amendment

Discussion ensued on Public Art Standards in the Historic District. Chair Plaag referred to pages 40 and 41 of the meeting packet regarding Public Art Standards in the Downtown Boone Local Historic District. He pointed out that the Council had directed the HPC to work on standards to address public art, including murals. Ms. Jessica Mitchell, Long Range/Special Projects Planner, explained that the proposed text is for the HPC's consideration and discussion. She added it would be sent to a public hearing and Council for approval as a text amendment. She also noted that the proposed standards are based on the Hillsborough, North Carolina standards shared at the last HPC meeting.

Council Liaison Roseman pointed out that the Council approved a committee to work on public art at the last Council meeting.

Ms. Meade explained the different ways public art could be defined. She explained that public art, as presented to the HPC in the proposed standards, is defined as publicly viewed art or art that affects the visual landscape. She said that it is appropriate for any publicly viewable art to be subject to standards to protect the architectural and historical character of the historic district. She noted that the proposed standards make it clear that this Commission would not be looking at the content, message, or the style of what is being offered. She said this would be inappropriate government regulation of free expression on private property. She explained that Ms. Bateman's committee that will look at publicly funded, publicly owned, or publicly located areas on Town property or publicly viewed areas.

Discussion ensued on Packet Page 41, number 10 of the proposed standards. Chair Plaag suggested this section be changed to read: "Artwork should consist of materials that are historically appropriate to the district and durable for exterior installation. It is not appropriate to introduce artwork in the contemporary materials including plastic or resin." Ms. Meade agreed with Chair Plaag's proposed text change. Ms. Meade asked if "historically appropriate" is defined in the historic district standards or could be defined with the addition of the resources. She felt it would be important for the applicants to have this information. Chair Plaag agreed that the proposed text, "historically appropriate," should be described by referencing the historical materials to the district and materials or designs approved by the National Parks Service through the Secretary of the Interiors Standards and the associated guidance for those standards. Ms. Meade noted her concern for an applicant reading item number 10 and perhaps needing more specific clarification on the text. Chair Plaag suggested having a list of materials that were not historically appropriate. Ms. Meade agreed that a list of materials would be helpful. She also explained being careful in making a list that might limit allowable art, and articulating a good reason for not allowing certain types of art. Chair Plaag suggested including in the proposed language for item number 10, "Artwork that employs historically appropriate materials is strongly encouraged." He said this proposed wording does not prohibit any medium, and it gives some guidance on what they select as inclusion in public art. Ms. Meade said there are not the same restrictions on the placement of public art because the Town is going to fund the artwork.

Chair Plaag asked if it would complicate working on the standards if he took another month to research materials for item number 10, and the colors and color palette of artwork discussed in item number nine (9). Ms. Meade and the HPC supported Chair Plaag in researching said topics.

Discussion ensued on the color palette of the artwork. Ms. Meade said that in the current standards, the reference to color seemed very ambivalent as to whether the color is or is not and to what extent it will be regulated. She suggested that this section be reviewed generally by the HPC. Chair Plaag said that color is not regulated using a color chart, for example, from a historic district standpoint. He said if the Town wants to add regulation of color as part of the broader zoning district category, they may do so, but not as part of the overlay standards.

Chair Plaag suggested the following proposed changes to the Public Art Standards:

- On Packet Page 40, item number C.3., rephrasing it to read: "Artwork should be placed only in locations that provide safe pedestrian access, and evaluation of such placement shall consider the general public's safety."
- On Packet Page 40, item number C.5, changing the second sentence to read: "Non-historically significant structures generally are those that were constructed after the local historic district period of significance from 1918 to 1964."
- On Packet Page 41, item number C.8, change to read: "Artwork should have an appropriate massing in relation to the building, site, or district, and be scaled appropriately for the intended space."

Discussion ensued on who is responsible for the maintenance of artwork. Chair Plaag asked Ms. Meade if there needed to be proposed language for maintaining the artwork or would it fall to the property owner, the artist, or the Town. He asked how artwork maintenance would apply to the art displayed on an art pad and not a part of a building. Ms. Mitchell said another standard in Appendix D and item number C.13 of the public art standards addresses the maintenance of artwork. Ms. Meade said she believes that item number C.13 covers the care for the painting. Ms. Meade also pointed out that the UDO defines who is responsible in its general enforcement provision.

Member Watkins explained that he felt that the type of public art is not for preservationists to decide on. Chair Plaag said the HPC would evaluate the mass, height, scale, durability of materials, installation method, and artwork placement.

Chair Plaag suggested that the HPC research communities that are the same size, character, and population as the Town of Boone learn about their standards for public art.

Vice-Chair Bond suggested that Council Liaison Roseman take the information from this discussion regarding the public art standards to Ms. Bateman.

Minor Work and Major Work – COA Revision – Draft Text Amendment

Discussion continued on text amendment revisions for Minor Work and Major Work – COA Revision – Text Amendment. Ms. Mitchell pointed out that the draft staff report for Case PL05504-021822 – Minor/Major Work – COA Revision – UDO Text Amendment is on packet page 42. She also pointed out that the revised chart for a description of work is on packet page 56. She said the proposed changes made at the last meeting have been incorporated into the chart and are shown in staff report provided in the packet.

Ms. Mitchell asked Ms. Shook if there needed to be a discussion on Article 8.03.01(D) on packet page 53; Ms. Shook noted that this was a topic she wanted to discuss with Ms. Meade. Ms. Shook pointed out that Ms. Meade had not reviewed the final draft of this article. Ms. Shook indicated that the currently highlighted text could be problematic.

Chair Plaag pointed out on packet page 56 that under the Section ADA, "the installation of residential ADA required features provided that they are consistent with the structure's architecture." He said he did not feel comfortable delegating to staff to decide if features are congruous because that is a function of the Commission. Chair Plaag also noted under the Architectural Features (not including items listed in other categories), that he believed historically appropriate should be defined as historically appropriate is used throughout. For instance, the item "addition of any historically appropriate architectural feature," he thought that historically appropriate should be defined in this section. Ms. Mitchell responded and told Chair Plaag that she understood his concern on these topics. She further explained that the Planning Staff was trying to make the COA process clearer and reduce the amount of excessive review by the HPC, if possible. She noted that the Planning Staff would consider Appendix D and the Secretary of Interior Standards in their review. Ms. Meade said that she agreed with Chair Plaag's point on his concerns in the draft document. She suggested maximizing specific areas where the Commission is comfortable with the Planning Staff preceding without Commission involvement. Chair Plaag made other proposed changes in Article 8 of the draft document captured in the chart below.

Description of Work	Routine Maintenance	Minor Work (SOC)	Major Work (COA)
New Construction and Additions			X
Accessory Building			
In-kind repair of existing accessory building	X		
In-kind replacement of existing accessory building		X	
Demolition of an existing accessory building not historically appropriate to the site		X	
New construction or an addition to an accessory building on a tertiary elevation not visible from a public street		X	
All other new construction or additions to an accessory building			X
Demolition of an existing historic accessory building			X
ADA			
In-kind repair or replacement of existing ADA features	X		
Installation of temporary accessibility ramps that are not intended to be permanent in nature		X	
Installation of residential ADA required features provided that ~~they are consistent~~ congruent with the architecture of the structure		X	X
Installation of ADA required features on tertiary elevations not visible from a public street		X	
All other, exterior modification of existing buildings for ADA compliance			X
Architectural Features (not including items listed in other categories)			
In-kind repair/replacement of any existing architectural feature	X		
Addition of any historically appropriate architectural feature *Staff is to define historically appropriate architectural features*		~~X~~	
Addition of any architectural feature on tertiary elevation not visible from a public street		X	
Removal/alteration of an architectural feature not historically appropriate to the building on a tertiary elevation not visible from a public street		X	
All other additions of architectural feature ~~not historically appropriate to the building~~			X
All other removal/alteration of architectural features			X
Awnings, Canopies, or Shutters			
In-kind repair/replacement of an existing awning, canopy or shutters	X		
Addition of ~~historically appropriate~~ awnings, canopies or shutters on primary and secondary elevations		X	X
Addition of awnings, canopies or shutters ~~that are not historically appropriate~~ to the building on tertiary elevations		X	
Removal of an awning, canopy or shutters that is not historically appropriate to the building		X	
All other additions of awnings, canopies, or shutters			X
All other removal of ~~historically appropriate~~ awnings, canopies or shutters			X
Decks, Patios, and Sidewalks			
In-kind repair/replacement of an existing deck, patio, or sidewalk, addition of public sidewalks	X		
Addition of ~~historically appropriate~~ decks, patios, and sidewalks to primary and secondary elevations		X	X

Communication: May 3 & May 10, 2022 Meeting Minutes (Approval of Minutes)

Additions of decks, patios, and sidewalks on ~~secondary and~~ tertiary elevations		X	
~~Removal of decks, patios, and private that are not historically appropriate to the building or site~~		~~X~~	
All other additions of decks, patios, and sidewalks			X
All other removals of ~~historically appropriate~~ decks, patios, or sidewalks			X
Staff is to correct formatting of the table from here thru the document – reference to gray shading of category labels.			
Demolition and Relocation			
Any demolition of any building, structure, or part thereof			X
Removal/alteration of archaeologically significant features			X
Any work that is likely to disrupt or damage known or discovered archaeological resources on the site			X
Moving or relocation of any buildings or structures			X
Doors & Windows			
In-kind repair/replacement of any door or window, including casing, frames, and trim	X		
Installation of storm windows where divided mullions of storm windows and doors align with windows and doors behind	X		
Addition of any ~~historically appropriate~~ door or window within existing openings		X	X
Addition of a door or window on tertiary elevations with historically appropriate materials that are compatible in terms of size, design and material		X	
Installation of skylights within a tertiary elevation or where the skylight is not publicly visible		X	
Removal of any door or window on a tertiary elevation not visible from a public street		X	
Installation of all other doors or windows			X
Removal of any door or window opening or any in-fill (e.g., bricking of door or window opening) of a door or window			X
All other removal of doors or windows			X
Driveways			
In-kind repair/replacement of an existing driveways	X		
Addition/alterations of ~~historically appropriate~~ driveways in primary and secondary elevations		X	X
Additions/alterations of driveways on ~~secondary and~~ tertiary elevations		X	
~~Removal of driveways that are not historically appropriate to site~~		~~X~~	
All other installation/additions of driveways			X
All other removal of driveways			X
Fences			
In-kind repair/replacement of an existing fences	X		
~~Addition/alterations of historically appropriate fences~~		~~X~~	
Additions/alterations of fences on ~~secondary and~~ tertiary elevations or not visible from public streets		X	
~~Removal of fences that are not historically appropriate to site~~		~~X~~	
All other installation/additions of fences			X
All other removal of fences			X
Exterior Surfaces Materials (Masonry, Siding, etc.)			

In-kind repairs/replacement, including repointing, to existing exterior surfaces when the material, color, composition of the new material matches the existing exterior surface (includes requirement that the composition of the mortar match the original)		X	
All other alterations of exterior surface materials			X
Foundations			
In-kind repair of a foundation	X		
Alteration of a foundation on a tertiary elevation not visible from a public street		X	
All other repairs/alterations of a foundation			X
Gutters and Downspouts			
In-kind repair/replacement of gutters and downspouts	X		
Installation of gutters and downspouts which match the house or trim color as long as no~~t~~ historic~~ally appropriate~~ features are damaged or removed.		X	
Removal of gutters or downspouts that are not historic to the building		X	
All other installation of gutters and downspouts			X
All other removals of gutters and downspouts			X
Landscaping			
Insignificant landscaping including vegetable and flower gardens and shrubbery	X		
Pruning of trees and/or shrubbery	X		
Removal of trees less than 25 inches in diameter	X		
Removal of trees that are dead, dangerous per adequate documentation from licensed arborist	X		
Removal of any invasive species (landscape material) as listed on the Invasive Plants Found in the Mountains of North Carolina list published by the N.C. Invasive Plant Council	X		
Any other removal of any tree 25 inches or greater			X
Mechanical Systems/Equipment			
In-kind repair/replacement of any existing mechanical systems, vents, and related equipment	X		
Removal of any existing mechanical systems, vents and related equipment	~~X~~	X	
Installation of mechanical systems, vents, and related equipment on ~~secondary and~~ tertiary elevations, or adjacent land areas, that does not involve alteration ~~to the building.~~		X	
Installation of window air conditioners		X	
All other installations of mechanical systems, vents, and related equipment			X
Painting			
In-kind repair/re-painting of any painted surface	X		
Painting exterior surfaces not previously painted			X
All other painting			X
Parking Lots			
In-kind repair/replacement of existing parking lots	X		
Alteration/addition to existing parking lots		X	X
Removal of parking lots not historic to the site		X	~~X~~
Installation of a new parking lot			X
All other parking lot removals			X

Public Art			
In-kind repair/maintenance of previously-approved and installed public art	X		
Replacement of previously-approved and installed public art with similar artwork (e.g., a statue replacing a statue, or one mural design replacing another)		X	
New installation of public art in the local historic district			X
Roofs			
In-kind repair/replacement of roof coverings	X		
Repair/replacement of roof coverings not publicly visible		X	
Modification of roof line			X
All other roof covering replacements			X
Satellites			
In-kind repair/replacement of existing satellite dishes	X		
Addition of satellite dishes on ~~secondary and~~ tertiary elevations		X	
Removal of satellite dishes		X	
All other installation/additions of satellite dishes			X
Signs			
In-kind repair/replacement of an existing permanent sign	X		
Addition/alteration of temporary sign or approved historic house marker		X	
Addition/alteration of ~~historically appropriate~~ permanent sign on a non-contributing building ~~(determined by historic significance)~~		X	
Addition/alteration of ~~historically appropriate~~ permanent sign on a contributing building ~~(determined by historic significance)~~		X	
~~Removal of permanent signs that are not historically appropriate to site~~		~~X~~	
~~All other installation/additions of permanent signs~~			~~X~~
~~All other removal of permanent signs~~			~~X~~
Removal of historic permanent sign			X
Removal of non-historic permanent sign		X	
Solar			
In-kind repair/replacement of an existing solar energy system	X		
Addition/alterations of solar panels on ~~secondary and~~ tertiary elevations		X	
Removal of solar panels		X	
All other installation/additions of solar panels			X
Miscellaneous			
In-kind repair/replacement of roof attachments	X		
Addition/alteration of ~~historically appropriate~~ roof attachments		X	
All other installation/additions of roof attachments			X
All other removal of roof attachments			X
Installation of house numbers and mailboxes	X		
Establishment of exterior fire exits on tertiary elevations		X	X
Establishment of exterior fire exits on secondary and primary elevations			X

Notes:

1. "In-kind" ~~shall be defined to~~ means having no change in design, materials, or general appearance including color of the existing or original historic feature

~~If both minor and major columns are marked, the item shall be considered in the first instance by staff, but referred to the HPC in case of doubt as to the appropriateness of the proposed change~~

2. “Historically significant” shall be defined to reference the period of significance of the district or landmark.
3. Permanent signs of a non-contributing building shall be historically appropriate to the period of significance for the district or landmark. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance of the district or landmark.
4. Permanent signs of a contributing building shall be historically appropriate to the period of significance of the building. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance to the building, and shall not harm, damage, or destroy historic materials or features. In the case there is no photographic evidence of materials appropriate to the historic building, then the materials shall be appropriate to the materials in the historic district.

Staff is to place Permanent Sign language in Appendix D, Downtown Boone Design Guidelines and Handbook as standards.

Discussion ensued on additional proposed changes submitted to the Planning Staff before posting the public hearing packet. Ms. Shook pointed out that if the HPC had more possible changes to the Minor Work and Major Work draft document, they could email the Planning Staff separately to incorporate those changes into the public hearing packet. Ms. Shook said she had rather have the changes now rather than later.

Motion and Vote:

Chair Plaag made a motion, seconded by Member Watkins, that the chart, as amended in this discussion, subject to further review by the Town Attorney, is the recommended language for Council to consider along with the Planning Commission in terms of defining what Major/Minor items are.

Vote: Aye – All
Nay – None
The motion passed.

Discussion of Alterations to Buildings within the Historic District or a Landmark that does not appear to have been reviewed by the HPC.

Chair Plaag asked Ms. Meade what is the appropriate way for the HPC members to ask about work they observe being undertaken within the historic district. Ms. Meade noted it was fine for HPC members to contact the Planning Staff. She said she would like to discuss with Ms. Shook the process that she would like for the Planning Staff to follow.

Ms. Meade left the meeting at approximately 5:30 p.m.

Project Updates by Planning Staff

Hayes-Bryan-Greene Cemetery Marker Update

Chair Plaag asked Council Liaison Roseman to relay the final motion was on the Hayes-Bryan-Greene Cemetery marker. Council Liaison Roseman replied the marker text which referenced the term “disenfranchised” was approved. She said the sign's location would be at the corner of Water Street and Queen Street. She said that the motion passed by a 3-2 vote.

Ms. Mitchell added that she is coordinating an encroachment agreement through the Public Works Department for the site, and will contact Sewah Studios on the marker. She said that in a previous discussion, it was noted that we would try to have the marker by September of 2022.

Ms. Mitchell said she also has been working with the Public Works Department on QR codes for markers. She showed a mock-up of what they had made. She said it is made of hard, durable vinyl material, that would be attached to the marker post. The HPC indicated that they all approved of the mock-up shown by Ms. Mitchell.

Chair Plaag said that he had received an email from a descendant of the Hayes-Bryan-Greene Cemetery wanting to know if the Town could do more to protect the cemetery. The reason is because that person's relative who's been caring for the cemetery cannot care for it anymore. Chair Plaag confirmed that he passed along the concern to Town Staff.

CLG Status Update

Ms. Mitchell provided an update to the HPC on the status of the CLG application. She noted she will wait until mid-to-late May to submit the draft CLG application.

Chair Plaag said the only distinction he would suggest is on packet page 65, number eight (8), describing the "1940 Boone Flood" and "The Junaluska Community" as historical marker reports.

Project Updates by HPC Members

Watauga County Jail Local Landmark Designation Report

Chair Plaag suggested that this agenda topic be tabled until the next advisory meeting scheduled for June 7, 2022.

Downtown Boone Walking Tours Brochure

Chair Plaag said the Cultural Resources Department created the brochure included in the board packet. He asked the HPC to review the brochure carefully and flag anything that did not look accurate. He said the HPC could discuss those potential revisions at their June 7, 2022, advisory meeting.

Other Discussion

Chair Plaag talked about two potential landmark properties on the HPC's work plan. He said the Town-owned properties are the RL Clay House (Rivers House) and the Jones House. He said he would like to see work begin on draft language for the landmark reports of these two properties. He said there is a member of the Digital Watauga team who is completing her master's degree in Historic Preservation. He expressed interest in having her, or another equally skilled individual completing their graduate program at ASU, work on these designation reports as he felt it was important that another voice, other than his, also be heard through the creation of these important historical documents. Brief discussion ensued as to funding. Ms. Shook said she would look into funding possibilities and report back to the Commission.

Ms. Shook asked the HPC what they wanted to see included in the COA staff reports. She asked the HPC if they wanted to continue to see both the designation report and the architectural survey information in the staff reports. Chair Plaag said he felt that both should be included in the staff reports.

Recess of HPC Advisory Session

Member Watkins made a motion, seconded by Member Brantz, to recess the meeting at 6:13 p.m.

Vote: Aye - All
Nay – None
The motion passed.

Town of Boone
Historic Preservation Commission
Meeting Minutes
May 10, 2022, 3 pm
WebEx Video Conferencing

Call to Reconvene on May 10, 2022 at 3:00 p.m.

Chair Eric Plaag reconvened the meeting of the Boone Historic Preservation Commission, held via WebEx, at 3:02 p.m., and he provided a brief synopsis of the Historic Preservation Commission, its makeup, and function. He then asked if there was any public comment, and there was none.

Historic Preservation Commission Members in Attendance:

Chair Eric Plaag, Vice-Chair Bettie Bond, Rennie Brantz, Izabela Willis, and Chuck Watkins

Council Liaisons: Virginia Roseman

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

Others in Attendance: Allison Meade-Town Attorney, Jim Deal-Attorney-Deal, Moseley and Smith, John Winkler-Rivers Street Ventures, LLC, Judah Goheen-Winkler Organization, Jason Gaston-Valor Engineering, and Brent Davis-Brent Davis Architecture and Carrie Caviness, Ph.D-Interface Environmental Consulting, LLC

Case Z05606-032422 Rivers Street Ventures – Certificate of Appropriateness for Major Work
John Winkler, on behalf of Rivers Street Ventures, LLC, is requesting a Certificate of Appropriateness (COA) for Major Wok for the demolition of the existing building (currently Café Portofino) at 970 Rivers Street (Watauga County PIN: 2900-78-7965-000) in the Downtown Boone Local Historic District and proposed new construction of a one-story hotel.

Chair Plaag affirmed/sworn in the following Planning Staff: Ms. Jane Shook, Ms. Christy Turner, and Ms. Jessica Mitchell.

Chair Plaag swore in the following individuals: Mr. John Winkler on behalf of Rivers Street Ventures, LLC, Mr. Judah Goheen from the Winkler Organization, Mr. Jason Gaston from Valor Engineering, Mr. Brent Davis from Brent Davis Architecture, and Ms. Carrie Caviness, Ph.D. from Interface Environmental Consulting, LLC.

Chair Plaag asked the Commissioners if they had a fixed opinion about this case that is not susceptible to change; if any Commissioner has 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; or if any Commissioner has engaged in any undisclosed ex-parte communication regarding this case. There were no responses in the affirmative.

Chair Plaag pointed out that Mr. Jim Deal, Attorney from Deal, Moseley, and Smith, was present to represent the applicant. Mr. Deal indicated that Mr. John Winkler was acting on behalf of the applicant, Rivers Street Ventures, LLC.

Chair Plaag asked Mr. Deal if he wished to make an opening statement. Mr. Deal explained that he was giving the opening statement on behalf of the applicant, who requested a "Certificate of Appropriateness" (COA) to demolish the building, commonly known as Café Portofino, and replace it with another structure. He said the applicant believes the proposed building is congruent with the downtown historic district. He noted that the height of the proposed building is less than the height of the current building. He stated the proposed work would demolish the existing pilings in the creek that restrict the flow of water and prevent the daylighting of the creek.

Mr. Deal explained the applicant and the witnesses would provide information and evidence about the process and the reasons for the demolition, the proposed reuse of the site, and the landscaping used to open up and restore the creek. He further stated there used to be hotels between Howard Street and River Street, and with this proposal, the applicant believed that a hotel in this location is in character with the downtown historic district.

Chair Plaag asked the Planning Staff if they wished to give an opening statement. Ms. Turner noted there were two topics for discussion: the demolition and then the proposed new building on the same lot. She referenced packet page 136 regarding Design Standards for Demolition and noted Section 2.4 of the standards should have been included in the staff report. She further explained that Sections 6.16, 7.3, 7.9, and 9.3 should be removed from the staff report for this case's hearing as those standards relate to renovations and not new construction as proposed.

Mr. Deal asked to confirm that the Commission has up to 365 days to delay demolition and that the Commission could not deny the demolition of a building. Chair Plaag replied that was correct with regard to this particular case.

Mr. Deal called Mr. Judah Goheen as the first witness to discuss the current condition of the building. Mr. Goheen said he was in the building as recently as last week with Mr. Darrell Pulliam, a Town of Boone Building Inspector. Mr. Goheen said that Mr. Pulliam agreed the building should be demolished. Mr. Goheen noted there were areas of mold, holes in the floor from rotted wood, roof leaks, sagging floors, and the foundation piers that sit in the creek were crumbling and appeared to look unsafe. He stated that in his opinion, the overall building has exceeded its reasonable service life.

Ms. Meade asked Mr. Deal if he offered some expert testimony; she stated that no foundation had been set at this point for who Mr. Goheen is or what his expertise is. Mr. Deal explained that he had just asked Mr. Goheen for his personal view of the condition of the building as the property manager of the building. Mr. Deal asked Mr. Goheen to describe his work and his background and training with respect to property management. Mr. Goheen replied that he is the maintenance and grounds director at the Winkler Organization, dealing directly with the owners of Café Portofino and the upstairs tenants for the past eight years. Mr. Goheen said there are two apartments upstairs that the Winkler Organization stopped leasing about a year or two ago because of extreme rot inside the walls, and because the exterior stairs into the building looked unsafe. Mr. Goheen said he has not been in the crawlspace, but plumbing companies have gone under the building to check on different things.

Chair Plaag said he noticed that Mr. Goheen said that he had not been in the crawlspace. He confirmed with Mr. Goheen that he essentially relied on comments from others' hearsay comments. Mr. Goheen said that was correct, and indicated he had pictures of the crawlspace. Chair Plaag asked Mr. Goheen if he had submitted copies of the pictures as part of the application. Mr. Goheen said he is not aware if the pictures had been submitted, but he could submit them if needed.

Chair Plaag confirmed with Mr. Goheen that he is not a structural engineer and does not have specialized training. Mr. Goheen replied that was correct. Chair Plaag asked Mr. Goheen if he had training in repairing and maintaining a historic wooden building. Mr. Goheen noted that if the current building was considered historic, then he has been involved firsthand in minor repairs, but not any substantial repairs to the building. Mr. Goheen said he is familiar with the general maintenance and upkeep of the building. Chair Plaag rephrased his question to Mr. Goheen if he had any preservation training in appropriate repair and maintenance of historical materials, as recommended by the National Park Service; Mr. Goheen replied no.

Discussion ensued on the submitted letter from the structural engineer. Mr. Deal asked Ms. Meade if he could tender the letter as evidence. Ms. Meade explained that the application and the staff report are normally considered as an exhibit offered into evidence. Chair Plaag said that generally, the Commission members rely on the staff report presented unless the applicant objects. Chair Plaag also pointed out that the problem with a prepared letter is that it leaves no ability to cross-examine that person or ask related questions. Ms. Meade suggested that the Commission accept the entire contents of the packet into evidence, and then the Commission can discuss and weigh the evidence during review of the case. Chair Plaag asked the Commission members if there were any objections to accepting the entirety of the case packet into evidence; there were no objections from the Commission.

Mr. Deal called Mr. John Winkler, on behalf of Rivers Street Ventures LLC, as the next witness in this case. Mr. Deal asked Mr. Winkler to describe his ownership or interest in the property, and his experience with the building known as Café Portofino. Mr. Winkler replied that he is a part of the LLC that owns the property. He stated that he is familiar with the construction of the building, and he is a licensed contractor. Mr. Winkler further explained that he had been an unlimited licensed contractor since 1982, and he has dealt with commercial and residential buildings.

Mr. Deal asked Mr. Winkler if he had the opportunity to view the Café Portofino building in its current status; Mr. Winkler replied yes. Mr. Deal asked Mr. Winkler his opinion as a licensed contractor of the existing structure of the building. Mr. Winkler stated that he saw the photos of the building, and he felt there was no way to salvage it because of the current condition, which included the failing foundation. Mr. Winkler said he was not sure why additional photos were not submitted.

Mr. Deal asked Mr. Winkler if he had witnessed the current pilings in the creek area. Mr. Winkler replied that in his opinion, they are insufficient, and indicated he has witnessed trash collecting in the creek due to the pilings. Mr. Deal also asked Mr. Winkler if he had his people clear out the trash in the creek. He could not speak to that as he was not there to see it, and he was unsure if staff had done that or not.

Mr. Deal asked Mr. Winkler to describe the proposed building. Mr. Winkler said he is proposing a 17-unit, one-story boutique hotel. He said it is designed to meet the special flood hazard requirements by FEMA. Mr. Deal asked Mr. Winkler if the new construction would not have any pilings in the creek. Mr. Winkler stated there would be five or six pilings from the edge of the creek, which would be 25 feet from the edge of the creek.

Chair Plaag asked Mr. Winkler if he had explored ways to replace the existing piers and beams with new materials, possibly concrete or some other material, that would sufficiently support the existing building located in the floodplain. Mr. Winkler said he had not explored replacing the piers with other materials because the building is in sections and it is impossible to get under the building to explore other material options.

Chair Plaag asked Mr. Winkler if he had read in the staff report that the Café Portofino building is the last remaining building in Boone associated with tobacco production and sales during the 1930s, 1940s, and 1950s. Mr. Winkler replied that he was informed of the history. Chair Plaag asked Mr. Winkler if he had explored the following possibilities for the consideration of things to be done with this building such as: National Register Designation under Criterion A for its association with the tobacco trade in Boone; or explored a National Park Service rehabilitation tax credits for buildings that are eligible for the National Register; or if explored local landmark designation for this building given its association with the tobacco trade in Boone. Mr. Winkler replied no to the considerations Chair Plaag mentioned.

Mr. Deal called the next witness, Mr. Jason Gaston from Valor Engineering. Mr. Gaston stated that he is a licensed engineer in North Carolina, and he has been practicing civil engineering since 2009.

Mr. Deal asked Mr. Gaston to state his involvement with the Café Portofino site. Mr. Gaston said that he worked on the layout for the proposed hotel. Mr. Gaston went over the site plans within the board packet. He explained that Mr. Winkler wants to use the existing parking lot with some modification as parking for the hotel with any excess parking to be shared with tenants who currently use it. He noted the parking lot would be resurfaced and restriped and have new curb and gutter added. He pointed out on the proposed plan that no portion of the new building will be inside the required stream buffer. He stated there will be a new sidewalk along River Street. He explained that the building has an awkward shape dictated by the 25-foot stream buffer. He pointed out that the Board of Adjustment has reviewed the buffer requirement variance to remove the building from the buffer.

Chair Plaag asked Mr. Gaston if his testimony was regarding the engineering for the proposed building, and not to any structural engineering with regard to the existing building. Mr. Gaston replied that was correct, with one exception. He noted that Mr. Winkler had initially explored the requirements to repair or reconstruct, which resulted in the project would trigger tier four, for repairs exceeding 75 percent of the current value.

Mr. Deal asked Mr. Gaston to describe to the Commission the effect of the tier that he talked about in response to Chair Plaag's question. Mr. Gaston read UDO Section 7.05.02(C4) as follows: Tier 4: Reconstruction, modification, and alteration of a structure or development in which the cost is certified to exceed seventy-five (75%) of the value of the development shall require compliance with all requirements of the UDO unless compliance is impossible, provided this section shall not require replacement of or substantial change to a façade that is in good condition.

Mr. Gaston further explained that the current tax value of the property is $505,200.00. He stated that he and Mr. Winkler discussed the repair estimate to be substantially over 100 percent of the value. He continued that the proposed project would have to meet all the requirements of the UDO, if possible. He stated this situation is one of the reasons why the applicant is proposing complete new construction. He further explained that the building itself does not meet the required base flood elevation; he explained this is not possible unless you raise the whole building. He said he would encourage the applicant to reconstruct a building that at least meets the special flood hazard requirements, which is for the building to be two feet above the base flood elevation.

Chair Plaag asked Mr. Gaston if the listed tax value for $505,200.00 is the amount that currently appears on the tax card or a figure listed due to the new evaluations recently mailed out. Mr. Gaston said he took the information from the current listing on the Town of Boone GIS system. He replied that did not know if the GIS system pulled the new values. He said he assumed the amount does not reflect the revised value if there is a revised value.

Chair Plaag noted that Mr. Winkler mentioned the existing building sits two feet below the flood level. Mr. Gaston replied no, as in reference to the base flood elevation, the finished floors are above the base flood elevation. Mr. Gaston explained that the UDO requires regulatory flood protection elevation, which the property does not meet at 1.67 feet above the base flood elevation; he stated the property is to be at two feet above the base flood elevation.

Chair Plaag asked Mr. Gaston if this means for any other existing building that does not meet the current standard that property owners must lift a building up to the proper height or remove it from the floodway. Mr. Gaston referred to Tier 4 of the UDO regarding compliance. He further stated that as an engineer, he said he would recommend development to meet the regulatory flood protection elevation of two feet above the base flood elevation. Chair Plaag asked if it would be possible to alter the existing building so that it could be raised to meet the flood standards. Mr. Gaston believed that was more of a structural question to raise an existing building.

Mr. Deal called the next witness, Mr. Brent Davis of Brent Davis Architecture. Mr. Davis stated he had been an architect in Watauga County since 2000. Mr. Davis said he is roughly familiar with but has not visited the site. He said that he prepared the architectural plans for the proposed building. He reviewed the written description of the proposed work as outlined within the board packet. He explained the features of the building including that it is a 17-guest room, boutique hotel, 16 feet, six inches in height. He further described that it is a wood construction building using fire retardant treated lumber with a low sloped roof truss, and a 30-inch parapet to screen HVAC equipment. He also stated the building exterior will be wood and brick, and siding material that will be painted. He detailed that the storefront material will be of anodized aluminum with clear, tempered glass. He noted that the guest rooms may or may not have tempered glass; he explained the type of glass will depend upon the height off the floor, and it could be clear glass with double insulation. He further stated that the proposal also included awnings over each entry door. He stated that a brick veneer will continue around base of the building, which will be an eight-inch concrete reinforced slab with piers. He also detailed a decorative pergola or trellis that will be placed at the front of the building. Mr. Davis concluded by stating that there were photographs submitted as comparisons of buildings on Depot and Howard Street.

Mr. Davis described the mass and scale of the proposed building. Mr. Deal asked Mr. Davis about the height of the current building. Mr. Davis replied that it is 19 feet. Mr. Deal asked if the height of the proposed building would be less than the existing building; Mr. Davis replied yes. Mr. Davis continued by explaining the buildings on Howard Street that were similar to the proposal. He noted that he tried to capture the scale proportion of similar buildings on Howard Street and others in the neighborhood in terms of scale and exterior features. He talked about the exterior finishes and the material and color for the proposed facility. He noted that the Black Forest color is not an actual black color and that he used the same color on two boutique hotels in Blowing Rock, North Carolina, and the color worked out well. Member Watkins said he knew that the Black Forest color has become popular, but he wondered about its relevance to the downtown historic district.

Member Watkins asked Mr. Davis about the rectangles under the windows shown on the building elevation within the board packet. Mr. Davis replied that the rectangles represent loose louvered panels called PTAC units, which are inside air conditioning and heating units that extends into the hotel room. He continued by stating they fit flat to the surface of the building, and the owner selected the colors. Mr. Winkler stated that the Black Forest paint color has been used on his other hotel properties.

Chair Plaag asked Mr. Davis about the pergolas at 208 Howard Street, a building identified in the Comprehensive Architectural Survey and the Designation Report WT0874 for the C. C. Wilcox Building. Chair Plaag asked Mr. Davis if those pergolas were original to that building. Mr. Davis replied that he was unsure if they were original to the building. Chair Plaag asked Mr. Davis if he was familiar with the renovations completed at the Howard Street building in 2017; he asked Mr. Davis if he knew the appearance of the building before 2017. Mr. Davis answered no to both questions.

Chair Plaag asked Mr. Davis if he could name another building in the historic district that has ever featured pergolas or utilized copper sheet metal as a coping material during the period of significance from 1918 to 1964, or if Mr. Davis was familiar with copper material being a common coping material in the district during the said period of significance. Mr. Davis said he could not think of a building in the historic district that used this material. He further explained that the material was used on the High Country Bank, however, the building is not in the historic district.

Chair Plaag asked Mr. Davis if he could name a building in the historic district that has utilized a gray-tan colored brick or any use of the gray-tan colored brick during the said period of significance for the district. Mr. Davis said no to both questions.

Chair Plaag noted that Mr. Davis had previously described the proposed use of columns made of stone and wood as an architectural feature of the proposed building; Chair Plaag asked if a more accurate term would be to classify those as pilasters. Mr. Davis said that is correct and stated that the pilasters are not holding up the building, but are a decorative feature that gives contours to the wall.

Chair Plaag asked Mr. Davis if he was familiar with any building in the historic district during the period of significance that used a combination of lap siding, boards, vertical batten boards, and brick on the exterior cladding of the building. Mr. Davis replied no.

Chair Plaag asked Mr. Davis if he was familiar with any building in the historic district during the period of significance that utilized tinted glass in its windows. Mr. Davis replied no.

Chair Plaag asked Mr. Davis about 260, 268, and 274 Howard Street; Chair Plaag said Mr. Davis described these three buildings as one building. Chair Plaag pointed out that these three buildings were built at distinct, separate times from one another. Mr. Davis said he assumed there were separate buildings, but he was looking at the mass of the building in terms of length and height. Chair Plaag pointed out that it is inaccurate to describe these three buildings as one building as massing appropriate or common to the historic district. Chair Plaag asked Mr. Davis to tell him the length of the proposed building of the primary elevation or main façade of the building along River Street. Mr. Davis stated the length is 132 feet and six inches. Chair Plaag asked Mr. Gaston to give the present length of the primary façade, not including the setback or porches located on the west side of the building. Mr. Gaston said the length is 80.5 feet.

Mr. Deal called the next witness, Ms. Carrie Caviness, Ph.D. from Interface Environmental Consulting, LLC and Chair Plaag affirmed her in. She stated she is an environmental consultant who has been practicing in the Boone area since 2013 or 2014. Mr. Deal asked Ms. Caviness if she was familiar with the site on River Street; Ms. Caviness replied she prepared the trout buffer waiver application for the Division of Land Quality with NCDEQ and the Board of Adjustment. Mr. Deal asked Ms. Caviness to state her findings and recommendations with respect to the stream quality and the restoration of the creek. Ms. Caviness explained that she found some geomorphology and stream health issues. She explained that these issues come from the elevated stream because of an existing sewer pipe underneath the Café Portofino building connecting to the main line that runs along the creek. She said that from a biogeochemical standpoint the condition is not ideal. She further stated that trash accumulates due to the shape of the building, and there is no leaf litter that supports stream health.

Mr. Deal asked Ms. Caviness if, in her opinion, the proposed pilings for the new structure would be an improvement from what is in the stream bed now. Ms. Caviness replied that she is doing a geomorphologic and a biologic study to see what is the best thing to do to improve the restoration of the stream.

Mr. Deal asked Ms. Caviness to describe the landscaping recommendations. She said that there is not a final list as of yet, but once the demolition is completed, the following will occur: boulders will be placed around the edge of the water to protect material behind the bank; a gentle slope to a floodplain bench and then sloped up to the existing elevation; the 25-foot trout buffer that will be matted, stabilized, and seeded with native riparian seed; along with planting a mixture of shrub and native tree species. She discussed working with Mr. Brandon Wise, Environmental Planner, on the planting design in accordance with Town approval. She noted that planting native plants that provide shade are ideal for the trout stream.

Chair Plaag asked Ms. Caviness about the supporting pillars proposed in the floodway but not necessarily within the 25-foot stream buffer. He wanted to know if there are potential consequences of structural members being located in the floodway during a flooding event at Boone Creek. Ms. Caviness replied that unfortunately she could not answer those questions because they were outside of her scope of permitted work.

Chair Plaag pointed out that Mr. Deal in his opening statement talked about the history of hotels in the area between Howard Street and Rivers Street in the applicant's opening statement. Chair Plaag asked Mr. Deal if someone was going to speak on this topic. Mr. Deal noted that there were two hotels on Howard Street during the period of significance, and there were multiple hotels on King Street, although none existed anymore. He mentioned a hotel used to be beside the Café Portofino building, where the parking lot is now between Howard Street and River Street. Ms. Meade pointed out that an attorney's comments are not evidence in the case. She said that unless there are materials in the record, they should not be considered. Mr. Deal pointed out that in the record, it stated the Café Portofino building was used in the tobacco industry for up to two years between 1939 and 1941 and was abandoned by Austin Tobacco. He said he did not want the Commission to think it was a long-standing tobacco building according to the records presented by the town.

Discussion ensued on the building being unsafe. Member Watkins asked if he was correct in understanding that there was testimony that the building is now unsafe. Chair Plaag said that Mr. Goheen made statements of opinion to that effect during his testimony. Member Watkins asked Mr. Goheen how long the building had been unsafe. Mr. Goheen said that it was hard to tell because it was difficult to access all of the areas of the building until the restaurant moved out all of its equipment. He explained on his initial walkthrough, after the equipment was removed, he noticed rotten flooring over the foundational parts over the creek. Chair Plaag questioned who was responsible for the maintenance and repair of the building. Mr. Goheen said that the tenant was responsible for the entire interior of the building and all of the equipment. He further stated the property management company was responsible for primarily anything outside of the building, such as walls, roof, common area, and parking lot.

Discussion ensued on the roof leaking and the poor condition of the outside columns. Chair Plaag confirmed with Mr. Goheen that the property management company is responsible for repairing the outside columns. Mr. Goheen explained that every time a leak was reported, he attempted to seal the roof. He explained that multiple repairs had been made, and because of the way the building had settled it made it difficult to repair the roof.

Chair Plaag asked if a property manager would be concerned about the liability perspective for their employer related to the deterioration of things, supporting posts or exterior materials, that are not the tenant's responsibility. Mr. Goheen agreed and stated that was the main reason that they stopped leasing the two apartments above the restaurant because he felt they were unsafe.

Chair Plaag asked Mr. Goheen who was responsible for cleaning up trash on the exterior of the building, specifically the trash that was said to have been in the creek and was mentioned during some of the testimonies. Mr. Goheen said the property management company, specifically the ground staff, would be responsible for the trash outside of the building. Chair Plaag asked Mr. Goheen if he routinely checked on the trash outside the building. Mr. Goheen said that there would be a buildup of trash after a storm and trash would collect around the pilings underneath the building. He pointed out that the town sewer line that runs underneath the building also tends to catch trash.

Ms. Meade asked Mr. Goheen who his employer was. He replied, Mr. John Winkler. She asked Mr. Goheen if he was the property manager for this building, and he replied yes. She asked him roughly how many properties he manages, and he replied that organization has about 30 properties in Boone. She asked him if he had a contractor's license or any specific licensing or certification other than the property manager experience for the last eight years. He replied no.

Mr. Deal said in response to Member Watkins's question that he would like to share the letter from the structural engineer that is included in the packet. Mr. Deal explained that the letter states the engineer's opinion that the building is not structurally sound. Mr. Deal said the engineer was not available to attend this meeting. Chair Plaag discussed that he did not think it was appropriate for Mr. Deal to defend the letter from the engineer since the engineer is not present to be cross-examined. Chair Plaag said that it has already been stipulated that the engineer's letter is in the packet and can be used as evidence.

Chair Plaag asked the Planning Staff if they would like to present any evidence other than the meeting packet pertinent to this application. Ms. Turner said the Planning Staff does not have further evidence.

Chair Plaag asked if there were any other interested parties that would like to speak or present evidence in support of the application. Ms. Shook said one person had indicated that they wanted to speak, but she had left the meeting. Chair Plaag asked if any other nonparty witnesses would like to speak or present evidence in support of the application. There were no responses in the affirmative.

Chair Plaag asked if any interested party or other nonparty witness would like to speak or present evidence in opposition to the application. There were no responses in the affirmative.

Chair Plaag asked the Planning Staff if their office had received any written correspondence about this particular case. Ms. Shook and Ms. Turner replied no.

Chair Plaag asked the Planning Staff if they had a closing argument or summary. The Planning Staff did not have a closing statement.

Mr. Deal gave a closing statement noting that no testimony showed that the existing building was safe. He said the only testimony voiced was that the building was unsafe. He referred to the engineer's letter located in the meeting packet that could be weighed as evidence supporting the case that the building is unsafe. He mentioned there was also testimony from individuals who have been in the building that repeatedly discussed the poor condition of the building. He said he is personally very familiar with the building, and how the building has had different uses through the years. He mentioned that anything built there needs to reflect the character and exterior appearance we want as a town. He stated on behalf of the applicant, they would like to work with the Town regarding the exterior appearance. Mr. Deal started describing findings, one of which is that the building has been structurally unsafe with its pilings in the stream. He described that this contradicts what the Town wants, which is the opening of Boone Creek to make it more attractive and amenable as opposed to the current site. He stated the reason for demolition is because the building is unsafe and it is in the floodway; moreover, he stated it does not meet any of the current requirements of the ordinance. He stated that it is not reasonable nor practicable to save the existing building. He described the proposed reuse of the site included a lower building height for the area. He mentioned that Ms. Caviness described the new landscaping and the proposal to improve the creek would be significant to get the pilings out of the creek and open it up. He indicated the applicant was working with the Town to remove the sewer line and connect it to Rivers Street. In closing, he said there is ample reason to allow the demolition, which will be the first thing that the applicant will request from the Commission.

Chair Plaag began the discussion of the evidence presented. Chair Plaag mentioned the issue of witnesses' statements of the building not being historically significant to the area. He continued by stating that there is a designation report that has declared this building to be historically significant to the district for its contributions to the history of the Town, not necessarily its contributions to architecture. Chair Plaag opened the floor for discussion on this issue and a possible motion for a finding of fact that the building is or is not historically significant to the district.

Member Bond said that she did not see the existing building having historical value even though it has had many uses. She said she felt the larger issue is the Howard Street project. She said she felt that we could make this area historically significant by cleaning up the creek and remembering what was in this area.

Member Watkins said he felt that the historical significance of the building is perhaps less important than the overall plan. He also noted that the applicant had indicated a willingness of the owners, the architect, and the developers to work with the Commission on a different proposal that is more appealing than the initial plan.

Member Brantz said that he found the safety issues to be important. He stated that removing the existing building and considering a new building would be wise from a public safety angle.

Chair Plaag reminded the Commissioners that the issue before them is not what is safe or unsafe; rather, the issue is if the building contributes to the historic district's character, has historical or architectural significance, or both. He noted the designation report says it is historically significant and a contributing building to the district. He mentioned that if we believe that to be true, or the demolition of the building is damaging to the character of the district, that demolition could not be prevented but it could be delayed. He said that other options could be explored for either repairing the building at the site or the possibility of the owner facilitating the moving of the building to another location. He noted the last resort would be to potentially salvage portions of the building to be used in some other capacity at some other location.

Ms. Meade explained that considering the safety angle could be a problematic precedent for the Commission to take. She explained that even if the Commission agreed that the evidence established a safety issue, she said she would take issue with that based on the evidence presented of no other measures taken regarding the safety of the building.

Ms. Meade reviewed the statute's language with respect to demolition, so the Commissioners understood the actual legal standard that applies. She said if the Commission finds that a building or site within the district has no special significance or value toward maintaining the character, the district shall waive all or part of such period of delay and authorize earlier demolition or removal.

Discussion ensued on a potential delay in demolition. Chair Plaag pointed out that the standards require the building be documented extensively as the interior of the building has never been documented. He said that the Commission is obligated to approve a request for demolition with a possible delay with the approval to allow for the documenting of the interior of building. Chair Plaag discussed some options in the hearing with regard to alternative solutions, and as a last resort, the relocating of the building.

Discussion ensued on possible ways to address the request for demolition. Chair Plaag suggested that a possible motion be made about the requested demolition or whether a delay seems appropriate or not. Member Watkins asked if everything that was not original to that building was stripped off what would remain. Chair Plaag said there is a rectangular piece at the southwest corner of the building that is not original to the building. He further noted that near the rear of the building, there is a stucco material placed over base material applied later at an unknown time. Chair Plaag said that he suspected that the base material was probably the original wood boards of the building. Member Watkins noted that in his experience, it was difficult to move buildings or motivate owners to pay for them to be moved, or finding people willing to undertake the process. Chair Plaag pointed out that there is an opportunity for Mr. Winkler and his company to work with the Town to donate the salvageable elements of this building to the Town to reconstruct this building or something similar at Daniel Boone Park. He said this could effectively create the possibility of a year-round Farmers Market at Daniel Boone Park. He added that there are potential tax benefits to Mr. Winkler and his company for doing something like this.

Chair Plaag noted that Mr. Winkler had testified that he had not explored options that could be done, ranging from the lifting of the building to figuring out a different configuration for the supports to get them out of the creek. Chair Plaag noted that he was troubled by any applicant who comes to the COA process and is not prepared to mention what has been explored or why certain items cannot be done. He suggested that a delay in the demolition be beneficial in assisting the owner, applicant, and the Commission in assuring the public that the Commission has done its due diligence in exploring all other alternatives before authorizing the demolition. Member Watkins mentioned that the applicant would probably be willing to do things like enable complete documentation of the building before the demolition. Chair Plaag suggested the applicant talk to a historic preservation specialist about what can be done to save the building or other things to meet the applicant’s goals for the hotel.

Discussion ensued on delaying the demolition of the building. Chair Plaag explained that the demolition could occur at the end of the 365 days. The applicant could do their due diligence and return to the Commission in two or three months. The hearing could be reopened to hear the diligence testimony from the experts to speak on those things. The Commission could make further consideration at that time for reducing the waiting period.

Chair Plaag explained his experience with property owners who take advantage of tax credits and explore those kinds of solutions, as it is generally less expensive than tearing down a building.

Member Watkins said the most helpful thing that the Commissioners can do since they cannot prevent the demolition of the building, and if the applicant wants to demolish the building, is to work with the applicant to produce a replacement building that will maintain the spirit of the historic district.

At 5:18 p.m. Chair Plaag called for a ten-minute break, and at 5:29 p.m., he reconvened the hearing.

Chair Plaag continued deliberating on the possible waiting period for the proposed demolition. He asked the Commission if they wished to impose any type of waiting period or if there were any suggestions for the applicant as to how to utilize the waiting period and possibly reduce the time if the Commission is so inclined. Member Brantz suggested a 90-day waiting period. Chair Plaag noted that it is his understanding that the applicant can demolish at any time once the COA is issued within the effective period of the COA that has a time limit on it to begin the work. Chair Plaag asked Member Brantz if he was suggesting the applicant have a 90-day waiting period or time limit before they would be able to demolish. Member Brantz confirmed that he is suggesting a waiting period.

Motion and Vote:
Member Brantz made a motion, seconded by Member Bond, that the Historic Preservation Commission approve the demolition of this structure with a 90-day waiting period.

Member Watkins asked if Member Brantz's motion included the applicant working with the Commission to produce an alternative plan for the hotel. Chair Plaag reiterated that the Commission is reviewing a two-part COA between the demolition and the proposed new hotel as two separate issues. Chair Plaag said that once the demolition is approved, the Commission can then consider the proposed plan for the site. Chair Plaag noted in the second part of the COA review that the Commission can choose to recess if there are questions that cannot be answered at this hearing and reopen the hearing at a later time, if the applicant needs to gather information to address some of the concerns the Commission might have about the new hotel.

Member Watkins asked if Member Brantz's motion included the applicant providing access to the building and hiring and paying for a professional to document the interior of the building. Chair Plaag suggested that Member Brantz amend his motion to include Member Watkins's thoughts, and if the applicant fails to do what is recommended by the Commission within the 90-day waiting period, it will revert to the 365-day waiting period or some other waiting period that is chosen.

Member Bond added a friendly amendment to Member Brantz's motion. She agreed to the demolition of the building with the caveat of a 90-day waiting period, at which time the applicant will give access to the building, and hire and pay for a photographic survey of the interior of the building before it is demolished.

Ms. Meade suggested that the motion establish precise parameters to be specific to the condition. Chair Plaag recommended that whoever does the interior documentation be from the list of historic preservation consultants maintained by the State Historic Preservation Office (SHPO). Chair Plaag pointed out that he is not making a recommendation and noted that from his work experience, Ms. Heather Fernbach has done work in Watauga County. He said her work would include a written description to supplement our existing exterior description of the building. He noted that this building had never been documented before. Chair Plaag said that, if appropriate, the applicant could ask the Planning Staff for SHPO contact information to help streamline the process for the applicant. Mr. Deal said the applicant would need some idea of the cost of hiring a professional before they would agree to it. Chair Plaag gave an estimate cost of between $2,000 and $5,000, or possibly less. Mr. Deal said the applicant agreed to pay within that cost range for the professional to document the building. He noted the applicant could contact them the next business day and get it scheduled to do the work. Mr. Deal noted that the professional going into the building would need to sign a waiver because it is too dangerous to let someone in that building without a waiver.

Mr. Deal pointed out that to do any work on demolition in a trout stream, you cannot get into the creek between October 15 and April 15. He said if the approval is not completed before October 15, the applicant might as well wait the year. Ms. Meade added that the waiting period could be within 90 days at the earliest date the report was submitted. Mr. Deal confirmed that the applicant was agreeable to the terms discussed. Ms. Meade added that if the timeframe was not met or the cost was an issue to the applicant, the matter would come back to the Commission.

Chair Plaag asked Member Brantz and Vice-Chair Bond to amend their motion to include the applicant is to explore the possibility of working with the Town to convey a part or all of the building to the Town if the Town is interested in acquiring it on a salvage basis. Mr. Deal said the applicant is willing to explore salvage opportunities but is unwilling to pay for them. Mr. Deal said that he could write a letter to the Town of Boone and offer the building to them and then they could move it wherever they wanted to move it. Chair Plaag said that in either case, regardless of whether it is moved or torn down and the Commission will probably want to see the building documented in its current location. He said they would offer it to the Town, and maybe there is a center part of the original structure that might be reasonably movable. Member Brantz and Vice-Chair Bond accepted these friendly amendments.

Ms. Turner clarified the conditions for the demolition COA as well as that the applicant has to obtain the COA before the demolition permit can be issued; and the demolition portion of the COA effective date will be 90 days and when both of the conditions have been met.

The conditions of the COA case are as listed below:

1. Where there is conflict between the application information and the plans (February 28, 2021), the plans control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed exterior modification made by the applicant or its (their) 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.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and other applicable codes for review and approval necessary to issue Zoning and Building Permits.
4. The applicant agreed to a 90-day waiting period: to hire and pay for a professional from a list provided by the State Historic Preservation Office (SHPO) to document the interior and exterior of the building.
5. The applicant shall explore alternative options to save or salvage the building.

Vote: Aye – All
Nay – None
The motion passed.

Discussion ensued on the proposed new building. Chair Plaag pointed out that from the architect's testimony, the applicant had done very little due diligence in selecting materials and features for the building appropriate to the historic district for new construction. He said he could not support the building as proposed because it is not congruous with the historic district. He suggested that the Commission discuss some of the materials to allow the applicant to regroup on what is proposed for the site. Mr. Deal agreed with Chair Plaag and noted that it would be helpful to ask the Commission for guidance on the building design's proposed features that are congruous with the period of significance.

Chair Plaag said that he appreciates the proposed lower building height He said he was concerned with the massing of the building because the proposed building is substantially longer. Chair Plaag pointed out his concerns about the proposed exterior materials of the new building as the applicant could use one exterior material along with interesting design features, rather than three or four different exterior colors and six or seven different architectural styles on the same building. He suggested that the applicant look at the buildings on lower Depot Street that have both stone and brick or brick tile on them instead of the mishmash of colors and architectural features proposed.

Discussion ensued on the required minimum building footprint. Mr. Gaston said a B-1 development requires a minimum building footprint coverage for the lot to be 50 percent. He said the site is barely that amount, and they are constrained with the stream buffer in the back, the sidewalk in the front, and have maxed out the buildable footprint. He said he would have to shorten the building because it could not go higher. He directed his question to Planning Staff, and Ms. Shook answered about making sure he meets the minimum flipping requirements for lots in the B-1 zoning district. Ms. Shook said that in the past a reduction was not allowed; she said there was another project that got a variance for the building footprint.

Ms. Meade asked Planning Staff if some type of public space, like a courtyard, on one side of the building would still count towards the building footprint. She said, if not it should be something that should be considered and could be an oversight in the UDO. She said she thought there should be some flexibility either for meeting historical standards or for public spaces like courtyard spaces. Ms. Shook clarified that there is no additional guidance within the section.

Member Watkins said he was uncomfortable trying to tell the applicant how to address the Commission's concerns. He said ultimately, the Commission will vote on whether they think the final result is congruous with the historic district. He suggested that the Commission provide the applicant with a list of elements or materials the Commission believes would be compatible with the approval. Chair Plaag agreed with Member Watkins.

Chair Plaag pointed out the following items that the Commission felt they would like to see on the proposed building:

- Replace the copper sheet metal with a historic material
- Do not use the pergolas on the new design
- Possibly use a different color brick and paint color other than the gray/tan brick and a different paint color other than Black Forest that is more historical to the district
- Adjust the massing/scale of the building that is more appropriate to the former building and lot as well as surrounding buildings
- If using pilasters, call them that on the architectural plan
- Break up the elements/materials using on the exterior of the building
- Do not use tinted or mirrored glass for the windows
- See if a different material for the HVAC units other than the PTAC's can be used

Mr. Deal said the applicant would have to discuss with Mr. Davis and Mr. Gaston the possible options to see if there is a reasonable way to address the concern of the massing issue by trying to include the slight setback that Chair Plaag mentioned.

Discussion ensued on the timeline to submit the proposed application's revised site plans and description. The Planning Staff discussed a date for the applicant to submit their revised documents and plans to the Planning Department. Ms. Shook said the meeting packet would need to be published by June 3. The Planning Staff agreed to work with the applicant as needed so long as there was sufficient time to review and publish.

Chair Plaag said he did not think a new staff report would be needed, rather a revision of the drawings, elevations, and site plan would need to be submitted. He said that the Planning Staff would need time to review and comment. Mr. Deal said he would need time to talk with Mr. Davis and Mr. Gaston and check their availability to work on the revised plans. Mr. Deal said he would try to work towards making the June meeting agenda. Chair Plaag noted that the Commission could delay the COA case review of the new construction until the July meeting, if needed. Ms. Meade pointed out that to avoid any issues with having to provide a second public notice, she would suggest that the Chair, when the Commission is done with this discussion, table the case over to the next regular session of the Commission. Chair Plaag said if there are no objections, he will continue this case to the next Historic Preservation Commission Quasi-Judicial hearing on June 14, 2022, at 3 p.m. via WebEx, a video conferencing software. On behalf of the applicant, Mr. Deal had no objection to continuing this case.

Other Discussion

There was no other discussion.

Adjournment

Member Brantz made a motion, seconded by Member Watkins, to adjourn the meeting at 6:28 p.m.

Vote: Aye - All
Nay – None
The motion passed.

______________________________ ______________________________

Eric Plaag, Chair **Marlene Crosby, Board Secretary**

PLEASE NOTE: This text is a draft version that the Town Attorney is still reviewing. The language will still undergo revisions by Planning Staff.

XX.XX Public Art Standards in the Downtown Boone Local Historic District

In the historic district, public art refers to works of art that are placed or created outside and intended for public appreciation. Such artworks include, but are not limited to, sculptures, murals, and mosaics. Functional aspects of streetscapes and landscapes, such as bridges, benches, and fencing may provide opportunities for artistic expressions and in certain situations will be evaluated as public art.

A. Public art installed in the Downtown Boone Local Historic District is to be reviewed by the Historic Preservation Commission for a Certificate of Appropriateness (COA). The HPC does not consider the content, subject matter, or style of any public art. The COA review is concerned with the mass, height, scale, durability, materials, method of installation, and placement of artwork. Artwork is reviewed with respect to these factors to determine if the artwork is congruous with the character of the historic district and the values of historic preservation served by the historic district.

B. The HPC will be focused on the following factors:
   a. The proposed artwork's relationship to character-defining façades or features (such as doors and windows) of a historic building or other structure.
   b. The proposed artwork's placement within a historic streetscape or landscape
   c. The proposed artwork's physical impact on historic materials
   d. The proposed artwork's height, scale and massing as it relates to the historic setting.

C. The following standards shall generally apply to proposed public artwork:
   1. Artwork should be placed only in locations that do not compromise or detract from the architectural integrity or historic character, design or materials of the building, site, or district.
   2. Artwork should be placed only in locations that do not materially obstruct or otherwise interfere with the view of historic structures or vistas.
   3. Artwork should be placed only in locations that provide safe pedestrian access and considers the safety of the general public.
   4. Wall-mounted artwork, including murals, mosaics, or metal installations, should be placed only in locations that do not compromise or diminish the overall design, architectural features, or pattern of the building, site, or district. Murals may not be placed around windows and doors, but rather are appropriate for expanses of wall surfaces otherwise without significant architectural detail.
   5. It is preferred that wall-mounted artwork be installed on non-historically significant structures. Non-historically significant structures are those that were constructed after the local historic district period of significance from 1918 to 1964.
   6. Wall-mounted artwork is not appropriate for previously unpainted surfaces of structures of historical significance.
   7. Artwork should be installed so that it does not conceal, result in damage to, or remove historical details or features.

8. Artwork should have an appropriate massing in relation to the building, site, or district, and scaled appropriately for the intended space.
9. The colors and color palette of artwork is not regulated, except that neon colors are not allowed.
10. Artwork should consist of traditional materials including wood, stone, masonry, or metal that are durable for exterior installation and compatible with the character of the building, site, or district. It is not appropriate to introduce artwork in contemporary materials including plastic or resin.
11. Installation of artwork should include methods of stabilization or attachment that are fully reversible and do not cause damage to historic buildings, sites, or materials.
12. Installation of artwork that includes additional features such as signage, mounting hardware, or lighting should be of compatible materials and should, as appropriate, be installed to be unobtrusive and screened from view as much as possible.
13. Artwork should be maintained and repaired as required by the nature of the materials to preserve the appropriate appearance and safety of the artwork.
14. Previously-approved and installed artwork may be replaced with another piece of similar artwork (e.g., a statue replacing a statue, or one mural design replacing another) without need for further approval, so long as general features including mass, scale, durability, method of installation, and placement of the art are not significantly altered and the replacement artwork does not include any new feature that is inconsistent with the standards set forth in this section.

D. Historical markers, interpretive signage, and public art that is either (i) located on public property or in the public right-of-way within a historic district or within the boundaries of a publicly-owned landmark or (ii) funded in whole or in part by the Town must be approved by Town Council and shall be exempt from the COA process.
    1. However, at least 30 days prior to consideration for approval by the Town Council, the proposed historical marker, interpretive signage, and/or public art shall have been considered by the HPC in its advisory capacity with respect to (i) applicable district or landmark standards regarding size, form, massing, materials, and placement, (ii) historical accuracy and appropriateness of the content, and (iii) any other factors, including but not limited to aesthetic considerations, that the HPC deems relevant. The HPC shall forward the results of its review to Town Council. Town Council may consider approval of such historical marker, interpretive signage, or public art within 45 days of consideration by the HPC, regardless of whether or not HPC has submitted the results of its review by that date.
    2. For purposes of this section, (1) “public property and public right-of-way” refer to any interest in real property held by the Town and/or dedicated for general use of the public; and (2) “public art” means any installation of art viewable from a public place such as a public street or sidewalk.

PLEASE NOTE: This text is a draft version that the Town Attorney is still reviewing. The language will still undergo revisions by Planning Staff. This draft will show changes to existing language in Article 8 or Appendix D of the Town of Boone Unified Development Ordinance with deletions and additions shown in ~~red~~ and blue, respectively.

Article 8 Historic Preservation Procedures

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8.08 Delay in Demolition of Landmarks and Buildings Within Historic District.

8.08.01 An application for a Certificate of Appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in Subsection 8.08.03.

A. However, the effective date of such a Certificate may be delayed for a period of up to 365 days from the date of approval.

1. This period of delay authorized by this Section shall be reduced by the Historic Preservation Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay.

B. During such period the Historic Preservation Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site.

1. When considering demolition of a historic building, the property owner is encouraged to seek all alternatives prior to this course of action. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project. Alternative possibilities include:

a. Adapting or renovating the property to suit the owner's or owners' needs

b. Selling the property to someone willing to preserve the building

c. Applicants should consult a historic preservation professional or XX for suggestions of alternative possibilities

d. Under General Statute 160D-949, these standards recognize that statewide significance can be determined by a submitted, review, and approved application to the State Historic Preservation Office, or by a property's (or properties') listing in the National Register of Historic Places at the state or national level are indicators that the site is considered significant.

~~a.~~e. Investigated and attempted alternatives to demolition should be recorded by the applicant and submitted as part of the COA as a report. Documentation can also include a structural integrity report.

C. If the Historic Preservation Commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

8.08.02 If the Historic Preservation Commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not yet been made by the Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the

Historic Preservation Commission for a period of up to 180 days or until the Council takes final action on the designation, whichever occurs first.

8.08.03 An application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places shall be denied except where the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

(Ord. PL04727-050721, 07-01-2021)
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Appendix D Downtown Boone Design Guidelines and Handbook

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Design Review Process

Except for minor work eligible for a Statement of Conformity, the Town of Boone Historic Preservation Commission (HPC) is responsible for the design review of all proposed changes to the exterior of structures, demolition of structures, moving of structures, new construction, and signage in the District. The design review process for changes in the District requires application for a **Certificate of Appropriateness (COA)**. This process is designed to ensure proposed work is compatible with the nature of the property and the character of the surrounding properties in the historic district. The HPC is assisted by Town of Boone Planning and Inspections Staff, who prepare HPC agendas and minutes and perform other administrative and design review duties as required.

The District overlay requires an applicant to meet design standards set forth herein, in addition to all other codes and laws. Applicants in the District are first required to obtain a COA as a preliminary step before obtaining zoning and building permits, if such permits are required for the proposed work. The issuance of a COA indicates that, in the opinion of the HPC, the proposed alterations, improvements, new construction, or demolition is consistent with the Standards and reflects the historic character of the District. Any repair or replacement that involves a change in exterior design, materials, or general appearance is defined as an alteration and requires an approved COA before work can begin. In addition, properties that are subject to interior review (either publicly owned properties or those whose owners have requested interior review) must have an approved COA for alterations affecting historically significant interior features. Some landscaping, streetscaping, and archaeological projects also require a COA.

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Note: The following section for COA Application Submission and Review is based on Case PL05504-021822 for Minor and Major Work – COA Revision. It is being heard at the May 23rd Public Hearing/Planning Commission Meeting with subsequent Town Council hearing in June.

COA Application Submission and Review

Pursuant to UDO Subsections 4.04 and 8.05.0~~3~~4, a pre-application consultation between the applicant and Staff is required. The aim of this consultation is to minimize development planning costs, avoid misunderstandings or misinterpretations, and ensure compliance with the requirements of this Ordinance. At this meeting, Staff shall inform applicants with respect to application requirements and provide assistance in identifying possible resources for historic information.

Required materials for all COA Application for Major Work shall include:

- *Written Description of the Proposed Work*: The application shall describe ~~Describe~~ in detail the scope and nature of the proposed project, including exact material types, colors, and dimensions for materials to be used (e.g., width of siding, color of window trim, type of roofing materials, etc.).
- *Design Standards References*: The application shall cite ~~Cite~~ the applicable sections of the design standards ~~Design Standards~~ related to and/or reflected in the proposed project.
- *Photographs of Existing Conditions*: The application shall include contemporaneous photographs ~~Provide current photographs~~ showing the current~~present~~ conditions of the area where the work~~project~~ will be completed and/or the portions of any existing building or other structure(s) that will be affected by the proposed work.
- *Site Plan*: The application shall provide ~~Provide~~ scaled drawings showing the relationship of all existing structures, ~~buildings, secondary structures,~~ driveways, sidewalks, fences, drains, lighting, and trees to the property lines and identify the location of any and all proposed changes. ~~Clearly identify the location of any and all proposed changes.~~ Tree caliper sizes ~~Caliper of trees~~ should be indicated as measured from four (4) feet above the earth's surface.
- *Historical Documentation*: If available, provide copies of historic photographs of the property in question, along with a list of any known previous alterations to the property (and the approximate date of those alterations). If the property is already listed on the National Register of Historic Places or is a designated Local Historic Landmark, include a copy of the nomination text for the property.
- *Elevations*: The application shall provide~~Provide~~ architectural drawings showing all elevations, including scale, where proposed work will occur. ~~Include scale.~~
- *For Projects Involving Demolition or Relocation*: The application shall describe ~~Describe~~ the structure, the reason for its demolition or relocation, the proposed reuse of the site, as well as plans for new landscaping at the site.

…

Standards For Relocation and Demolition

1. Relocation of Buildings

Relocation is considered to be a "last resort" to demolition. Most historic buildings are strongly associated with the original site; therefore, relocation could threaten the integrity of a landmark property. Relocation requires full consideration, especially in the circumstance if it is the only alternative to demolition.

An application for a Certificate of Appropriateness (COA) authorizing the relocation of a designated landmark or a building, structure, or site within the District may not be denied except if the State Historic Preservation Officer determines that the structure has statewide significance as defined in the criteria of the National Register of Historic Places. This decision may be overturned in instances where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. The effective date of such a certificate for relocation of a resource within the District may be delayed up to 365 days from the date of approval. This period shall be reduced by the HPC where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay.

1.# Review project proposals including the description of the structure, reason for relocation, proposed reuse of the existing site, and plans for new landscaping.

1.# In considering relocation of a building, the owner or applicant should consider the following items. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.

A. If there is a threat to demolition other than through neglect
B. If relocation is the only alternative
C. If the structure is significant enough that a relocation is necessary for the character of the historic district
D. If the relocation will adversely affect the character of the district
~~A.~~E. If the relocation will damage significant site features
F. If there are alternatives prior to this course of action, i.e. relocation. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.
   1. Alternative possibilities include:
      a. Adapting or renovating the property to suit the owner's or owners' needs
      b. Selling the property to someone willing to preserve the building
   2. Applicants should consult a historic preservation professional or XX for suggestions of alternative possibilities
   3. Under General Statute 160D-949, these standards recognize that statewide significance can be determined by a submitted, review, and approved application to the State Historic Preservation Office, or by a property's (or properties') listing in the National Register of Historic Places at the state or national level are indicators that the site is considered significant.
   4. Investigated and attempted alternatives to relocation should be recorded by the applicant and submitted as part of the COA as a report. Documentation can also include a structural integrity report.

~~1.1~~ ~~Choose relocation only as a "last resort" to demolition.~~

1.~~2~~ ~~In consultation with the Planning Department, the Cultural Resources Department, and the SHPO,~~ The owner is to record the structure thoroughly with photographs and other documentation, including identifying and recording the interior and exterior of the building or structure, any special architectural features of the building(s), important landscape features, streetscapes, other structure(s) on site, and archeological significance of the site. ~~document the original site through drawings and photographs prior to relocating the historic~~

~~resource.~~Planning Staff will provide the owner, the applicant, or the legal representative a list of consultants provided by the State Historic Preservation Office or preservation affiliates. Documentation should be kept on record with the applicant or owner, and shall be submitted to Planning and Inspections Staff.

1.~~3~~ Work with reputable and experienced contractors to accomplish the relocation.[1] Assess the structural condition of the building prior to relocation.

1.~~4~~ Plan the relocation route thoroughly. Contact Town staff, local utility providers, and building officials to secure necessary permits and discuss a work plan for the move. Coordinate efforts to ensure minimum delays en route.

1.~~5~~ Secure the structure to be moved to protect from weather damage, water infiltration, to minimize damage during the move, and to deter vandalism.

1.~~6~~ Review the compatibility of the proposed relocation site with respect to building spacing, setback, orientation, height, scale, massing, the new site's topography, and distance from other buildings. Consider if the new site is compatible in character with the original site location. Choose a site within the historic district when possible. ~~Choose a site for a relocated building that corresponds proportionally to the size of the structure.~~

1.~~7~~ Position the building on the new site in such a manner that its orientation to the street, ~~setback, and~~ shape, mass, scale, and lot coverage is compatible to and harmonious with the existing structures on the block to which it is moved. The new foundation of the building or structure should match the original in height, design, and materials.

~~1.8 Ensure that the shape, mass, and scale of the building to be moved conforms to the existing structures on the block to which it is moved.~~

1.~~9~~ Move a building as a single unit in order to prevent the unnecessary loss of historic building fabric or any important architectural features. Partial or complete disassembly is only acceptable when absolutely necessary.

1.# Protect original and significant site features, features of the new site, and of the route during the relocation.

A. Preserve important site features within the historic district, or employ measures to keep important features on current site, such as large or historic trees.

B. If disassembly must be undertaken measured drawings and photographic documentation of the structure shall be completed with written plan detailing the disassembly as part of the COA application for HPC approval.

C. Elements that are removed should be reassembly accurately. To do so, any parts of the building or structure should be marked with a non-destructive method that can be removed after reassembly.

[1] The North Carolina SHPO maintains a list of qualified preservation consultants and building movers with experience working on North Carolina historic properties.

1.# In the circumstance that the approved relocated building is disassembled for moving and the physical condition is different than reported during the COA case, any change of physical condition should be documented. Documentation of changed physical conditions includes on-site photographs, written notes including dimension, finish, texture, or color. Applicant, owner, or the one documenting the physical appearance should report any change to Planning and Inspections staff.

1.# In the circumstance a structure is being relocated to the historic district, the HPC is to consider if the relocated building fits into the era of the district in architectural style and scale. The structure is to be harmonious with the adjacent buildings according to the guidelines for new construction. Relocating within the historic district shall not diminish the overall character of the historic district or damage existing historic buildings.

A. Additional considerations include siting orientation, building spacing, setbacks, height, scale, massing, distance from other buildings, landscaping, and other site features as in guidelines for new construction. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.

2. Demolition

Demolition or removal of any structure in the historic district requires a COA. The HPC may not deny any application for demolition, however, the HPC may delay the effective date of the COA for up to 365 days from the date of approval. A delay in the effective date would be given if the structure contributes to the character of the historic district.

An application for a Certificate of Appropriateness (COA) authorizing the demolition or destruction of a designated landmark or a building, structure, or site within the District may not be denied except if the State Historic Preservation Officer determines that the structure has statewide significance as defined in the criteria of the National Register of Historic Places. This decision may be overturned in instances where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial. The effective date of such a certificate for demolition or destruction of a resource within the District may be delayed up to 365 days from the date of approval. This period shall be reduced by the HPC where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay.

If the HPC has voted to recommend designation of a property as a landmark or designation of an area as a historic district, and final designation has not yet been made by the Town Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the HPC for a period of up to 180 days or until the Town Council takes final action on the designation, whichever occurs first.

The action for demolition cannot be reserved and all alternatives to demolition should be explored. While demolition negatively impacts the context and setting of the adjacent buildings and the district as a whole, it is not the intent of the standards regarding demolition to require the reconstruction or restoration of individual or original buildings, or to prohibit the demolition of such buildings.

2.# The demolition standards for the historic district are intended to follow the state law in North Carolina General Statute 160D-949, which requires demolition of building(s) or structure(s) within a local historic district requires a COA. The HPC will review any demolition application or any project of substantial or significant exterior demolition, such as the demolition of significant portions of a building and projects may be subject to the standards for demolition.

A. Review project proposals including the description of the structure, reason for demolition, proposed reuse of the existing site, and plans for new landscaping.
B. In the case that site development is to be staged over several months, site plans should include a site treatment such as seeding or introducing ground cover once the site has been cleared of debris and any below-grade openings are filled.

2.~~2~~ When considering demolition of a historic building, the property owner is encouraged to ~~work closely with the HPC in reviewing~~seek all alternatives prior to this course of action. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.

A. Alternative possibilities include:
   1. Adapting or renovating the property to suit the owner's or owners' needs
   2. Selling the property to someone willing to preserve the building
   3. Relocation
B. Applicants should consult a historic preservation professional or XX for suggestions of alternative possibilities
C. Under General Statute 160D-949, these standards recognize that statewide significance can be determined by a submitted, review, and approved application to the State Historic Preservation Office, or by a property's (or properties') listing in the National Register of Historic Places at the state or national level are indicators that the site is considered significant.
D. Investigated and attempted alternatives to demolition should be recorded by the applicant and submitted as part of the COA as a report. Documentation can also include a structural integrity report.

2.# The owner is to record the structure thoroughly with photographs and other documentation, including identifying and recording the interior and exterior of the building or structure, any special architectural features of the building(s), important landscape features, streetscapes, other structure(s) on site, and archeological significance of the site. Planning Staff will provide the owner, the applicant, or the legal representative a list of consultants provided by the State Historic Preservation Office or preservation affiliates. Documentation should be kept on record with the applicant or owner, and shall be submitted to Planning and Inspections Staff.

2.~~1~~ In reviewing a request to demolish a building in the district, the HPC also considers (1) whether the building contributes to the historic character of the district, and (2) whether the proposed demolition will adversely affect other buildings in the district or the overall character of the district.

2.# The HPC will also consider the following questions to determine if a delay is warranted on the demolition application. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.

A. What is the contribution of the building to the historic district? Including if it is significant because of its historic use, historic event(s), significant person(s), significant builder(s), significant architect(s), or significant contribution to the aesthetic character of the district.

B. What is the condition of the building, including foundation, floors, walls, windows, doors, and roofs? Including if the site is a hazard to the public health, safety, and welfare; if all possible efforts for preservation have been considered.

   1. If it is determined by the HPC that the structure does not present a threat to public health, safety, and welfare, but is a deteriorated structure, the demolition should be delayed. The HPC may determine that relocation is a better option for the structure; if the HPC determines such, a delay will allow time to find a suitable site and prepare the structure for relocation.

C. After demolition, would the new use of the original site be of greater benefit to the district compared to the loss of the historic structure?

2.# If the HPC designates a delay period, the HPC should negotiate with the owner or other interested parties, including State and local preservation organizations, to consider the following items. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.

A. If the owner has provided a well-developed proposal for the use of the site necessitating demolition

B. If the proposed site serves the purpose as well as the original site

C. If the site has known or potential archaeological significance

D. If the structure is of national, state, or local significance

2.# If it is deemed that any of the materials or features are salvageable or useable, the owner or applicant is to manage selecting the company or organization in executing all matters of salvaging materials. ~~work with the HPC and other interested parties~~ Salvageable or useable materials can include the following. The list is not intended to be comprehensive and cannot cover every circumstance that could be encountered in the project.

A. Wood flooring

B. Exterior elements such as doors or windows

C. Masonry materials such as brick or stone

D. Other decorative features such as trim, mantels, stair rails, and newel posts

E. Other architectural features for reuse

2.# Demolition of a building or demolition of a landmark property that has deteriorated beyond where repairs are feasible is considered demolition by neglect. The HPC discourages demolition by neglect due to such condition leading to the loss of a valuable historic resource.

2.# During demolition, the property owner, applicant, or any workers on the site are to take measures that will protect adjacent properties and significant site features during demolition. Significant site features include known archaeological resources and mature trees.

2.# After demolition, the site is to be cleared promptly and to develop according to the approved plan.

~~2.3 An application for a Certificate of Appropriateness (COA) authorizing the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within the District may not be denied except if the State Historic Preservation Officer determines that the structure has statewide significance as defined in the criteria of the National Register of Historic Places. This decision may be overturned in instances where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.~~

~~2.4 The effective date of such a certificate for relocation, demolition, or destruction of a resource within the District may be delayed up to 365 days from the date of approval. This period shall be reduced by the HPC where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay.~~

~~2.5 If the HPC has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not yet been made by the Town Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the HPC for a period of up to 180 days or until the Town Council takes final action on the designation, whichever occurs first.~~

Rules of Procedure
Historic Preservation Commission
Town of Boone

Effective May 25, 2022

Table of Contents

Purpose of Rules

1. What are these Rules?

These Rules of Procedures (Rules) apply when the Boone Historic Preservation Commission (hereinafter, "the Commission") acts in its quasi-judicial capacity to consider applications for Certificates of Appropriateness submitted pursuant to Section 8.03 of the Town of Boone's Uniform Development Ordinance (hereinafter, "UDO") by owners of properties designated as local historic landmarks or located within the Town's designated historic district(s).

These Rules also are designed to answer questions from people who are unfamiliar with the Commission's processes in order to provide more predictability and therefore more timely processing of applications. They are an attempt to make the procedures more understandable, to address certain details of the Commission's operation, to create uniform methods for dealing with recurring questions that arise during hearings before the Commission, to provide guidance to people who appear before the Commission so they can better prepare for Commission public hearings, and to facilitate the efficient administration of matters that come before the Commission.

2. What happens if there is a conflict or absence of authority?

In the event of conflict between or among the legal authorities governing the Commission's actions, the North Carolina General Statutes shall take precedence first, then the UDO, and then these Rules. To the extent applicable law and these Rules are silent or ambiguous as to a procedural matter, the Commission may consult the rules set forth at Chapter 35 of the Town's Code of Ordinances and Robert's Rules of procedures for small boards.

The Historic Preservation Commission

1. What is the Historic Preservation Commission?

The Historic Preservation Commission is a citizen volunteer commission established by the Boone Town Council pursuant to Articles 2 and 8 of the UDO and §§ 160D-303 and 160D-942 of the North Carolina General Statutes. The Commission acts in a quasi-judicial capacity to consider applications for Certificates of Appropriateness submitted pursuant to UDO § 8.03 by owners of properties designated as local historic landmarks or located within the Town's designated historic district(s).

The Commission also hears appeals from administrative denials of applications for Statements of Conformity for minor works. Such appeals shall be treated *de novo* as applications for Certificate of Appropriateness for all purposes under these Rules, except as may be otherwise mutually agreed by the Commission, the Town, and the applicant.

In its advisory (and non-quasi-judicial) capacity, the Commission also makes recommendations to Town Council with respect to a variety of matters related to historic resources within the Town. These Rules have no bearing on the Commission's actions in its advisory capacity.

2. What does it mean that the Commission is "quasi-judicial"?

A "quasi-judicial" commission is one that operates like a court. Commission members must make decisions on the issues before the Commission based only on evidence presented to the Commission at a hearing and standards set forth in the UDO. The Commission, just like a court, can decide what evidence it believes and what evidence it rejects. Similarly, it can choose to believe a person who appears before it, or it may find that the person's information or testimony is not credible and it may reject it. In some areas, North Carolina General Statutes dictate what testimony and evidence the Board is allowed to consider. (See Evidence §§ 1,3.)

3. When and where does the Commission meet?

The Commission holds its regular monthly meetings on such dates and times as has been specified by the Boone Town Council and properly noticed by the Town Clerk. However, the date, time, and place (or method) of regular monthly meetings are subject to change at any time, subject to the notice requirements of open meetings law and any other limitations or requirements of applicable law. In addition, the Commission may continue regular meetings and may schedule special meetings as it deems appropriate, subject to the requirements of open meetings law and any other applicable law.

4. How does a case come before the Commission?

A written application for a Certificate of Appropriateness, on such forms as may be required by the Planning and Inspections Department (sometimes referred to as "Planning"), must be filed with Planning by a person who has the legal right to file the application and the application must generally be considered complete by the pertinent Planning staff.

The Town of Boone has forms for applications available on its website and in the Planning and Inspections Office. Planning and Inspections is located on the basement level of the Boone Downtown Post Office at 680 West King Street, Boone, NC 28607. The appropriate form must be fully filled out and the fees paid for Planning to process it. Planning will then set the application for hearing at the next available Commission meeting date and provide notice of the hearing to neighbors and the public as required by the UDO.

5. How many Commission members participate on each case?

A full commission is composed of five Town residents; a quorum of at least three members is required to hear a case. Commission members cannot participate in cases in which they have a fixed opinion on the case prior to the hearing that is not susceptible to change; in which they have undisclosed communications with others prior to the hearing regarding the substance of the case; in which they have a close familial, business, or another associational relationship with someone who will be affected by the decision; or in cases in which they have a direct or indirect financial interest in the outcome. (See Membership §§ 6-10)

Membership

1. What is expected of Commission members?

Sections 2.04 and 2.05 of the UDO govern the conduct of the Commission's business and of individual commission members, and shall be considered incorporated herein.

The applications that come before the Commission can be extremely important both financially and in terms of quality of life for the parties, neighboring property owners, and Town residents generally. Commission members are expected to:

A. Fully comply with all relevant provisions of the Town of Boone Code of Ethics, found at § 30.52 of the Town of Boone Code of Ordinances;

B. Disclose to the Commission and/or seek advice from the Town Attorney in the event of any concern about a potential conflict, ex parte communication, or any other matter which could call into question the impartiality and fairness of the Commission member as to any particular matter to be heard by the Commission;

C. Review, become familiar with, and remain familiar with these Rules, the UDO, the Comprehensive Plan, and all other adopted plans of the Town of Boone that may relate to decisions by the Commission;

D. Fairly apply the UDO and any other applicable law and Town plans to the application before them, even when they personally disagree with applicable standards or policies;

E. Review and be familiar prior to the meeting with the application and staff report on each matter that comes before the Commission;

F. Advise the Planning Department if the member is no longer eligible to serve on the Commission due to a change of residence or other cause;

G. Attend all training sessions of the Commission; and

H. Recognizing the gravity of the matters that come before the Commission, conduct themselves in a manner befitting the responsibilities that have been placed upon them, including:

1. Recognizing the high costs parties may incur in appearing before the Commission, making all reasonable efforts to timely arrive for meetings of the Commission so as to avoid keeping parties, their various witnesses and professionals, and members of the public from having to wait for meetings to begin;

2. Dressing for public hearings in appropriate attire so as to communicate to the parties, witnesses, and general public that they take their responsibilities seriously, and understand and consider the matters that come before the Commission matters of serious concern to the participants and the public; and

3. Maintaining a professional and serious decorum during public hearings, including the deliberations and decision-making of the Commission, by:

    a. Avoiding all whispered conversations with each other;

    b. Refraining from interrupting other members of the Commission, parties, or witnesses, absent an appropriate reason for doing so;

    c. Treating all participants and witnesses in hearings, as well as other Commission members, with the degree of respect with which they would like to be treated;

    d. Avoiding cell phones ringing during meetings, as well as the receiving or sending of text messages during a meeting, absent an emergency; and

    e. Paying attention to the presentations by parties and witnesses and carefully listening to the comments and questions of other members of the Commission.

2. How are Commission members appointed?

The Commission is comprised of town resident volunteers appointed by the Boone Town Council. A majority of the Commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields.

3. Do Commission members receive compensation for their service?

No, Commission members receive no compensation for their service.

4. What happens if a Commission member cannot participate in a particular hearing?

The Planning and Inspections Department attempts to determine in advance of each meeting whether any Commission member should not or is unavailable to participate in any particular case, and when possible arranges for the appearance of an alternate member for the regular member who is unable to participate. Quorum requirements for the Commission are set under state law and the UDO and the Commission cannot hear a case if there are fewer than three participating members. If a Commission member is recused from the hearing after it has been called and no alternate is present leaving the Commission with less than a quorum, the case cannot be heard and will be continued to a later date.

5. When should a Commission member not participate in a hearing?

A Commission member should not participate in or vote on an application if the member's participation would violate an affected person's constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

- **A.** Having a fixed opinion prior to hearing the matter that is not susceptible to change;
- **B.** Having undisclosed ex parte communication concerning the matter;
- **C.** Having a close familial, business, or other associational relationship with an affected person;
- **D.** Having a financial interest in the outcome.

6. What is ex parte communication?

An ex parte communication occurs when a Commission member discusses with any other person, including another Commission member, party, neighbor, or Town staff, the substance of a case outside the hearing and before the decision in the case is announced. Should a Commission member receive an unsolicited comment from a party or member of the public concerning a case, he or she shall inform the person seeking to comment that discussing a case prior to the hearing is prohibited and shall end the conversation. If that Commission member then participates in the hearing on the case, the member shall disclose at the beginning of the hearing the substance and source of any such unsolicited comment in order to allow any party an opportunity to object to the member's participation in the case.

7. What happens if a Commission member does not discover that the member should not participate in the case until the hearing has started?

Although every effort is made to avoid this, at times a Commission member may not realize until the hearing on the case has already begun that a reason exists that does or may make it inappropriate to participate in a case. As soon as a Commission member realizes that such reason exists or may exist, the member should interrupt the hearing to announce the existence of the reason and if appropriate should withdraw from the case, unless objection to the member's participation is waivable and is in fact waived by all parties. (See Membership § 9) If an alternate member of the Commission is not present at the time of such withdrawal and a quorum is lost as the result of the withdrawal, the case will be continued and shall be treated as a new case when it is next heard. At the new hearing, the Commission will be directed to disregard whatever evidence was presented to it during the initial hearing and shall base its decision only on the evidence presented at the new hearing.

8. What happens if a Commission member does not withdraw from a case, but another Commission member or a party believes that the Commission member should not participate in the case?

In the event a Commission member does not withdraw from a case, but another Commission member or a party to the case raises an objection to the Commission member's participation, the objecting person must state with specificity the basis for the objection. The Commission member whose participation is questioned shall be entitled to answer the objection, and following such response, the remaining members of the Commission, by majority vote of those participating in the vote, shall rule on the objection. The challenged member of the Commission shall not participate in the vote on the objection.

9. Can an applicant waive its objection to a Commission member participating in the hearing?

Yes, in certain circumstances an objection can be waived. The Town of Boone disfavors any member of the Commission participating in a case for which a valid basis exists for objection to his participation, as described in Membership § 5. However, in some circumstances, if the Commission member discloses the full extent of the matter or circumstances which would prevent participation, and all parties to the case express on the record their wish that the Commission member nevertheless participate in the case, the Board member may do so. However, under state law a Commission member who has, or whose family member has, a direct or indirect financial interest in the case may not participate in the proceedings even if all parties consent to the member's participation.

Pre-Hearing Procedures

1. Who is allowed to submit an application?

Either the party seeking the Commission's decision on a matter within the jurisdiction of the Commission or an authorized person acting on behalf of that party, such as an agent, attorney, employee, or other representative, can fill out an application or appeal for a matter that will be decided by the Commission, but if the person proceeding is a representative, he or she must prove the proper authority to do so.

2. What is a staff report?

In every case which comes before the Commission, Planning staff will prepare a report summarizing the issues and at least some of the history of the matter, and including copies of documents which the Planning Department considers important to an understanding of the case. Staff reports on each case are distributed to members of the Commission in a "Board Book" which is distributed to the members prior to the hearing. Except to the extent that a party objects to material contained in a staff report and the objection is sustained by the Commission, the staff report is considered evidence in the matter and may be considered by the Commission in its decision.

3. Who can examine a file prior to the hearing?

Files related to cases before the Commission are available for inspection by members of the Commission, parties, and members of the public. If a file is particularly voluminous, not every item from the file may be included in the staff report and Board Book. Commission members, parties, and members of the public may arrange to review the file by contacting the Planning and Inspections Department at (828) 268-6960 and making an appointment to do so.

4. Once a case is scheduled for a hearing, can it be delayed?

Yes. Cases are generally placed on the agenda for the Commission as soon as possible once all needed materials have been submitted by the applicant. If an applicant wishes to have consideration of a case delayed, the applicant must submit a written request to the Planning and Inspections Department. Planning staff will transmit the request to the Chair of the Commission, and will notify all other parties involved in the case of the request. Unless a party objects to the request for a continuance, the Chair can either make the decision on the request or refer the request to the Commission itself for a decision. If any party objects to a continuance, it must be decided by the Commission. The Commission can also decide to continue a case on its own initiative if it determines that the case is not ready for hearing or it will not be reached at a particular meeting, but this can only happen at the hearing.

5. If a case is delayed, will it be heard the next month?

Not necessarily. A case which is continued can be scheduled for the next month's regular meeting of the Commission, it can be continued for more than one month, or it can be continued to a special meeting. In unusual circumstances, a case might be continued for more than a month.

6. How does a person intervene as a party in a case?

The applicant and the Town of Boone are always considered parties in a case before the Commission. Other persons can also request that they be allowed to participate in a case as a party, but only a person who has a special and substantial interest in a case before the Commission will be allowed to intervene in the case as a party. In order to intervene as a party in a case, at least twenty-four hours prior to the beginning of the Commission meeting in which the case is to be considered, the person seeking to intervene must complete a "Request to Intervene" form provided by the Planning and Inspections Department. The completed form must state the name and address of the person seeking to intervene, and it must explain the nature of the interest such person has in the outcome of the case. Persons who own property adjacent to or within one-hundred-and-fifty feet of the property in question in the case shall, without further showing, be presumed to have a special and substantial interest in the outcome of a case and will be allowed to intervene. Other persons may establish a substantial interest by showing that the value of their property will be adversely affected by the outcome of the case, or by showing such other distinct and personal interest in the outcome of the case as to distinguish their interests from the interests of the public at large. Organizations whose members include persons with such substantial interest in a particular case may be permitted to participate on behalf of their members upon written proof that they include and are acting on behalf of such members.

7. How does the Commission decide if a person can intervene?

When a person has filed a timely request to intervene, a hearing to determine if intervention will be allowed will precede the hearing on the merits of the case. The Commission shall consider the written application to intervene, and after hearing from the person seeking to intervene and from all other parties to the case their reasons in support of or against intervention, the Commission shall decide whether the person may intervene in the case. A decision allowing a person to intervene is by majority vote of the Commission.

8. Can a person denied the right to intervene still participate in the case?

Yes. If an application to intervene is denied, the person can still participate in the hearing as a witness.

9. Can a person be compelled to appear as a witness or provide documents?

Yes. Under state law, the Commission Chair has the power to issue subpoenas at the request of a party to require attendance of witnesses or to compel the production of documents or other evidence. To request issuance of a subpoena, the applicant, the Town, or any person with standing under G.S. 160D-1402(c) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled.

10. How are subpoenas served?

Subpoenas are served just as they are in any normal court proceeding (see N.C. Rule of Civil Procedure 45(b)). They can be served by personal delivery by the sheriff, by the sheriff's deputy, by a coroner, or by any person who is not a party and is 18 years of age or older; or they can be served by registered or certified mail addressed to the person, return receipt requested. Service of a subpoena for the attendance of a witness can also be made by telephone communication with the person named in the subpoena, but this type of service is only available if it is done by the sheriff, the sheriff's designee who is 18 years of age older and not a party, or by the coroner. Alternatively, service can be achieved by any means agreed to by the person being served, including email.

11. What are the procedures for issuance of subpoenas?

A subpoena will only be issued upon submission of a completed "Subpoena Request Form" provided by and returned to the Planning and Inspections Department. Any request for a subpoena by an applicant or the Town must be served on the Commission Chair and all persons who are parties to the case or have moved to intervene as a party at least 10 days prior to the hearing on the case at issue. Persons moving to intervene as a party must serve a subpoena request on the Chair and all persons who are parties to the case at least 24 hours prior to the hearing on the case at issue.

The Commission Chair shall issue requested subpoenas that the Chair determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be immediately appealed to the full Commission. The Commission shall hear any such appeal in a duly-noticed meeting. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Commission or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

The Hearing

1. How long do Commission meetings last?

Because it is hard to predict or control how many matters will be placed on the Commission's agenda at any of its regular monthly meetings, and because the matters that come before the Commission demand its utmost attention and clarity, meetings that last too long interfere with the Commission's ability to function effectively. The Commission generally will adjourn approximately 3 hours after the start of its meeting and continue to the next meeting any cases which are not completed or heard. However, the Commission may shorten or allow lengthier hearings in its discretion, and in all other respects may adopt such other or additional rules for the length and conduct of its meeting or of a particular meeting as it may see fit, so long as the substantive and procedural due process rights of the parties are reasonably protected.

2. Who may participate in a hearing before the Commission? (Parties and Witnesses)

There are two types of participants in a hearing before the Commission: "Parties" and "Witnesses."

A. Parties. The applicant and the Town of Boone are always considered parties in a hearing before the Commission. In addition, a person who has properly intervened in the case is considered a party to the case. (See Pre-Hearing Procedures §§ 6-7)

B. Witnesses. At the start of each meeting, the Chair will announce the availability of sign-up sheets for any person wishing to appear as a witness in a case scheduled for that meeting. A person who wishes to testify as a witness must record his or her name on the sign-up sheet for the case in question unless the Chair or Commission allows people who have not signed up to also testify. If people who did not sign up are allowed to testify, every person who wants to be heard but did not sign up must also be allowed to testify. Parties and witnesses who are called by parties to testify are not required to sign the sign-up sheet.

Any interested person, other than a party, may participate in a hearing before the Commission by testifying and is considered a "witness." (See The Hearing § 3) Witnesses are subject to questioning/cross-examination with respect to their testimony by Commission members and the parties.

3. If I am not the person who filed the application, can I still appear before the Commission?

Yes. All hearings before the Commission are open to the public, and interested members of the public can participate in two different ways. People who wish to give testimony to the Commission about a particular matter can sign up prior to the hearing on the matter on sign-up sheets placed near the entrance of the room in which the Commission is conducting its hearing. (See The Hearing § 2) Since the sign-up sheets are turned into the Commission at the beginning of the hearing on a matter, it is important to arrive on time. Otherwise, you might not be able to speak. Other people can also request that they be allowed to participate in a case as a party, but only a person who has a special and substantial interest in a case before the Commission will be allowed to intervene in the case as a party. (See Pre-Hearing Procedures §§ 6-7.) A person who has intervened can ask questions of other witnesses at the hearing and can argue the facts and law of the matter under consideration, just as any other party to the case is entitled to do.

4. Who can represent a corporation, limited liability company (LCC), or other nonhuman entity before the Commission?

Only an attorney licensed by the State of North Carolina can represent a corporation, LLC, or other non-human entity before the Commission. Attorneys can argue the law and facts of a case, object to materials and evidence offered to the Commission, and question their witnesses and cross-examine other witnesses. Other types of experts, such as engineers, architects, and appraisers, can testify in the hearing on a matter, but they cannot argue the law and facts of a case, object to materials and evidence offered to the Commission, or question other witnesses at a hearing.

5. Who can represent a natural person before the Commission?

A natural person is the term in the law for a human being who is acting in his or her own name representing his or her own interests. A natural person may be represented by an attorney, or may represent himself or herself. If a natural person who is also a party chooses to represent him- or herself, that person can argue the case to the Commission by summarizing the facts and offering legal argument, can testify, and can ask questions and cross-examine witnesses who appear.

6. What happens if the applicant does not show up for the hearing?

If the party who has filed the application fails to show up for the scheduled hearing, the Commission may by majority vote either dismiss the case or continue it to another time to provide an opportunity for the party to justify the failure to appear.

7. If an application is dismissed due to the failure to show up for the scheduled hearing, can the application be revived?

Yes. Once a case is dismissed, the party may file a new application for a Certificate of Appropriateness to be considered by the Commission. Any new application requires that a party submit all required materials and pay the required fees as if no prior application had been submitted. (See The Historic Preservation Commission § 4.) No credit is given for the fees paid in connection with a case that was dismissed.

Generally, an application is evaluated against the requirements in the UDO at the time the application is filed. If the requirements of the UDO have not changed since the dismissed application, an identical application may be filed. If on the other hand, the requirements of the UDO have changed since the dismissed application was filed, it may no longer be possible to submit an identical application.

8. What is the role of the Town Attorney at hearings?

The Town Attorney attends meetings of the Commission and normally acts as the Commission's attorney. In that role, the Town Attorney can call witnesses, cross-examine witnesses offered by any party, cross-examine witnesses who are appearing as members of the public, answer legal questions from the Commission members, and provide direction and clarification to Commission members when he or she believes it is warranted to do so, including during the Commission's deliberations. Alternatively, independent counsel may be retained to advise the Commission.

9. In what order does the Commission hear cases or other matters scheduled before it?

Cases are placed on the Commission's agenda on a first come-first served basis, based on the order in which they reach a readiness for hearing.

10. How much time does an applicant have to present a case?

There is no time limit placed on the presentation of a case, but the Chair or the Commission may prohibit the presentation of repetitive, irrelevant, unreliable or other evidence deemed to be of no substantial usefulness to the Commission in reaching the legal issues presented. (See The Decision §§ 3-

6.) Although the North Carolina Rules of Evidence do not strictly apply to proceedings before the Commission, the Commission will only consider evidence that meets at least minimal standards for reliability. (See Evidence §§ 1, 3.) As to the length of Commission meetings, see § 1 herein (How long do Commission Meetings last?).

11. What happens if a case is not reached when it is first scheduled?

If a case is not reached when it is first scheduled on the agenda and the Commission does not schedule it for hearing at a special meeting, it will be scheduled for the next regularly-scheduled meeting of the Commission and will hold its place in the line of cases to be heard.

12. What happens if an application is modified between the time the staff report is distributed and the time it comes before the Commission?

In every case that comes before the Commission, Planning staff prepares an analysis of the case for the Commission called the "staff report" that is distributed to the Commission and all parties to the case about a week prior to the meeting. (See Pre-Hearing Procedures § 2.) If an applicant has changed its plans or any other features of its application between the time the staff report is distributed and the meeting, there may be no opportunity for staff to thoroughly evaluate the revised application. Therefore, in every case in which there is a change between the application materials evaluated in the staff report and the Commission meeting, as soon as such a change becomes apparent to the Commission, it will suspend its hearing on the merits of the application and conduct a hearing to determine whether it should continue the case to a future meeting in order to allow staff to evaluate the modified application materials. The Commission may question staff and others at the hearing to help it decide whether it should proceed or continue the case. If the Commission decides it can fairly consider the case without a revised staff analysis, such as in cases in which modifications are obviously minor, it can proceed with its hearing on the case without the benefit of an updated staff report.

13. If multiple issues are involved, can the Commission divide them into separate hearings?

Yes. Upon motion of any party to a case or by motion of a Commission member, second, and majority vote, the Commission may divide a hearing by issue. For example, the Commission may first admit evidence as to whether an application is complete, hearing from each party and witness as to that specific issue, closing the hearing as to that issue, and then voting on that issue. Using this system, in the event a vote is taken which bars the granting of approval, as the case may be, the case will end and no further votes need be taken unless a request for a provisional vote is made and approved by majority vote of the Commission. (See The Decision § 11.)

14. Can the Commission reopen the evidentiary portion of a hearing after it has been closed?

Yes. After the evidentiary portion of a hearing has been closed, should any member of the Commission request that the hearing be reopened, upon majority vote the Chair will reopen the hearing. The Chair can also reopen the hearing on the Chair's own initiative. When a hearing is reopened, each party to the case shall be given an opportunity for response and rebuttal as to the particular information elicited, but parties may not use the reopening of the hearing to present matters which are beyond the scope of the information elicited or solicited by the Commission.

15. What happens if a case cannot be finished at a single meeting of the Commission?

When a hearing or case is not concluded in one session of the Commission, it will be recessed and continued until a subsequent regular meeting of the Commission or until a special meeting called for the specific purpose of completing the case. Absent a stipulation on the record by all parties to the case to the contrary, the same Commission members who participated in the initial meeting must comprise the Commission that hears the case at the subsequent meeting(s). If circumstances prevent identity among the Commission members at the initial and continued hearings, such as the expiration of the term of a Commission member and the naming of the Commission member's replacement, and the parties are unwilling to waive their objections to this lack of identity, the case shall be presented to the Commission at the resumed hearing from the beginning, and no evidence presented to the Commission in the incomplete hearing shall be considered by the Commission in its decision.

16. Is a recording made of the hearing before the Commission?

Yes. The Commission Secretary records all cases before the Commission. Any person wishing to record a meeting of the Commission may also do so by utilizing a certified court reporter or any recording device so long as it does not disrupt the hearing. Although a party who has filed a petition for judicial review of a decision of the Commission may obtain a copy of the recordings made at the hearing, neither the Commission nor the Planning staff shall have any responsibility to prepare a verbatim transcript of a Commission hearing unless ordered to do so by a Court of competent jurisdiction upon the financial commitment of a party to pay for the transcription in accordance with N.C. Gen. Stat. § 160D-1402(h).

17. May the Commission schedule a special meeting to take up a case or complete one?

Yes. If at a regularly scheduled meeting the Commission concludes that it will be unable to complete all cases upon the agenda, it may schedule a special meeting to complete the agenda or hear a specific case. Notice must be published to the public in accordance with UDO § 6.01.04 unless the time and date of the special meeting is announced prior to the close of the regular meeting. The Commission may not schedule a special meeting for which there is an inadequate time to provide required notice.

Presentation of a Case at the Hearing

1. If I appear before the Commission, what is expected of me?

The Commission expects people who appear before it to prepare in advance and to be truthful and respectful, not only of the Commission itself but of others who might appear on the matter, even if they have a different view. The Commission cannot simply consider whether people who appear before it support or oppose a particular application or decision; rather, Commission members must consider the facts of the case and apply the criteria of the UDO that relate to the matter before the Commission.

The applicant for a Certificate of Appropriateness bears the burden of proof before the Commission and is expected to present sufficient information to allow the Commission to decide all of the issues it must consider in deciding whether to grant the application. The applicant can do this through the applicant's own testimony, documents and exhibits, and the testimony of others.

In every case Planning staff prepares an analysis of the issues that staff deem to be presented by the case and that report may summarize all or some of the facts as staff sees them. This is called the "staff report." Parties should familiarize themselves with the staff report before the hearing so that they may object to any parts of the report with which they disagree. The staff report is not intended to present everything that the parties might want to have the Commission consider; it may not address each of the issues that the Commission must decide to issue a decision in the applicant's favor; and it may not present the facts or law in the same way that each party sees them. If an applicant relies on the staff report to meet its burden of proof, it does so at its own risk that the staff report may be inadequate to fully prove the applicant's case.

A person who appears before the Commission as a "witness" is expected to testify truthfully and to stick to the subject about which the witness is testifying. The Commission appreciates it if people who testify as witnesses are as concise as possible, but a witness should not leave important information about a matter out of the witness's presentation merely in an attempt to save time.

2. Who has the burden of proof in a case before the Commission?

The burden of presenting sufficient evidence to allow the Commission to decide an issue is always upon the party or parties urging a particular position. At a minimum, the applicant must provide competent evidence which addresses every material issue presented by the application.

3. What are the rules for decorum of participants and observers at hearings?

Whether they are parties, attorneys, representatives, witnesses or simply spectators to a hearing before the Commission, all persons are expected to conduct themselves in an appropriate and respectful manner while in the hearing chambers of the Commission. Profanity, arguments between witnesses, arguments between attorneys and witnesses or other attorneys, arguments among spectators, noise that interferes with the conduct of the hearing, and the like, shall not be tolerated. Any such behavior may result in an order by the Chair for removal from the hearing chamber of the person(s) causing or engaging in such action, interference or disturbance.

4. Determination of preliminary matters; Jurisdiction objections

Objections regarding jurisdictional issues, including but not limited to, the standing of a party, may be made to the Commission. The Commission Chair shall rule on any objections, and the Chair's rulings may be appealed to the full Commission. The Commission should address any other preliminary matters that might moot, shorten, or otherwise change the presentation of the matter, including such matters as a request to intervene, request for a continuance, determination whether a modification to an application requires that the hearing be delayed, and objection to participation by a Commission member.

5. What is the order of a hearing on an application?

Cases generally shall proceed in the following order, although if the parties agree or there is no objection, deviations in this order are permitted and shall not impair the decision in the case:

- **A.** Applicant is given an opportunity to object to any materials which were provided to the Commission in advance of the hearing;
- **B.** Applicant is given the opportunity to make an opening statement;
- **C.** Parties other than the applicant are given an opportunity to make opening statements;
- **D.** Applicant presents the evidence in support of the application. For an explanation of the types, forms and admission of acceptable evidence, see Evidence §§ 1-3.

E. Planning staff presents evidence pertinent to the application. However, at any time before, during or after the presentation of evidence by the applicant, a Commission member, with permission from the Chair or full Commission, may request the testimony of Planning staff as to any matter relevant to the case, including their interpretation of provisions in the UDO or Comprehensive Plan or state law.

F. Other parties present evidence pertinent to the application.

G. Non-party witnesses testify and offer evidence.

H. Applicant is given opportunity to present rebuttal evidence.

I. Applicant is given the option of giving its closing summary and argument or deferring its presentation until all other parties are given the opportunity for closing summary and argument.

J. In the order they have qualified as intervenors, Parties other than the Town present their closing summary and argument.

K. Town presents its closing summary and argument.

L. If applicant has deferred presentation, applicant presents its closing summary and argument.

M. Commission deliberation begins. (See Weighing the Evidence by the Commission §§ 2-3, The Decision §§ 1-2.)

N. If, in the course of its deliberations, the Commission entertains additional testimony or other evidence from any party, the Commission shall allow all other parties and witness to address the particular subject area as to which the additional evidence was allowed.

O. The Commission completes its deliberations and issues its decision.

P. The Chair closes the case.

Evidence

1. What evidence can the Commission rely on in making a decision?

The Commission is required to base its decisions on competent evidence presented at the hearing. To be considered "competent," witness testimony requires that (a) the witness has personal knowledge of the subject of the testimony and (b) the subject of the testimony is relevant to an issue involved in the hearing. "Competent" documentary evidence requires that the document be authenticated by one of the following methods:

a. Certification, by signature, title and seal, of the person who is the custodian of the records; or

b. Information within the document which establishes its origin and reliability; or

c. Testimony by a person with personal knowledge of the document's origin and reliability.

The requirement that the Commission consider only "competent" evidence does not prevent the Commission from relying on evidence that would not be admissible under the Rules of Evidence as applied in North Carolina courtrooms so long as the evidence was admitted without objection or it appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the Commission to rely upon it. Evidence may include hearsay evidence, such as an affidavit or letter written by a person who is not present, in certain circumstances. (See Evidence § 5.) Commission members may also rely upon their own knowledge of the property at issue if their knowledge is fully disclosed during the hearing in order to give the parties a fair opportunity to address the knowledge upon which they intend to rely. (See Evidence § 10.)

The Commission may only rely on opinion evidence pertaining to any of the following if such evidence is offered by a person accepted by the Commission as an expert witness:

A. That the use of property in a particular way would affect the value of other property;

B. That the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; and

C. Matters about which only expert testimony would generally be admissible under the North Carolina Rules of Evidence.

2. Are statements by an attorney appearing as the representative of a party considered evidence?

No. Attorneys representing parties participating in any hearing may not be sworn and their statements are not considered evidence. Statements made by an attorney representing a party shall be considered only as legal argument or a summary of evidence intended to be offered, or which has been offered by parties and witnesses participating in the hearing.

3. How is testimony (or testimonial evidence) presented?

A. MUST TESTIMONY BE GIVEN UNDER OATH OR AFFIRMATION? Yes. All testimony offered in connection with a case before the Commission must be offered under oath or affirmation administered by the Chair, another member acting as Chair, or the Commission Secretary.

B. WHAT TESTIMONY ARE WITNESSES COMPETENT TO OFFER? Testimony from non-expert witnesses should generally be comprised of factual information within the personal knowledge of the witness, as opposed to opinions. In general, the Commission cannot rely or base its decision or findings on the opinion testimony of lay witnesses. For example, a witness's testimony that "traffic will be a problem" is entitled to no weight while that same witness's testimony that "I watched and counted the traffic between 9:00 a.m. and 9:30 a.m. on a Friday morning and x number of cars drove past the site" is competent evidence which could be used by the Commission to help determine the facts of a case, to pose questions to a traffic engineer, and even to decide whether the testimony of a traffic engineer is credible.

C. WHAT OPINIONS CAN BE RELIED UPON BY THE BOARD? Only experts can give competent opinions concerning matters which are within the specialized knowledge of experts. If a witness is not testifying as an expert, testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact in issue. For example, a lay witness might testify, "He appeared to be drunk." The Commission can never rely on opinion evidence when it is offered by a layperson or non-expert to establish that the use of property in a particular way would affect the value of other property, including the witness's own property, or that the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

D. WHAT OPINIONS MUST COME FROM AN EXPERT? Competent opinions regarding scientific, technical or other specialized knowledge which will assist the Commission in understanding the evidence or determining a fact in issue must be provided by an "expert." A witness can be qualified as an expert by virtue of knowledge, skill, experience, training, or education. An expert may testify in the form of an opinion if all of the following apply: (1) The opinion is based upon sufficient facts or data; (2) The testimony is the product of reliable principles and methods; and (3) The witness has applied the principles and methods reliably to the facts of the case. The Commission can never rely on opinion evidence offered by a layperson or non-expert to establish that the use of property in a particular way would affect the value of other property, including the witness's own property, or that the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.

E. HOW DOES A WITNESS QUALIFY AS AN EXPERT? A person who proposes to appear before the Commission as an expert must first present the credentials which qualify the witness as an expert. Specifically, the person must explain what knowledge, skill, experience, training, or education qualifies the person to give expert opinion testimony by instilling in the witness the superior knowledge of the area to be addressed in the testimony. Once the credentials of a witness are presented, the Commission must invite all parties, should they choose, to ask questions of the witness regarding the witness's credentials and at the conclusion of the questioning, to either agree that the person is an expert or object to the person being considered an expert. If an objection is made, the party offering the objection must explain how the person's credentials do not establish the capacity for the person to give a scientific, technical or other specialized opinion which will assist the Commission in understanding the evidence or in determining a fact in issue must be provided by an "expert." Once all parties have been given the opportunity to be heard as to the witness' qualification as an expert, the Commission Chair shall render a determination as to whether the person has qualified as an expert. The Chair's determination can be overridden by the Commission, by majority vote upon proper motion and second. A person who is offered as an expert to the Commission may not provide opinion evidence until the Commission Chair or the Commission has accepted the witness as an expert.

F. CAN THE BOARD LIMIT A WITNESS'S TESTIMONY? Yes. At the start of a hearing or at the beginning of testimony by non-party witnesses, the Commission Chair may request an estimate of the time each party anticipates it will take to present its case, and/or the Chair may review the sign-up sheet of witnesses. At that time, or at the conclusion of the presentation of their cases by parties to the hearing, the Chair or any member of the Commission may propose that the Commission limit the time for each non-party witness to testify and may further limit the number of witnesses offering testimony on any particular point. If time limitations for witnesses are proposed by the Chair, the Commission may overrule the Chair's recommendation by motion, second and majority vote. If time limits are proposed by a Commission member, such proposal shall be in the form of a motion and second, and shall be adopted by majority vote. The Commission generally will not limit the number of witnesses or length of presentation by witnesses called by a party, except to prevent the presentation of repetitive, irrelevant, unreliable or other evidence deemed to be of little to no usefulness to the Commission in making the findings and decisions regarding the matter before it.. (See The Hearing § 10.)

G. WHO CAN CROSS-EXAMINE A WITNESS? Each person who testifies before the Commission is subject to cross-examination by every party to the case or appeal other than the party who called the witness, but not to cross-examination by persons only participating in the case as witnesses.

H. WHEN CAN A WITNESS BE CROSS-EXAMINED? After a witness testifies, any party to the case can ask the witness questions. The parties take turns asking, with the party who called the witness, if the witness was called by a party, going last. See subsection I below. If the witness was not called by a party, questioning will begin with the Commission itself, followed by the Town, any intervening party, and the applicant. If the witness was called by the applicant, after questioning by the Commission, the Town will be given a chance to ask questions, followed by any intervening parties and then the applicant. If the witness was called by the Town, after questioning by the Commission, intervening parties will be given a chance to ask questions, followed by the applicant. If the witness was called by an intervening party, after questioning by the Commission, the Town will be given a chance to ask questions, followed by the applicant. If requested, the Chair can allow additional rounds of cross-examination, and each round should follow this same order.

I. AFTER A WITNESS HAS BEEN CROSS-EXAMINED, CAN A PARTY ASK THE WITNESS MORE QUESTIONS? Yes. Following cross-examination, the party who called the witness is entitled to ask additional questions of the witness ("redirect testimony"), but that triggers the opportunity for further cross-examination of the witness as to matters which first arise during the witness's redirect testimony, and such further cross-examination shall be conducted in the same order as the original cross-examination, followed by further redirect testimony, the party calling the witness always being afforded the final opportunity to question that party's own witness. As to witnesses who are interested members of the public, the same opportunities are afforded using the same sequence of questioners, with the Applicant or Appellant always given the final opportunity to question the witness.

J. WHEN CAN BOARD MEMBERS ASK QUESTIONS OF WITNESSES? Members of the Commission have the right, when recognized by the Commission Chair, to question any witness or party appearing before the Commission. They may do so at any time after a witness has been sworn, whether during the presentation by a party, after the presentation by a party, during examination or cross-examination of a witness called by a party or who is appearing as an interested member of the public, or even after the witness has returned to his or her seat, until the hearing is closed, and they may inquire into any matter that may assist them in reaching a decision, whether or not the matter was previously addressed by the witness in the witness's testimony.

4. What documents are acceptable for presentation?

Any evidence that might assist the Commission in deciding an issue or case may be offered into evidence. The North Carolina Rules of Evidence do not strictly apply to proceedings before the Commission, but there must be some indication of a document's reliability for it to be given any weight. Any documentary evidence relied upon by the Commission in making its decision or in deciding an issue must at a minimum be authenticated and relevant to the factual or legal issues under consideration.

5. Can the Commission consider hearsay evidence, such as a letter or affidavit?

Yes. Hearsay evidence, generally understood as a statement made by a person not present at the hearing, may be considered and given weight if the statement is made by a party or witness actually involved in the hearing in a setting that promotes its reliability, or if it contains sufficient indications of authenticity to assure the Commission that it is reliable. For example, information from the Internet should normally only be considered if the date and source of the information is disclosed, and the internet "address" is displayed on the information sought to be submitted. People who make statements against their own interests are generally considered reliable and such statements can be presented to the Commission. In general, the testimony of a person appearing before the Commission, who is thus subject to cross-examination, will be preferred over testimony contained in a sworn statement or affidavit, and testimony contained in a sworn statement or affidavit will be preferred over testimony contained in a non-sworn written statement. However, the Commission itself must ultimately determine how credible and reliable any evidence presented to it is, and it is free to reject evidence which it finds unreliable.

6. How is documentary evidence, including photographs, authenticated?

No document can be admitted into evidence until it has first been identified by the person offering it into evidence and authenticated. Authentication of a document is accomplished if it is either:

A. Certified as authentic, by signature, title and seal of a person who is the custodian of the record; or

B. Confirmed through the sworn testimony of a witness who establishes, based upon first-hand knowledge, the date and author of the document, and, if a copy is used in place of an original, that the document is a true and accurate copy of the original document.

A photograph is authenticated by sworn testimony as to the date and place where the photograph was taken and the sworn statement that the photograph fairly and accurately represents the subject depicted at the time the photograph was taken.

7. How are the documents submitted?

Once a document has been identified and authenticated, a witness or party wishing to offer it to the Commission for its consideration must provide a copy to every other party for review, present it to the Commission Secretary to mark the document with an identifying letter or number, and then hand it to the Commission Chair. The Chair may then accept the document into evidence. If a party or Commission member objects to a document being accepted into evidence, the Commission must rule on the objection by either overruling the objection and accepting the document into evidence or by sustaining the objection and refusing to accept the document into evidence. All documents tendered as evidence by a party or witness (whether or not allowed into evidence) shall be retained by the Commission Secretary as part of the official record of the case.

8. How many copies of a proposed exhibit should be submitted?

Although the Commission may accept a single copy of a proposed exhibit, it is strongly recommended that a person wishing to submit a document into evidence bring enough copies for each of the five Commission members, the Commission Secretary, the Town Attorney, and each party to have their own copy.

9. Can proposed evidence, which has been refused, be preserved in the record?

Yes. If the Commission by its own action, or by sustaining an objection to testimony or a document that is offered to it for consideration refuses to consider evidence that has been offered to it (see Objections to Evidence §§ 1-4), the party or witness offering the evidence can make an "offer of proof." This requires that the witness or party announce "I wish to make an offer of proof" and then proceed with the testimony that has been excluded or provide the excluded document to the Commission Secretary, who will mark the document for identification purposes. Any such document shall be retained as part of the record, but it shall not be considered by the Commission in its deliberations or decision.

10. When can Commission members rely upon their own knowledge of the subject property?

If a Commission member, while inspecting the property in question, has either noted some matter or feature that may influence the Commission member's decision in the case, or, while inspecting the full departmental file in the case, has noted some document that is not included in the staff report, the Commission member can utilize such information under the following circumstances: While the evidentiary hearing is still open, the Commission member must note the matter or feature observed or document noted. In the case of a document, the Planning staff shall produce the document for review by all parties and Commission members. The Commission shall allow all parties to reasonably inspect the document before it is inspected by other Commission members, and each party shall be given an opportunity to offer evidence related to the document. When a Commission member has noted a matter or feature relating to an inspection of the property in question, all parties shall be given an opportunity to present evidence that relates to the matter or feature.

Objections to Evidence

1. What objections to evidence are allowed?

The only grounds for an objection to the testimony of a party or witness are that: (1) the testimony has no relevance to the case before the Commission, (2) the answer is not responsive to the question which was asked, (3) the person offering the testimony is not competent to offer the type of information or opinion being offered, or (4) the answer contains hearsay statements that do not meet the requirements of Evidence § 4.

The only grounds for objection to documentary evidence are that: (1) the evidence is not relevant; (2) the document has not been properly identified or authenticated in accordance with Evidence § 4; or (3) the evidence is unacceptable hearsay or contains hearsay statements that do not meet the requirements of Evidence § 4.

A party may also object to the form of a question, such as that it is argumentative, a compound question, improperly leads (puts words in the mouth of) the witness, or calls for information which is not relevant to the case.

2. What evidence is "relevant"?

Relevant evidence is information that relates to a factual or legal issue that the Commission may or must decide in a particular case, including issues of credibility. Documentary evidence that contradicts the witness's testimony is always relevant since credibility of witnesses is an issue in every case. Relevant evidence should, by itself or in combination with other evidence, help the Commission determine any issue it needs to decide.

3. Who can object to evidence?

Only a party may object to the testimony of a witness, the admissibility of a document, or a question asked by another party.

4. How are objections decided?

The Commission Chair shall rule on any objections, and the Chair's rulings may be appealed to the full Commission. Upon appeal to the Commission, all participating members, including the Chair, shall vote, and any abstention by a member shall be counted as a vote in favor of the motion. In the event of a tie vote by the Commission, the objection will be overruled and the evidence considered by the Commission. If testimony is successfully objected to, a witness may make an "offer of proof" by stating those things which the witness intended to state, but such statements will only be for the purpose of preserving the record of the case and shall not be considered by the Commission. (See Evidence § 9.)

Weighing the Evidence

1. How does the Commission decide what weight to give documents and testimony?

In general, as with any court, the Commission must weigh the evidence that is presented to it. When there is conflicting evidence relating to an issue it must decide, the Commission must explicitly resolve such conflict. It may also, however, refuse to give any weight to evidence that has been presented to it – even when no conflict in the evidence exists – when the Commission determines that the evidence is not credible or relevant. In determining the weight it will give to testimony and documentary evidence, the Commission may consider such things as the credibility of a witness (based on such considerations as the witness' demeanor, qualifications or expertise, ability to observe the conditions about which testimony is offered) and the reliability and persuasiveness of documents that are offered as evidence. In general, the testimony of a person appearing before the Commission who is thus subject to cross-examination will be preferred over testimony contained in a sworn statement or affidavit, and in general, testimony contained in a sworn statement or affidavit will be preferred over testimony contained in a non-sworn written statement. However, the Commission may conclude that the information in a non-sworn statement is more reliable than the testimony of a person who has appeared and testified before it if it finds sufficient cause to do so.

2. Can the Commission make credibility decisions?

Yes. In making its decision the Commission may explicitly or implicitly make credibility determinations regarding the testimony of any witness or party. Where the Commission has concluded that the testimony of a particular witness is not credible or is otherwise unreliable, it is not bound to accept that testimony and may not only reject it but, if warranted, may make a contrary finding from the facts which that witness asserted. A credibility decision may be based upon such factors as the demeanor of the witness, the consistency of the witness's testimony, the consistency of the witness's testimony with other evidence of record which the Commission finds more reliable or persuasive, or any other relevant factor.

3. Should Commission members discuss their view of a case while evidence is being presented?

Private discussions among Commission members should never take place regarding a case prior to a decision being rendered. Commission members should also limit open discussion with each other during the presentation of the evidence, and should instead use the evidentiary portion of the hearing to listen to, consider and elicit evidence relating to the issues that must be decided. After the evidentiary portion of the hearing is closed and before a decision is rendered, Commission members are encouraged to publicly discuss their views of the case, including those factors that might lead them to support a particular position or outcome in the case.

The Decision

1. How does the Commission decide a case?

Deliberations may be flexible and involve open discussion of the case among Commission members or a process by which the Commission members identify proposed findings of fact and determine whether a majority of members endorse each such proposal, or a combination of the two. At the suggestion of the Commission Chair or another member of the Commission, the Commission can also conduct "straw polls" about particular issues or facts before formally adopting findings of fact or conclusions of law. The Commission may consider each of the conclusions for the type of case before it and upon motion and second, may vote on each such conclusion, and the Commission may include discussion and the adoption of findings of fact prior to any conclusion of law being adopted, or it may intersperse such discussion and adoption of findings among its actions to adopt conclusions of law. Once a motion has been made and seconded on either a proposed finding of fact or proposed conclusion of law, Commission members can offer proposed modifications to the motion, and if those are accepted by the person who made the motion and the person who seconded the motion, the modified motion will be substituted for the original one. In general, each Commission member is encouraged to explain his or her view of the case and the significant issues involved, particularly if the member intends to vote against a motion that has been offered in favor of an applicant. However, there is no formal requirement that each Commission member explain his or her individual view of the case.

If the evidentiary portion of the case has been closed and, during the discussion of a case, a Commission member raises an issue for which additional testimony is desired, a matter or issue that was not addressed at the hearing, information based upon the member's personal visit to the property in question or the member's review of the file and documents that are not part of the staff report and have not been addressed during the evidentiary hearing, or other good cause, the Chair may reopen the public hearing to allow evidence, argument and rebuttal evidence on that particular issue.

2. Can the Commission recess a hearing after the evidentiary portion of the case has been closed and reconvene the hearing at a later time for the decision to be made?

Yes. Upon majority vote, the Commission may recess a case between the close of the evidentiary hearing and the decision by the Commission until (but not later than) the next scheduled meeting of the Commission, to allow Commission members an opportunity to review, but not discuss, the evidence that has been submitted.

3. Can a case be dismissed before full findings of fact and conclusions of law are adopted?

Yes. If an applicant does not present evidence which at a minimum addresses every conclusion of law that must be decided by the Commission in the particular type of case, at the conclusion of the evidentiary hearing the Commission may adopt a motion dismissing the case. Such a motion must specify in what respect(s) the evidence or presentation was lacking. A dismissal of a case on this basis does not prevent the applicant from submitting a new application for the same approval unless there is some other reason that prevents that, such as a change in the requirements of the UDO.

4. What is a fact?

A fact is a description of a circumstance, event or occurrence as it actually takes place or took place, a description of a physical object or appearance as it actually exists or existed, or an actual and absolute reality, as distinguished from a supposition or opinion not provided by a qualified witness. For example, when talking about traffic, a fact might be that "in the last month there have been ten accidents" at a particular intersection, while a statement that "the intersection is dangerous" would be considered an opinion and not a "fact" unless it were established by a qualified expert, in which case it could be accepted as a "fact."

5. What is a "finding of fact"?

A finding of fact is a statement of one or more facts that the Commission decides is true and pertinent to the issues it must determine in the case. Findings of fact should be based on evidence presented at a hearing. Generally, the Commission should only adopt findings of fact that relate to the conclusions of law required in a particular case. The Commission must also make a finding of fact to resolve any conflicts in the evidence presented to it if the conflict relates to an issue material to the case. Therefore, if one person testifies, "The road is ten feet wide," and a second testifies, "The road is twenty feet wide," the Commission must make a finding as to which is correct.

6. How does the Commission adopt findings of fact?

Upon its deliberation following presentation of the case, the Commission members should discuss the facts presented in the case, discuss the credibility of the witnesses if such has been put at issue by a party or raised as a concern by one or more Commission members, and resolve by majority vote as necessary any contested issues of fact. Facts should be articulated in conclusory form as to what the Commission member believes has been established by the evidence, rather than a recitation of a party's or witness' contentions. For example, a finding of fact is "the road is ten feet wide," whereas a statement that "Mr. Jones testified that the road is ten feet wide" is not a finding of fact. When competent opinion testimony is provided (See Evidence §§ 3(C) and (D)), a finding of fact may be based upon that opinion. For example, the Commission may adopt as a finding of fact, "The intersection is dangerous," but such a finding must be supported by an expert opinion to that effect. Findings of fact should generally only relate to the issues before the Board that relate to the type of case before it. They may include findings regarding the credibility of witnesses. (See Weighing the Evidence § 1.) Findings of fact should always address the staff report submitted in the case, and if portions of the report or the report as a whole are not accepted as factually accurate, such should be specifically identified.

7. What is a conclusion of law?

A conclusion of law is a decision about some requirement in the UDO needed to decide the type of case before the Commission. The conclusions of law pertinent to a particular case are generally set forth as potential motions in the staff report. In approving or rejecting any particular such motion, Commission members should articulate the findings of fact upon which each conclusion of law is based.

8. What vote is needed for approval to be granted?

Approval of a Certificate of Appropriateness requires a majority vote of the members of the Commission. For the purposes of this paragraph, vacant positions on the Commission and members who are disqualified from voting on the case shall not be considered members of the Commission for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. See UDO section 6.01.03. In any event, a quorum of at least three members and the affirmative vote of at least two members shall be required for approval of any Certificate of Appropriateness.

10. Can the Commission impose conditions on an approval?

Yes. If the Commission approves a Certificate of Appropriateness, the Commission may do so subject to such reasonable conditions as the Commission concludes are necessary to carry out the purposes of historic preservation as contemplated by the UDO. See G.S. § 160D-947 (a). Conditions that simply reiterate requirements of the UDO are unnecessary and discouraged.

11. If a vote is taken that has the effect of ending the case, can the Commission vote on the other issues which would be decided if an application were approved?

Yes. For the sake of judicial and quasi-judicial efficiency, and at the request of any party, the Commission Chair, or any member of the Commission, the Commission may (upon motion, second and majority vote) issue provisional votes as to any and all preliminary or alternative issues, even though an application or permit has been denied upon some other basis. However, such provisional consideration and votes are not required, and if not made then all parties retain their rights to litigate such issue(s) following any decision on appeal that does not affirm the Commission's decision.

12. What information should be included in a motion?

A motion by a Commission member should usually include at least a brief statement of the reason(s) for the motion and may cite specific, adopted findings of fact as the basis for the motion.

13. Can Commission members discuss a case once the decision has been made?

No. Because decisions by the Commission are subject to review by the courts of North Carolina, which may send a particular case back to the Commission for reconsideration, Commission members must avoid and refrain from discussing a case even after the Commission has made its decision.

Appeal

1. May an applicant appeal a decision by the Commission?

An appeal may be made from the Commission's action granting or denying a Certificate of Appropriateness. The appeal is made to the Boone Board of Adjustment pursuant to the procedures set forth at Articles 4 and 6 of the UDO, and is in the nature of certiorari as set forth at N.C. Gen. Stat. § 160D, Article 4. The filing of an appeal is subject to a strict filing deadline and the payment of a fee in an amount set by the Boone Town Council.

The Town of Boone has forms for appeals available on the website and in the Planning and Inspections Office. Planning and Inspections is located on the basement level of the Boone Downtown Post Office at 680 West King Street, Boone, NC 28607. The appropriate form must be fully filled out and the fees paid for the Department to process it.

Amendment of Rules

1. May these Rules be amended?

These rules may be amended by the Town Council on its own initiative or upon recommendation of the Commission.

This Staff Report has been modified to include (1) revised ordinance language as discussed at the public hearing (page 9), and (2) the Planning Commission's recommendations (page 4). All changes are highlighted in green.

STAFF REPORT
PUBLIC HEARING
MAY 23, 2022
Case PL05504-021822 – Minor/Major Work – COA Revision - UDO Text Amendment

Request

The Town proposes to amend UDO Article 8 and Appendix D with respect to the downtown Boone historic district to clarify and elaborate on what repair and construction activities will be considered "minor work," which may be approved administratively, and what activities are considered "major work," which require a hearing and approval by the Historic Preservation Commission.

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15):

The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Open Space: Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes.

Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

****

Downtown: Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation.

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

Comprehensive Plan Policies: Staff has reviewed land use and comprehensive plan policies, and listed those policies which in staff's opinion have a bearing on the request. The Commission and Council should review these policies carefully. Each member may make his or her own interpretation as to the relevance of each and which carry the most weight thereby shaping their overall recommendation.

COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.

A.1 Continue to evaluate and amend development regulations to help insure aesthetic quality in the area and preserve the natural beauty of the area.

****

C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.

D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.

D.1 Evaluate development regulations for amendments providing flexibility in the renovation and redevelopment of existing structures and sites.

****

E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources.

E.1 Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects which, due to their small size or relatively minor impacts, may not require review by a formal public commission or board.

****

2.1 THE ECONOMY

2.1.5 Downtown

A. A compatible design character for the downtown area, drawing upon the locality's original High Country small town features, shall be identified, reinforced and supported to put forth a quality image and sense of place.

****

A.4 Establish specific architectural and design standards for downtown consistent with its location, setting, and various functions.

****

D. Public and private developments shall be encouraged to incorporate local artistry into public and semi-public spaces downtown.

D.1 Consider the placement of public art (including murals and statuary) at appropriate locations in the downtown area.

D.2 Support the development and enhancement of cultural facilities, e.g. art and antique galleries.

****

2.3 THE COMMUNITY

2.3.2 Community Character

A. The identification, restoration and active use of structures, buildings, monuments, and neighborhoods of historic or architectural significance shall be encouraged as a means of enhancing their economic and cultural value to the planning area.

A.1 Conduct on-going assessments of critical locations in community deserving special attention by the zoning ordinance, in light of their high visibility, traffic impact, strategic location, or other unique features. Continue to encourage significant new public buildings and outdoor spaces to locate in these and other positions of visibility and strategic prominence. Encourage the private sector to do likewise.

A.2 Seek out locations of historical merit in the community, and prepare an action plan for their enhancement, rehabilitation, or relocation as may be necessary.

B. Multiple and appropriate adaptive reuse of historic resources shall be encouraged.

B.1 Amend development regulations to offer flexibility for restoration and active use of historic structures and other resources.

C. Wise development of the tourism potential of the area's architectural, historic, scenic and natural resources shall be encouraged.

C.1 Consider the placement of public art at appropriate locations in downtown, including murals.

D. The destruction of significant architectural, historic, scenic, natural and archaeological resources in the planning area shall be discouraged.

D.1 Carefully scrutinize proposed road widening to ensure that such actions do not destroy community and neighborhood character.

D.2 Continue to support the Town's tree preservation standards. Evaluate the effectiveness of the tree regulations since their establishment and amend them as necessary.

E. New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160D-604(b), subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the Planning Commission for review and comment. If no written report is received from the Planning Commission within 30 days of referral of the amendment to that board, the Town Council may act on the amendment without the Planning Commission report. The Town Council is not bound by the recommendations, if any, of the Planning Commission. Per NCGS 160D-604(d), when conducting a review of proposed zoning text or map, the Planning Commission shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Commission shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

First Motion and Vote: Commission Member Tippett made a motion that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plans of the Town that are applicable because the amendment is consistent with:

Comprehensive Plan Policy 2.1 The Economy
2.1.1 Economic Development

A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.
   A.1 Continue to evaluate and amend development regulations to help insure aesthetic quality in the area and preserve the natural beauty of the area.

D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
   D.1 Evaluate development regulations for amendments providing flexibility in the renovation and redevelopment of existing structures and sites.

Comprehensive Plan Policy 2.1.5 Downtown

A. A compatible design character for the downtown area, drawing upon the locality's original High Country small town features, shall be identified, reinforced and supported to put forth a quality image and sense of place.
   A.4 Establish specific architectural and design standards for downtown consistent with its location, setting, and various functions.

Comprehensive Plan Policy 2.3 The Community
2.3.2 Community Character

A. The identification, restoration and active use of structures, buildings, monuments, and neighborhoods of historic or architectural significance shall be encouraged as a means of enhancing their economic and cultural value to the planning area.
   B.1 Amend development regulations to offer flexibility for restoration and active use of historic structures and other resources.

The motion was seconded by Commission Member Veno.

Vote: Aye – 5
Nay – None
Recused – 1 (Plaag)

The motion passed.

Second Motion and Vote: Commission Member Tippett made a motion that the Planning Commission recommends approval of Ordinance PL05504-021822 and believes approval is reasonable and in the public interest because the amendment with respect to Downtown Boone's Historic District does clarify and elaborate on what repair and construction activities will be considered minor work, which may be approved administratively, and what activities are considered major work, which require a hearing and approval by the Historic Preservation Commission.

The motion was seconded by Commission Member Behrend.

Chair Shay wished to amend the motion to add that the proposed amendment preserves Town resources and staff time by reducing the need for review on minor or routine activities while still preserving the review and approval process for larger-scale projects with a greater impact on historic assets.

Commission Members Tippett and Behrend accepted the amendment.

Vote: Aye – 5
Nay – None
Recused – 1 (Plaag)
The motion passed.

TOWN COUNCIL ACTION – Adoption of Ordinance

Per NCGS 160D-605, when adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan.

ORDINANCE # PL05504-021822

AN ORDINANCE TO REVISE ARTICLE 8 AND APPENDIX D OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE RELATING TO CERTIFICATE OF APPROPRIATENESS PROCESS AND PUBLIC ART IN THE DOWNTOWN BOONE LOCAL HISTORIC DISTRICT

WHEREAS, the Boone Town Council desires to modify, clarify and streamline the requirements for; and

WHEREAS, the Town Council finds that it is in the best interest of the Town and its citizens that Town Council directly consider and, with input from the public as deemed appropriate by Council; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160D, Article 6;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Article 8 and Appendix D of the Town of Boone Uniform Development Ordinance ("UDO") is hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference, with deletions and additions shown in ~~red~~ and blue respectively:

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this the ___th day of ___________________, 2022.

____
The Honorable Tim Futrelle, Mayor

Attest:

____
Nicole Harmon, Town Clerk

Vote 1: The proposed amendment to the Town's zoning ordinance ☐**is** OR ☐**is not** consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because:

Note 1

___

___

___

Vote 2: The Town Council ☐**approves** OR ☐**denies** Ordinance # PL05504-021822 to the Town's zoning ordinance and believes ☐**approval** OR ☐**denial** is reasonable and in the public interest because:

Note 2

___

___

___

Note 1*: describe elements of controlling land use plans and how the amendment is or is not consistent. Town Council members may reference the comprehensive plan policies in the Planning Commission's recommendations, or use the other comprehensive plan policies as the Council member see relevant and pertinent to the case.*

Note 2*: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.*

EXHIBIT A

Article 8 Historic Preservation Procedures

…

8.03 ~~Certificate of Appropriateness~~Application Required

8.03.01 From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a Statement of Conformity (SOC) for minor work or a Certificate of Appropriateness (COA) for major work has been approved as detailed herein.

A. A ~~Statement of Conformity~~SOC or COA must be approved prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing any structure~~structures~~.

B. A ~~Statement of Conformity~~ SOC or COA may be issued subject to reasonable conditions necessary to carry out the purposes of this Article.

C. A ~~Statement of Conformity~~SOC or COA is required whether or not a building permit or other permit is required.

D. ~~Approval for ordinary~~Exception: Ordinary ~~or routine~~ maintenance or repair of the exterior features of a building does not require approval ~~under this Article.~~ through the SOC or COA process. Ordinary ~~or routine~~ maintenance or repair includes only such work as does not involve a change in design, material, or appearance ~~includes only those activities which have no discernable effect on the appearance of or materials constituting the~~ of any exterior features of a building or other structure. ~~Examples include cleaning or re-painting existing siding with the existing color of paint and replacing a piece of trim with trim of the same material and color.~~ Proposals to engage in ordinary maintenance or work must be submitted for review pursuant to such process(es) as the Administrator may require to confirm whether or not the activity meets the standards for the exception.

…

8.04 Statement of Conformity for Minor Work

8.04.01 Upon application, the Administrator may issue a Statement of Conformity (SOC) approving changes to a structure or a site that are judged not to have significant impact on the historical integrity or character of the property ("minor work").

A. The application for a ~~Statement of Conformity~~SOC approving minor work is reviewed by the Administrator on the basis of the standards adopted for the landmark or district in accordance with the provisions of Article 4.

B. Minor works that may be approved pursuant to issuance of a SOC include by way of example, but are not limited to the examples described as minor work at Table 8.05.03 below.

~~A.~~C. When the Administrator determines that an application for approval of a SOC involves major work or otherwise does not meet the requirements for SOC approval, or presents factual or legal issues or matters of discretion not appropriately determined by staff ~~Statement of Conformity does not meet the requirement for such approval~~, the application will be forwarded to the HPC for review as a COA ~~Application for Major Work~~application for major work. Upon such action by the Administrator, the applicant is required to submit such additional information or documentation as may be required for the COA review process.

8.04.02 ***Reserved.*** ~~Minor work that may be approved pursuant to issuance of a Statement of Conformity may include by way of example, but is not limited to, the following:~~

~~Installation of mechanical systems, air conditioning units, vents, and related equipment on secondary and tertiary elevations or adjacent land areas that does not involve alteration to the building.~~

~~Installation of patios and sidewalks in secondary and tertiary elevations or adjacent land areas.~~

~~Change of roofing materials with like materials on flat or low-slope roofs not visible from the street~~

~~Fence installation in land areas adjacent to secondary and tertiary elevations~~

~~Installation of skylights within a tertiary elevation~~

~~Installation of storm windows and doors where divided mullions of storm windows and doors align with windows and doors behind~~

~~Signs as permitted under Article 26 of the Unified Development Ordinance and adopted design standards for a district or landmark:~~

~~1. Temporary signs and/or approved historic house markers~~

~~2. Permanent signs on non-contributing buildings shall be historically appropriate to the period of significance for the district or landmark. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance of the district or landmark.~~

~~3. Permanent signs on contributing buildings shall be historically appropriate to the period of significance of the building. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance to the building and shall not harm, damage, or destroy historic materials or features. In the case there is not evidence of materials~~

~~appropriate to the historic building, then the materials shall be appropriate to the materials in the historic district.~~

~~Removal of synthetic siding where original siding exists underneath~~

~~Installation of new doors, door frames, and associated door sills in tertiary AVCs when new materials are compatible with the original in terms of size, design, and material.~~

8.04.03 Applications.

A. Pre-Application Consultation. Pursuant to UDO Subsection 4.04, a pre-application consultation between the applicant and Staff is strongly encouraged in order to minimize development planning costs, avoid misunderstandings or misinterpretations, and ensure compliance with the requirements of this Ordinance.~~, a preapplication consultation between the applicant and Staff is strongly encouraged.~~

B. In addition to meeting the requirements of Appendix A as applicable, applications shall include ~~In addition to the submittal requirements of Appendix A, as may be applicable, applications shall include~~:

1. Written ~~Description~~ description of the proposed work: The application shall describe ~~Describe~~ in detail the scope and nature of the proposed project, including exact material types, colors, and dimensions for materials to be used (e.g., width of siding, color of window trim, type of roofing materials, etc.).

2. Design Standards References: ~~Cite~~ The application shall cite the applicable sections of the design standards related to and/or reflected in the proposed request.

3. Photographs of Existing Conditions: The application shall include contemporaneous ~~Provide current~~ photographs showing the current~~present~~ conditions of the area where the work will be completed and/or the portions of any existing building or other structure(s) that will be affected by the proposed work.

4. Site Plan: For development which includes modifications to the site in addition to a structure ~~the building~~, the applicant shall provide scaled drawings prepared in accordance with UDO Appendix A~~,~~. These drawing should ~~which~~ depict at least the relationship of all existing structures~~buildings, secondary structures~~, driveways, sidewalks, fences, drains, lighting, and trees to the property lines and identify the location of any and all proposed changes. ~~Clearly identify the location of any and all proposed changes.~~ Tree caliper sizes ~~Caliper of trees~~ should be indicated as measured from four and a half feet (4.5') above the earth's surface.

5. Historical Documentation: If available, provide copies of historic photographs of the property in question, along with a list of any known previous alterations to the property (and the approximate date of those alterations). If the property is already listed on the National Register of Historic Places or is a designated Local Historic Landmark, include a copy of the nomination text for the property.

Communication: Minor/Major Work - COA Revision - UDO Text Amendment (Project Updates by Planning Staff)

(Ord. PL05044-083121, 10-21-2021)

8.05 Certificate of Appropriateness for Major Work

8.05.01 Major work includes all other work not considered as either ordinary or routine maintenance or minor work. Major work ~~projects require~~requires a COA Application and a quasi-judicial hearing before the Historic Preservation Commission for approval.

A. All public hearings on Certificates of Appropriateness for major work shall be conducted in a quasi-judicial manner as described in Article 6.

8.05.02 Major works that must be approved pursuant to issuance of a COA include by way of example, but are not limited to the examples set forth at Table 8.05.03 below.~~Major work may include, but is not limited to, the following:~~

~~A. New construction or additions to buildings~~

~~B. Reconstruction of buildings once located on the site but demolished or moved at some previous time~~

~~C. Restoration or rehabilitation of an historic property to its historic appearance~~

~~D. Pointing of masonry as well as alteration, repair, or replacement of masonry, siding, roofing materials, architectural trim elements, foundations, windows, doors, and other significant architectural details~~

~~E. Demolition of any part of a building or structure~~

~~F. Work that is likely to disrupt or damage known or discovered archaeological resources on the site~~

~~G. Moving of buildings~~

~~H. Replacement of architectural details when there will be a change in design or materials from the original or existing details~~

~~I. Changes to rooflines~~

~~J. Establishment of exterior fire exits~~

~~K. Exterior modification of existing buildings for ADA compliance~~

~~L. Painting or stuccoing of buildings not previously painted or stuccoed~~

~~M. Installation of mechanical systems, air conditioning units, vents, and related equipment in primary elevations that involves alteration to the building facade~~

~~N.~~A. ~~Location of satellite dishes, solar panels, and other roof attachments to the primary elevation roof and/or facade of a building if they are not effectively screened or are visible from a public street~~

8.05.03 Table of Minor Work and Major Work in the Historic District

Communication: Minor/Major Work - COA Revision - UDO Text Amendment (Project Updates by Planning Staff)

Description of Work	Routine Maintenance	Minor Work (SOC)	Major Work (COA)
New construction of or additions to structures, except as specifically provided otherwise herein.			X
Accessory Buildings			
In-kind[1] repair of existing accessory building	X		
In-kind replacement of existing, non-contributing accessory building		X	
Demolition of an existing, non-contributing accessory building		X	
New construction, modification or an addition to an accessory building on a tertiary elevation not visible from a public street		X	
All other alterations[2]			X
ADA			
In-kind repair or replacement of existing ADA features	X		
Installation of temporary accessibility ramps		X	
Installation of ADA-required features on tertiary elevations not visible from a public street		X	
All other alterations			X
Architectural Features (not to include items specifically addressed in other categories) (may include but are not limited to cornices, friezes, medallions, sunbursts, brackets, bays, turrets, fascias, decorative moldings, quoins, columns, brickwork, string courses			
In-kind repair/replacement of any existing architectural feature	X		
Addition, removal, or alteration of an architectural feature on tertiary elevation not visible from a public street		X	
All other alterations			X
Awnings, Canopies, or Shutters			
In-kind repair/replacement of an existing awning, canopy or shutters	X		
Addition of awnings, canopies or shutters on tertiary elevation not visible from a public street		X	
Removal of an awning, canopy or shutters on a non-contributing structure		X	
All other alterations			X
Decks, Patios, and Sidewalks			
In-kind repair/replacement of an existing deck, patio, or sidewalk; addition of public sidewalks	X		

Communication: Minor/Major Work - COA Revision - UDO Text Amendment (Project Updates by Planning Staff)

Additions of decks, patios, and sidewalks on tertiary elevations		X	
All other alterations			X
Demolition and Relocation			
Except as otherwise specifically provided herein, any removal, relocation, or demolition of any structure or part thereof			X
Removal/alteration of archaeologically significant features			X
Any work that is likely to disrupt or damage known or discovered archaeological resources on the site			X
Doors & Windows			
In-kind repair/replacement of any door or window, including casing, frames, and trim	X		
Installation of storm windows where divided mullions of storm windows and doors align with windows and doors behind	X		
Installation of skylights within a tertiary elevation or where the skylight is not publicly visible		X	
Addition, removal, or modification of a door or window on tertiary elevations not visible from public street		X	
All other installation, removal, addition or modification of doors or windows, including construction of new openings and replacement, removal, or modification of existing openings			X
Driveways			
In-kind repair/replacement of an existing driveways	X		
Additions/alterations of driveways on tertiary elevations		X	
All other alterations			X
Fences			
In-kind repair/replacement of existing fence	X		
Additions/alterations of fences on tertiary elevations or not visible from public streets		X	
All other alterations			X
Exterior Surfaces Materials (Masonry, Siding, etc.)			
In-kind repairs/replacement, including repointing, to existing exterior surfaces when the material, color, composition of the new material matches the existing exterior surface (includes requirement that the composition of mortar match the original)		X	
All other alterations			X
Foundations			
In-kind repair of a foundation	X		
Alteration of a foundation on a tertiary elevation not visible from a public street		X	
All other alterations			X

Gutters and Downspouts			
In-kind repair/replacement of gutters and downspouts	X		
Installation of gutters and downspouts that match the house or trim color as long as no historic features are damaged or removed.		X	
Removal of gutters or downspouts that are not historic to the building		X	
All other alterations			X
Landscaping			
Insignificant landscaping including vegetable and flower gardens and shrubbery	X		
Pruning of trees and/or shrubbery	X		
Removal of trees less than 25 inches in diameter	X		
Removal of trees that are dead, dangerous per adequate documentation from licensed arborist	X		
Removal of any invasive species (landscape material) as listed on the Invasive Plants Found in the Mountains of North Carolina list published by the NC Invasive Plant Council	X		
Removal of any tree 25 inches or greater, unless documented as dead or dangerous			X
Mechanical Systems/Equipment			
In-kind repair/replacement of any existing mechanical systems, vents, and related equipment	X		
Removal of existing mechanical systems, vents and related equipment		X	
Installation of mechanical systems, vents, and related equipment on tertiary elevations		X	
Installation of window air conditioners		X	
All other installations			X
Painting			
In-kind repair/re-painting of a previously-painted surface	X		
All other painting, including the painting of exterior surfaces not previously painted			X
Parking Lots			
In-kind repair/replacement of existing parking lots	X		
Insubstantial alterations of existing parking lots and removal of non-historic parking lots		X	
All other alterations			X
Public Art			
In-kind repair/maintenance of previously-approved and installed public art	X		

Replacement of previously-approved and installed public art with artwork of essentially identical mass, proportions, and general features (e.g., a statue replacing a statue, or one mural design replacing another)		X	
New installation or substantial modification of public art in the local historic district			X
Roofs			
In-kind repair/replacement of roof coverings	X		
Repair/replacement of roof coverings not publicly visible		X	
All other alterations, including any modification of roof line			X
Satellites			
In-kind repair/replacement of existing satellite dishes	X		
Addition of satellite dishes on tertiary elevations		X	
Removal of satellite dishes		X	
All other alterations			X
Signs			
In-kind repair/replacement of an existing permanent sign	X		
Addition/alteration of temporary sign or approved historic house marker		X	
Addition/alteration of permanent sign on a non-contributing building		X	
Addition/alteration of permanent sign on a contributing building		X	
Removal of non-historic permanent sign		X	
Removal of historic permanent sign			X
Solar			
In-kind repair/replacement of an existing solar energy system	X		
Addition/alterations of solar panels on tertiary elevations		X	
Removal of solar panels		X	
All other alterations			X
Miscellaneous			
Installation of house numbers and mailboxes	X		
Establishment of exterior fire exits on tertiary elevations		X	
Establishment of exterior fire exits on secondary and primary elevations			X

Notes:

1. "In-kind" means having no change in the design, construction method and materials, and general appearance of the existing or original historic feature.
2. "Alteration" means and includes new construction or installation, modifications, additions, removal or demolition, and any other material change.

8.05.04~~3~~ Applications

A. Pre-application Consultation. Pursuant to UDO Subsection 4.04, a pre-application consultation between the applicant and Staff is strongly encouraged in order to minimize development planning costs, avoid misunderstandings or misinterpretations, and ensure compliance with the requirements of this Ordinance~~, a pre-application consultation between the applicant and Staff is required~~. At this meeting, Staff shall inform applicants on application requirements and provide assistance on identifying possible resources to obtain historic information.

B. In addition to meeting the requirements of Appendix A as applicable, applications shall include: ~~the submittal requirements of Appendix A, as may be applicable, applications for a Certificate of Appropriateness for major work shall include:~~

1. Written ~~Description of the Proposed Work~~description of the proposed work: The application shall describe~~Describe~~ in detail the scope and nature of the proposed project, including exact material types, colors, and dimensions for materials to be used (e.g., width of siding, color of window trim, type of roofing materials, etc.).

2. Design Standards References: The application shall cite~~Cite~~ the applicable sections of the design standards~~Design Standards~~ related to and/or reflected in the proposed project.

3. Photographs of Existing Conditions: The application shall include contemporaneous photographs ~~Provide current photographs~~ showing the current ~~present~~ conditions of the area where the work~~project~~ will be completed and/or the portions of any existing building or other structure(s) that will be affected by the proposed work.

4. Site Plan: The application shall provide ~~Provide~~ scaled drawings showing the relationship of all existing structures, ~~buildings, secondary structures,~~ driveways, sidewalks, fences, drains, lighting, and trees to the property lines and identify the location of any and all proposed changes. ~~Clearly identify the location of any and all proposed changes.~~ Tree caliper sizes~~Caliper of trees~~ should be indicated as measured from four (4) feet above the earth's surface.

5. Historical Documentation: If available, provide copies of historic photographs of the property in question, along with a list of any known previous alterations to the property (and the approximate date of those alterations). If the property is already listed on the National Register of Historic Places or is a designated Local Historic Landmark, include a copy of the nomination text for the property.

6. Elevations: The application shall provide ~~Provide~~ architectural drawings showing all elevations, including the scale, where proposed work will occur. ~~Include scale.~~

7. For Projects Involving Demolition or Relocation: The application shall describe ~~Describe~~ the structure, the reason for its demolition or relocation, the proposed reuse of the site, as well as plans for new landscaping at the site.

(Ord. PL04727-050721, 07-01-2021; Ord. PL05502-021822, 04-13-2022)

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Appendix D Downtown Boone Local Historic District Design Standards and Handbook Commission Procedures

Design Review Process

Except for minor work eligible for a **Statement of Conformity (SOC)**, the Town of Boone Historic Preservation Commission (HPC) is responsible for the design review of all proposed changes to the exterior of structures, demolition of structures, moving of structures, new construction, and signage in the district~~District~~.

…

Completing the Statement of Conformity or COA Application

Applications fall under two different project types: ~~Minor Work and Major Work~~minor work and major work. Requirements for ~~the~~ approval are outlined in the following sections.~~: Application for a Statement of Conformity and COA Application for Major Work.~~

Statement of Conformity Application

~~As set forth herein,~~ Minor ~~Work~~ work includes ~~those~~ changes to a structure or a site that ~~are judged not to~~ do not have significant impact on the historical integrity or character of the property. While ~~Minor Work~~minor work does not require a review by the HPC, applicants are required to submit an ~~Application~~ application for a ~~Statement of Conformity~~SOC. This application is reviewed administratively by Planning and Inspections Staff in context with the historic district standards~~Standards and is generally approved within ____ business days~~. ~~When an Application for a Statement of Conformity does not meet the limitations of Minor Work~~ If an application for a SOC cannot be approved by staff for any reason, the application will be forwarded to the HPC for review as a COA application for major work ~~Application for Major Work~~.

~~When work proposed under a Statement of Conformity Application does not meet the limitations of Minor Work, the application will be forwarded to the HPC for review as a COA Application for Major Work.~~

Minor work that may be approved pursuant to issuance of a SOC includes those examples set forth in the table provided herein.

~~Examples of Minor Work include:~~

- ~~Installation of mechanical systems, air conditioning units, vents, and related equipment in secondary and tertiary AVCs that does not involve alteration to the building~~
- ~~Installation of patios and sidewalks in secondary and tertiary AVCs~~

- ~~Change of roofing materials with like materials on flat or low-slope roofs not visible from the street~~
- ~~Fence installation in secondary and tertiary AVCs~~
- ~~Installation of skylights within tertiary AVCs~~
- ~~Installation of storm windows and doors where divided mullions of storm windows and doors align with windows and doors behind~~
- ~~Signs as permitted under Article 26 of the Unified Development Ordinance and adopted design standards for a district:~~
  - ~~Temporary signs and/or approved historic house markers~~
  - ~~Permanent signs on non-contributing buildings shall be historically appropriate to the period of significance of the district. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance of the district.~~
  - ~~Permanent signs on contributing buildings shall be historically appropriate to the historic period of significance of the district. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance of the district and shall not harm, damage, or destroy historic materials or features. In the case there is not evidence of materials appropriate to the historic building, then the materials shall be appropriate to the materials in the historic district.~~
- ~~Removal of synthetic siding where original siding exists underneath~~
- ~~Installation of new doors, door frames, and associated door sills in tertiary AVCs when new materials are compatible with the original in terms of size, design, and material.~~

Required materials for a Statement of Conformity Application for Minor Work shall include:

- *Written Description of the Proposed Work*: The application shall describe ~~Describe~~ in detail the scope and nature of the proposed project, including exact material types, colors, and dimensions for materials to be used (e.g., width of siding, color of window trim, type of roofing materials, etc.).
- *Design Standards References*: The application shall cite ~~Cite~~ the applicable sections of the design standards ~~Design Standards~~ related to and/or reflected in the proposed project.
- *Photographs of Existing Conditions*: The application shall include contemporaneous photographs ~~Provide current photographs~~ showing the current~~present~~ conditions of the area where the work~~project~~ will be completed and/or the portions of any existing building or other structure(s) that will be affected by the proposed work.
- Site Plan: For development which includes modifications to the site in addition to a structure, the applicant shall provide ~~Provide~~ scaled drawings showing the relationship of all existing structures, ~~buildings, secondary structures,~~ driveways, sidewalks, fences, drains, lighting, and trees to the property lines and identify the location of any and all proposed changes. ~~Clearly identify the location of any and all proposed changes. Caliper of trees~~Tree caliper sizes should be indicated as measured from four (4) feet above the earth's surface. (Not required for minor work, unless the proposed minor work involves modifications to landscaping, fencing, sidewalks, mechanicals, or other elements of the present "footprint" of the site.)
- Historical Documentation: If available, provide copies of historic photographs of the property in question, along with a list of any known previous alterations to the property (and the approximate date of those alterations). If the property is already listed on the National Register of Historic Places or is a designated Local Historic Landmark, include a copy of the nomination text for the property.

(Ord. PL05419-010622, 02-09-2022)

…

COA Application for Major Work

~~As set forth herein, Major Work includes all other work not considered as either ordinary or routine maintenance or Minor Work. Major Work projects require both a COA Application and HPC approval~~. Major work includes all other work that cannot be approved as either ordinary or routine maintenance or minor work. Examples are set forth in the table below. Major work requires submission of a COA application and approval by the HPC.

~~Examples of Major Work include:~~

- ~~New construction or additions to buildings~~
- ~~Reconstruction of buildings once located on the site but demolished or moved at some previous time~~
- ~~Restoration or rehabilitation of an historic property to its historic appearance~~
- ~~Pointing of masonry as well as alteration, repair, or replacement of masonry, siding, roofing materials, architectural trim elements, foundations, windows, doors, and other significant architectural details~~
- ~~Demolition of any part of a building or structure~~
- ~~Work that is likely to disrupt or damage known or discovered archaeological resources on the site~~
- ~~Moving of buildings~~
- ~~Replacement of architectural details when there will be a change in design or materials from the original or existing details~~
- ~~Changes to rooflines~~
- ~~Establishment of exterior fire exits~~
- ~~Exterior modification of existing buildings for ADA compliance~~
- ~~Painting or stuccoing of buildings not previously painted or stuccoed~~
- ~~Installation of mechanical systems, air conditioning units, vents, and related equipment in primary elevations that involves alteration to the building facade~~
- ~~Location of satellite dishes, solar panels, and other roof attachments to the primary elevation roof and/or facade of a building if they are not effectively screened or are visible from a public street~~

COA Application Submission and Review

Pursuant to UDO Subsections 4.04 and 8.05.0~~3~~4, a pre-application consultation between the applicant and Staff is required. The aim of this consultation is to minimize development planning costs, avoid misunderstandings or misinterpretations, and ensure compliance with the requirements of this Ordinance. At this meeting, Staff shall inform applicants with respect to application requirements and provide assistance in identifying possible resources for historic information.

Required materials for all COA Application for Major Work shall include:

- *Written Description of the Proposed Work*: The application shall describe ~~Describe~~ in detail the scope and nature of the proposed project, including exact material types, colors, and dimensions for materials to be used (e.g., width of siding, color of window trim, type of roofing materials, etc.).
- *Design Standards References*: The application shall cite ~~Cite~~ the applicable sections of the design standards ~~Design Standards~~ related to and/or reflected in the proposed project.
- *Photographs of Existing Conditions*: The application shall include contemporaneous photographs ~~Provide current photographs~~ showing the current~~present~~ conditions of the area where the work~~project~~ will be completed and/or the portions of any existing building or other structure(s) that will be affected by the proposed work.
- *Site Plan*: The application shall provide ~~Provide~~ scaled drawings showing the relationship of all existing structures, ~~buildings, secondary structures,~~ driveways, sidewalks, fences, drains, lighting, and trees to the property lines and identify the location of any and all proposed changes. ~~Clearly identify the location of any and all proposed changes.~~ Tree caliper sizes ~~Caliper of trees~~ should be indicated as measured from four (4) feet above the earth's surface.
- *Historical Documentation*: If available, provide copies of historic photographs of the property in question, along with a list of any known previous alterations to the property (and the approximate date of those alterations). If the property is already listed on the National Register of Historic Places or is a designated Local Historic Landmark, include a copy of the nomination text for the property.
- *Elevations*: The application shall provide~~Provide~~ architectural drawings showing all elevations, including scale, where proposed work will occur. ~~Include scale.~~
- *For Projects Involving Demolition or Relocation*: The application shall describe ~~Describe~~ the structure, the reason for its demolition or relocation, the proposed reuse of the site, as well as plans for new landscaping at the site.

Once submitted, the COA application for major work~~Application for Major Work~~ and supporting documentation are initially reviewed by Planning and Inspection Staff in context of the design standards. The results of this review are condensed to a Staff Report, which is then forwarded to a regularly scheduled HPC meeting.

…

Staff Note: For Appendix D, the minor work and major works table will be included following the Appendix D sections of Statement of Conformity application and COA application for major work.

…

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

8. Signage

~~8.1 No signs shall create any vision obstructions onto a public right-of-way, alley, sidewalk, adjacent drive, or private drive entering onto a street. Signs or floodlights erected or~~

~~placed in such a manner as to cause glare that impairs driver vision on a roadway or causes a nuisance to adjacent property as defined in N.C. General Statute 136-32.2 are also prohibited.~~

~~8.2 Freestanding signs must be placed in a landscape area that is at least three (3) feet in width and at least the length of the greatest dimension of the sign. Curbing, bricks, fencing, and/or other suitable vehicular barrier shall enclose the landscaped area.~~

8.~~3~~1 Sandwich boards, other temporary street signage, seating, and/or merchandise shall not be placed upon the public ways of the District or otherwise impede the pedestrian or traffic flow on those public ways.

~~8.4 Attached signs shall not project higher than the building soffit or eave height and shall not extend beyond the edge of any wall or other surface to which they are mounted (this does not refer to projecting signs).~~

~~8.5 The area of a sign shall be measured according to the following rules as applicable:~~

- ~~In the case of freestanding, projecting, canopy, or marquee signs, area consists of the entire surface area on which copy could be placed. The supporting structure or bracing of a sign shall not be counted as a part of the sign area unless such structure or bracing is made part of the sign's message. Where a sign has two (2) display faces back to back, the area of only one face shall be considered as the sign area. When a sign has more than one display face, all areas that can be viewed simultaneously shall be considered the sign area. All signs are limited to two (2) faces.~~
- ~~In the case of a sign (or other freestanding, projecting, canopy, or marquee) whose message is fabricated together with the background that borders or frames the message, sign area shall be the total area of the entire background.~~
- ~~In the case of a sign (other than freestanding, projecting, canopy, or marquee) whose message is applied to a background that provides no border or frame, sign area shall be computed by continuous rectilinear lines, or a circle or an eclipse enclosing the extreme limits of the letters, writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display used to differentiate the sign from the backdrop or structure against which it is placed.~~

~~8.6 All freestanding signs shall follow the following criteria:~~

- ~~No freestanding sign shall be placed less than forty (40) feet from another freestanding sign.~~
- ~~Freestanding signs shall not be located in satellite parcels of real estate.~~
- ~~All freestanding signs, support structures, and required landscaping areas shall be at least one (1) foot from any right-of-way or easement.~~

~~8.7 Interior lighting for signs, where permitted, shall not exceed eleven (11) watts per bulb (the standard industry size). In the case of the use of exterior lighting by floodlights, such lights must comply with N.C. General Statute 136.32.2.~~

~~8.8 Awning, canopy, projecting, and suspended signs may be no less than eight feet at their lowest point above any sidewalk.~~

8.2 Permanent signs in the historic district are to be historically appropriate for either a contributing or non-contributing building:

- Permanent signs of a non-contributing building shall be historically appropriate to the period of significance for the district or landmark. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance of the district or landmark.
- Permanent signs of a contributing building shall be historically appropriate to the period of significance of the building. The sign shall be of appropriate size, massing, and lighting design relative to the period of significance to the building, and shall not harm, damage, or destroy historic materials or features. In the case there is not photographic evidence of materials appropriate to the historic building, then the materials shall be appropriate to the materials in the historic district.

8.3~~9~~ All signs ~~must be placed in accordance with the~~are subject to the general sign regulations contained in the Town of Boone UDO.

Staff Note: For Section 8 included above, the deleted sections (shown in ~~red strikethrough~~) are for areas that are general UDO standards already contained in Article 26.

BOONE HISTORIC PRESERVATION COMMISSION

Local Landmark Designation Report, Initial Draft

WATAUGA COUNTY JAIL

142 BURRELL STREET
BOONE, NC

Prepared by

Dr. Eric Plaag, Carolina Historical Consulting, LLC

April 29, 2022

Cover Image: Watauga County Jail as a restaurant, October 2021, image courtesy of Eric Plaag

Local Historic Landmark Designation Report
Watauga County Jail
Boone, Watauga County, North Carolina

I. General information

1. Common and Historical Property Names

Watauga County Jail

2. Physical Address or Location

142 Burrell St., Boone, NC 28607

*3. Tax Parcel Identification Number (PIN)**

2900-79-5419-000 (Jail Building)

4. Current Owner(s) Name(s)

Samuel F. Furgiuele, Jr., and Peggy Mendel Furgiuele

5. Current Owner(s) Mailing Address(es)

169 Gragg St., Boone, NC 28607

6. Appraised Value of the Property (a copy of the most recent tax card will suffice)

$347,500 combined; $128,800 (Building) and $218,700 (Land)

7. Date of Construction

1889

8. Historical Significance

Areas of Significance:	Criterion A: Politics/Government, Law, and Social History
Period of Significance:	1889-1927

II. Brief Statement of Significance

The Watauga County Jail is significant at the local level under Criterion A in the areas of Politics/Government, Law, and Social History for its association with the early correctional institution history of Watauga County from 1889 to 1927. The fourth of Watauga County's early jails, it is the only extant, nineteenth-century, governmental building within the county's boundaries. The Watauga County Jail was in use at a key transition point in Boone's history during the early 1920s, when Boone rapidly and radically transformed from a sleepy, backcountry, county seat to a vibrant commercial and tourist hub in northwestern North Carolina. Indeed, it was the success of Boone's booming economy and the area's rapid growth that ushered in the end of the building's use as the local jail.

The Watauga County Jail retains an impressive degree of exterior integrity, given its changes in ownership and function since the 1920s. The jail retains its general original form and appearance, and in those few cases where newer exterior materials have been applied, the original materials are known to survive underneath. While there are also important interior elements that are reflective of the Watauga County Jail's period of significance, these elements tend to be mere vestiges of the original interior layout and design, and modern alterations of and damage to some of these elements have had an adverse impact on their integrity. While these interior elements are noted here for their historical importance, the proposed local landmark designation applies only to the exterior elements of the building.

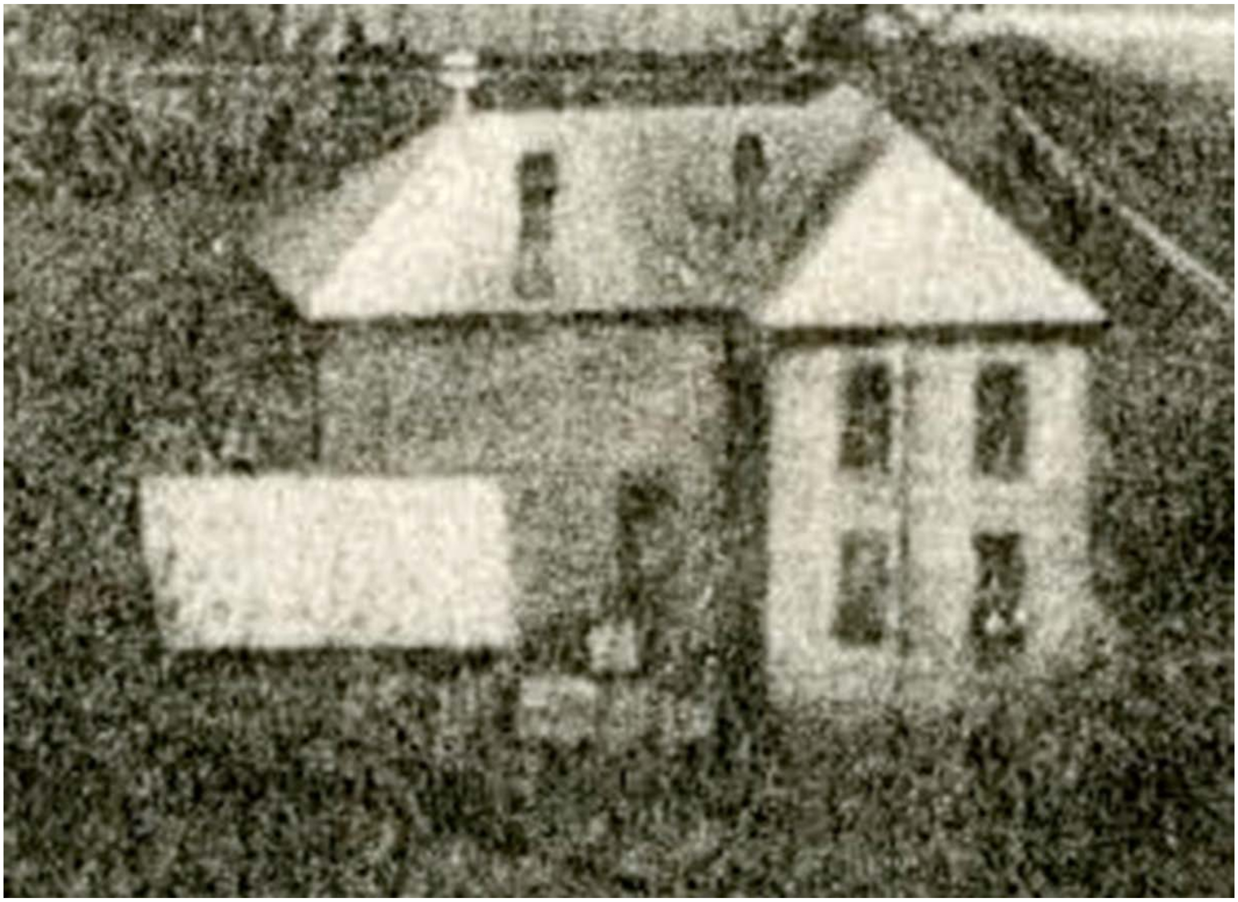
The property to be designated includes the entire current parcel containing the Watauga County Jail, including the stone retaining wall along the sidewalk at Burrell Street, the pathway leading from the sidewalk to the front porch, the driveway access located to the southwest of the building, and the two small parking areas to the southwest and northwest of the building.

III. Architectural Description[1]

The former Watauga County Jail is a classic example of a Folk Victorian-style home adapted to rural institutional needs. Originally "T" shaped in design, with a hipped roof on its two-story main block that resembles an I-house and a hipped roof, two-story, rear (west) extension, the building is constructed of six-course, common bond, red brick that was kilned by builder William Stephens of Mayfield, Kentucky, on site. Sturdy brick pilasters separate the three main bays of the front (east) façade and are present at the corners, with the east elevation terminating in a quadruple-tier, English bond, corbelled cornice that is interrupted at irregular intervals by brick brackets. Stunted brackets are centered on the pilasters, while a pair of elongated brackets frames each window opening of the second floor. A second, alternating corbel line separates the first and second floors but is mostly

[1] This architectural description is taken largely from Eric W. Plaag, "Comprehensive Architectural Survey of Downtown Boone, North Carolina, Final Report," February 2021, Revised September 2021, (Boone, NC: Carolina Historical Consulting, LLC, 2021), 93-96, with some minor revisions to architectural descriptions reflecting present conditions and new information.

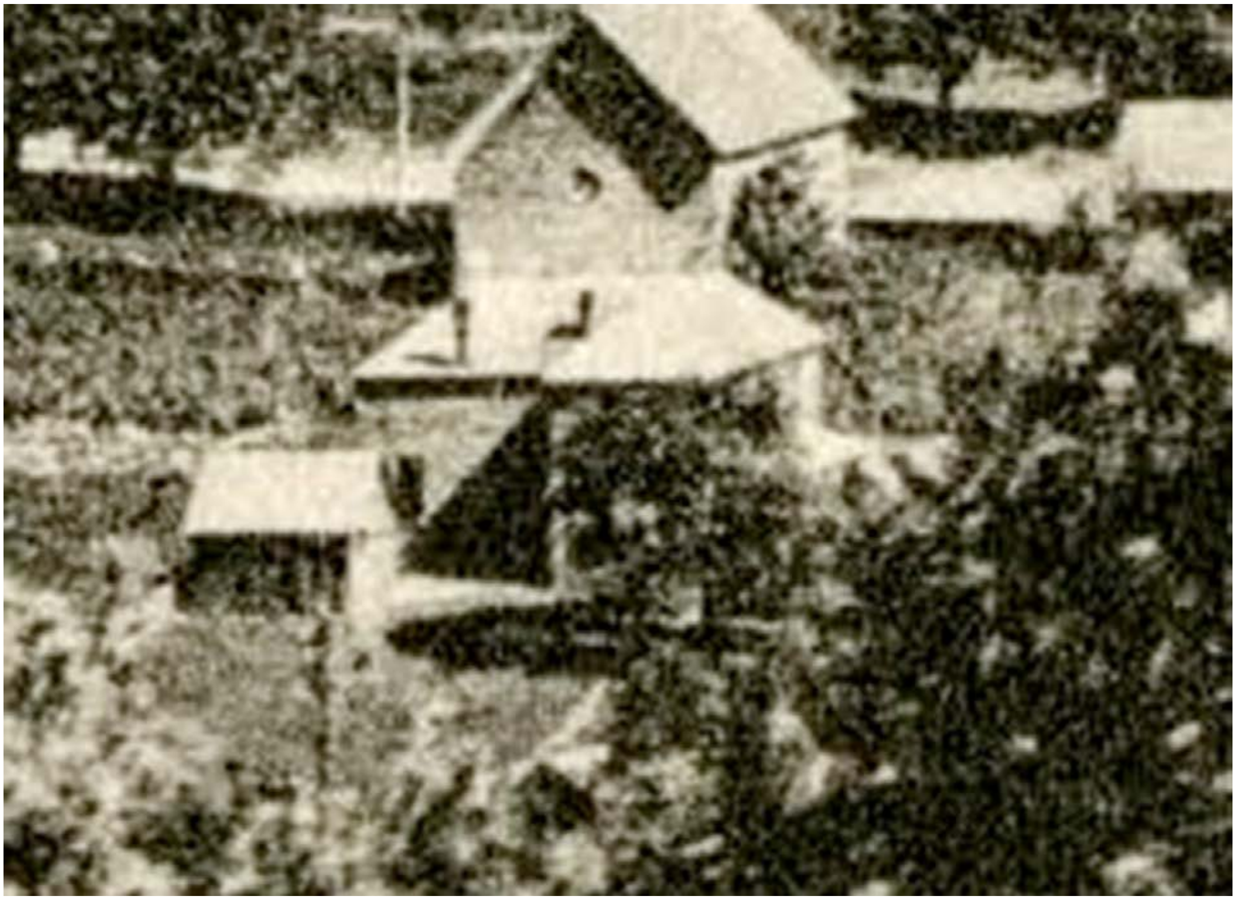
obscured by the front porch. The roof is clad in small, metal shingles that may be original to the building.



Detail crop from a 1905 postcard showing the south elevation of the Watauga County Jail from the southwest. A shed-style, angled bracket appears to be visible projecting from the east elevation of the jail, suggesting the presence of a front porch as early as 1905. Image courtesy of the Bobby Brendell Postcard Collection, Digital Watauga Project.

A large, one-story porch runs three-quarters of the width of the first floor of the east elevation. Some past accounts of this house have suggested that the house did not originally have a front porch, but images from circa 1905 (Bob-Bre-02-117) and 1915 (Bob-Bre-02-114) clearly show a porch of this approximate massing was present relatively early in the building's history. A wooden, one-story porch is also visible on this building on the 1928 Sanborn map of Boone. By 1940, this porch was supported by four tapered, wooden posts rising from square, brick piers with cement caps (Dav-Wyk-01-007). At that time, the roof of this porch was a stunted hip of metal shingles with a flat top, capped by a wooden balustrade on three sides. The area underneath the porch appears to have also been a wooden floor resting on a brick foundation with a centered, three-step, concrete stoop with low brick cheek walls. It's possible that this Craftsman-influenced version of the porch was an updated form completed as part of renovations known to have taken place in 1926.

By the late 1980s, the wooden balustrade was removed, and by the early 2000s the flat portion of the porch roof had been built up and clad in standing seam metal. The area

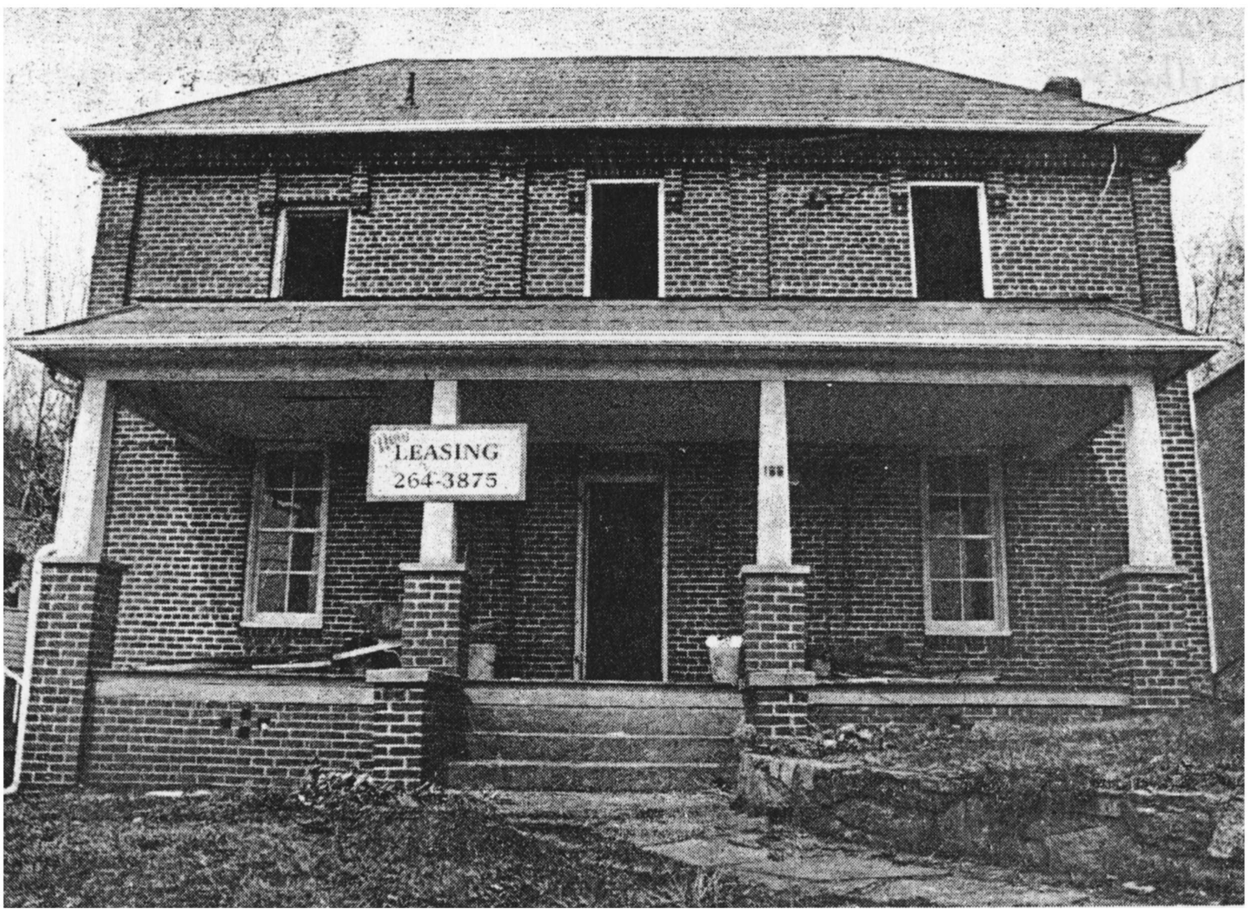


Detail crop from a 1915 postcard showing the south and east elevations of the Watauga County Jail from the southeast. A hipped-roof porch clearly appears to be visible projecting from the east elevation of the jail, confirming the presence of a front porch as early as 1915. Image courtesy of the Bobby Brendell Postcard Collection, Digital Watauga Project.

underneath the porch, meanwhile, was enclosed several years ago using salvaged material from a 1920s Blowing Rock home to create a three-season porch; as part of this change, the brick piers and wooden posts disappeared as supports for the porch roof, although the brick porch foundation, steps, and cheek walls remain. A cut-stone pathway trimmed by a cut-stone, low cheek wall extends to a small set of concrete stairs with concrete cheek walls and iron banisters that descend to the sidewalk on Water Street; this walkway and cheek wall feature dates at least to 1940. Meanwhile, a native stone retaining wall in a random rubble pattern used to descend along the Burrell Street sidewalk and wrap into the driveway area at the southeast corner of the property. This stone retaining wall also dated to at least 1940, and a portion of it survives at the upper end of the driveway. The remainder was either covered or removed and replaced with a poured concrete retaining wall. A wrought iron fence—possibly salvaged from elsewhere and not installed until sometime between 1988 and the 2002 resurvey—forms a perimeter around much of the

Detail crop showing Louise Wyke Russell (L) and an unidentified man sitting on the stone wall in front of the Watauga County Jail building during the 1930s. Image courtesy of the David Wyke Collection, Digital Watauga Project.

front yard of the Jail. Just to the northwest of the retaining wall, on the lawn southeast of the house, is a patio composed of concrete block pavers with a brick perimeter line.[2]
The center bay of the first floor of the east elevation contains an entrance with a single, eight-light, wooden door with a transom above; this transom was originally divided into two horizontal lights but now is a single light. The north and south bays each contain a tall, narrow, four-over-four, wooden window with a brick rowlock sill. This general configuration is repeated on the second floor of the south elevation. The north and center bays each contain a tall, narrow, four-over-four, double-hung sash, wooden window identical to the ones found on the first floor, each with a brick, rowlock lintel. The south bay, however, has a four-over-four, double-hung sash, wooden window that is substantially shorter than the other two on the second floor for reasons that are unclear. It possesses a brick header lintel and has been this size since at least 1940, but irregular brickwork in the area above the window suggests that this opening may have been changed at some point between 1889 and 1940.



The Watauga County Jail underwent significant renovations in 1985 and 1986 following its acquisition by Don and Mary Dunlap. This image, taken near the completion of renovations, shows the building circa March 1986. Image from the *Watauga Democrat*, courtesy of the Historic Boone Collection, Digital Watauga Project.

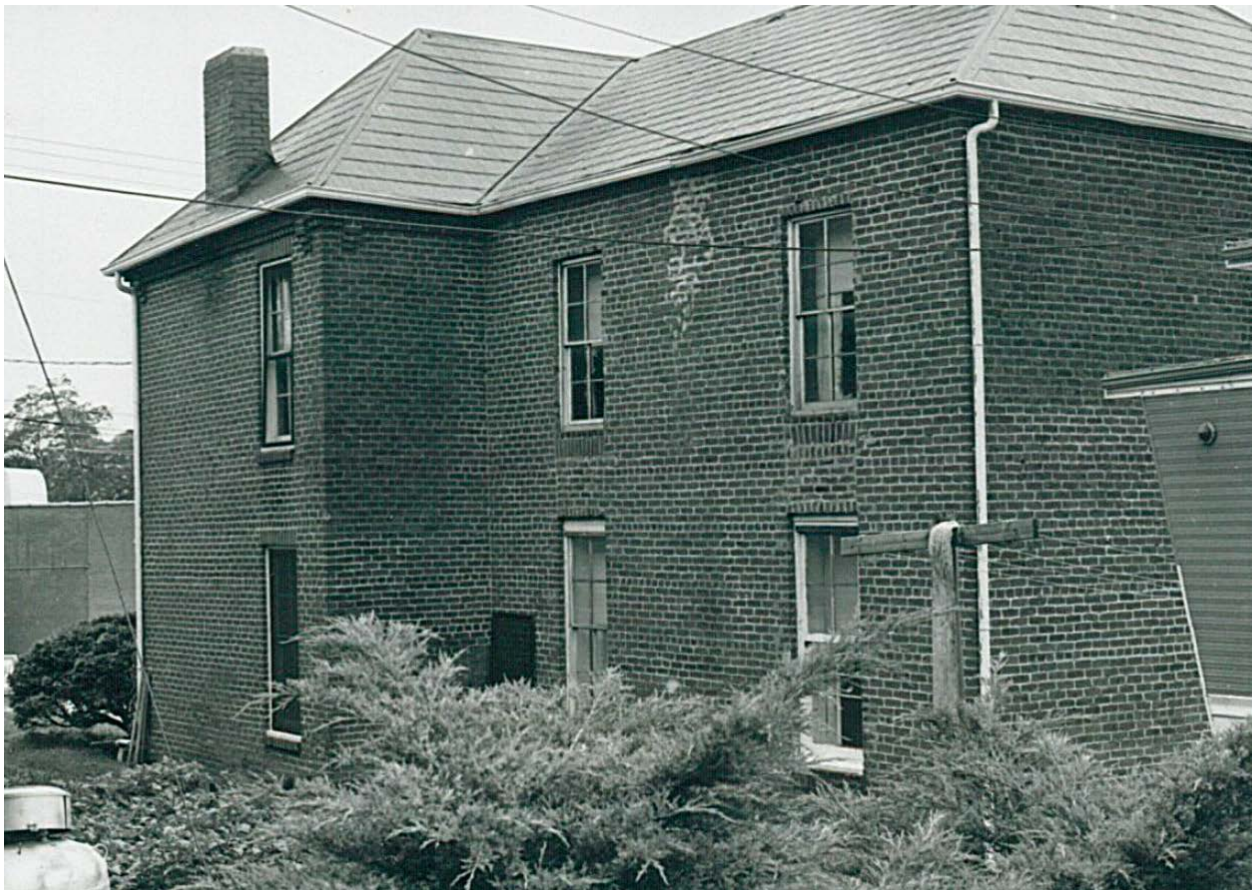
[2] For all past survey documentation in a single folder, see WT0067 Watauga County Jail, Architectural Survey File, North Carolina State Historic Preservation Office, Asheville ("Western") Office.

Circa 1982 image showing the south porch prior to its enclosure. Image courtesy of the NC SHPO.

The south elevation of the main block repeats many of the details of the east elevation, including the quadruple-tier, English bond, corbelled cornice and the six-course, common bond brick for the main masonry, and stunted brick brackets are found near each corner below the roofline. Window openings contain long and narrow, four-over-four, double-hung sash, wooden windows with aluminum storms and are arranged symmetrically with two openings on each floor. Here, though, lintels are an intriguing double-tier comprised of angled sailors capped by a band of brick rowlocks, while sills are brick rowlocks. A coal chute is visible at the lower end of the elevation. The corbelled cornice treatment wraps from the south elevation of the main block onto the south portion of the west elevation of the main block, but this wall is otherwise featureless.

The south elevation of the west extension, meanwhile, reveals two symmetrically spaced, four-over-four, double-hung sash, wooden windows with aluminum storms and brick rowlock lintels and sills on the second floor. The image from circa 1905, when this part of the building was still being used as a jail, shows no window openings on the second floor of the west extension, suggesting that these were added when the building was converted to a residence in the 1920s. The first floor of the south elevation of the west extension, meanwhile, has been almost entirely obscured by a wooden, enclosed porch addition clad in weatherboard and covered with a hipped, asphalt shingle roof. A large kitchen exhaust vent occupies a portion of the roof. This porch area was a relatively early addition to the building, as it is visible on the 1928 Sanborn map illustration of the property, but the present owner indicates that a restaurant tenant enclosed the once-open south porch several years ago, probably in 2002, when the resurvey images showed that the open porch was just beginning to be enclosed. Two large door openings along the original brick wall of the south elevation of the west extension (one of which was originally a double window opening, based on 2002 survey images) are still visible from the interior and provide access to this enclosed porch area. Meanwhile, a tall but narrow, brick boiler stack rises from the joint between the west face of the main block roof and the south face of the west extension roof. A third chimney visible in the 1905 photograph along the south face of the west extension roof—probably in service to the former kitchen—is no longer extant.

The west elevation of the west extension includes a single, modern, storm door entry to the enclosed wooden porch on the south elevation. The remainder of the west elevation of the west extension, however, is almost entirely featureless, consisting purely of the six-course, common bond brick with the same corbelled cornice treatment and thus preserving the original, completely windowless design of this west extension that served as jail space. Reports from past surveys suggest these walls range in thickness from twelve to eighteen inches, no doubt because this area served as the enclosure for prisoners of the jail. The north elevation of the west extension continues the English bond and corbelled cornice treatments found elsewhere. At the north end of the west extension is a large, steel staircase rising to the north entrance to the second floor apartment. This north elevation entrance is intriguing, as it appears to contain an iron, cased opening within which sits a modern doorframe and door. It's possible that this iron casing may have been salvaged from one of the jail spaces inside, given that the 1986 survey images clearly show this opening as a four-over-four, double-hung sash window. A defect in His-Boo-1-19-001 (1907), which offers the best pre-1927 view of this side of the building, obscures this part of the building, so it cannot be confirmed, but it appears that this opening may have been an early access point to the upper story of the jail area. To the east of this doorway is a tall, narrow, four-over-four, double-hung sash, wooden window with an aluminum storm and header lintel. The east end of the first floor of the west extension, meanwhile, features a tall, narrow, four-over-four, double-hung sash, wooden window with an odd, Adams-style, brick rowlock lintel and brick rowlock sill. The brick above this window has clearly been altered, as the original sailor lintel for the original opening here is still hanging out of place about two feet above the Adams-style lintel over the window. To the west of this is a former opening, even larger than the window but now bricked in, suggesting that it may have been a doorway at one time. This doorway is visible in the 2002 survey images, at which time the exterior steel balcony was self-contained, with no staircase descending to the rear. Meanwhile, the 1986 survey images show this now-sealed opening as a four-over-four, double-hung sash window with the same odd lintel issues as the window immediately to the east.



Circa 1982 survey image showing the north elevation prior to the addition of the steel balcony and staircase, with both northwest corner windows intact. Image courtesy of the NC SHPO.

The north end of the west elevation of the main block, meanwhile, is featureless aside from the corbelled cornice, English bond, and brick stunted bracket treatments found elsewhere. The north elevation of the main block continues these features and includes one tall, narrow, four-over-four, double-hung sash, wooden window with brick rowlock sills and angled sailor lintels on both the first and second floor at the west end of the elevation. A rectangular, interior chimney stack with concrete cap rises above the center of this north elevation.

While the interior of the former Watauga County Jail has been much altered since its use as a jail ceased in 1927, a number of important design elements remain in the interior. Many of the original interior brick walls associated with the rear jail space are up to 18 inches thick, purportedly to make escape much more difficult, and these walls survive to this day. In addition, the steel doorjamb and lintel of the doorway leading into the jail area on the first floor is still intact. During renovations in 1986, a new buyer removed stucco from the walls in the first-floor jail cell area and uncovered decades of graffiti from former inmates; while much of this original graffiti survives, uncovering these historic artifacts allowed the various college students and fraternity members who lived in the building over the next fifteen years to add their own graffiti to the mix.

Other notable changes to the interior include the repeated reconfiguration of what was the original interior staircase. Now no longer extant, this staircase descended from the second floor, south to north, in undated survey images (1988?) taken during the building's use as a fraternity house. This stair configuration was still intact at the time of the 2002 survey, suggesting that it was removed for the building's renovation into a restaurant shortly thereafter. Prior to 1988, however, as indicated in a floor plan displayed in the 1982 (?) survey, the staircase originally rose from east to west at the center of the house, then turn to the south for a short rise to the second floor. At that time, the second floor apartment offered an interior arrangement that was completely different from what is found today, and it has been altered on at least two occasions since then.

The former Watauga County Jail was added to the North Carolina State Historic Preservation Office's Study List in 1984. It is currently under evaluation for nomination to the National Register of Historic Places. The property is at significant risk from planned, large-scale developments immediately to the south and east.

III. Historical Background

The Watauga County Jail in a Politics/Government, Law, and Social History Context

The North Carolina legislature first created Watauga County in 1849, The county's first jail, built for $400 by a Mr. Dammons, was located on the lot at the northwest corner of Howard and Depot Streets. According to early county historian John Preston Arthur, this first building was of brick with a steel cage built inside, but the locally kilned brick was so poor in quality that inmates quickly figured out how to erode the brick around the windows and doorways to escape. A few years later, a second jail was built, this time using white pine logs erected by Elisha Green, with the original cage moved to the interior of this new jail. Union troops burned that jail building during Stoneman's Raid in March 1865. Following the American Civil War, Jack Horton—who had built the original Watauga County Courthouse that would burn in 1873—received the contract to construct a third jail on the same site as the first two. Two stories in height, this new jail was also of heavy logs.[3] It stood for many years past its use as a jail, until it was finally demolished in 1908.[4]

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[3] John Preston Arthur, *A History of Watauga County, North Carolina,* (Richmond: Everett Waddey Co., 1915), 126-27.
[4] "Local News," *Watauga Democrat*, June 11, 1908: 3.

The county's fourth jail was built in 1889 on land acquired by the Watauga County Commissioners for $200 from Thomas J. Coffey and his wife Mollie E. Coffey, and William C. Coffey and his wife Carrie L. Coffey. Described as being on Lot 6 from the original, 1849 plat of the Town of Boone, this parcel faced on what was then called Burnsville Street (present-day Burrell Street), totaled "one half acre, more or less," and ran from King Street all the way to the then-unnamed street we now know as Poplar Grove Road, sometimes called Burnsville Road.[5] Completed in December 1889 by William Stephens (1870-1945) of Mayfield, Kentucky *(Watauga Democrat*, May 22, 1889, sometimes reported in error as William Stephenson of Mayesville, Kentucky), for $5,000, the Watauga County Jail is Boone's only surviving local government building from the nineteenth century.[6] Like many small-town jails of the period, this building was actually a mixed-use space, with both floors of the rear half of the building being used for jail purposes and the front half set aside for the residence of the jailer and his family. Sources disagree on how the jail spaces were divided. Survey records from the early 1980s indicate that the women's quarters were on the first floor, while men's quarters were on the second floor, but a later survey narrative suggests that "the men's cell was downstairs" and "the women and the jailer were housed upstairs."[7]

By 1925, local disdain for the condition of the 1889 jail reached a fever pitch, heightened in part by local racist sentiment and a focus on segregation during this period in Boone, following a report from the local court's grand jury that viciously critiqued the existing jail:

> We have visited the jail and find it inadequate to meet the present needs of the county, being entirely too small, badly arranged, being no provision to keep the whites and colored separate, they having to use the same toilet. The water works are out of commission, having to flood the stool by hand, and the sanitary conditions it does not appear could be worse, being dark, sunlight excluded, with very little ventilation, appearing to us more like an ancient dungeon than like a modern prison. The female department we find a little more sanitary, but being heated only by an oil stove and lighted only by an oil lamp, and being shut off from ventilation and having no water system. We find the only way for a bath in either department is no better than an ordinary wash basin.
>
> We recommend that the jail and lot upon which it stands be sold at the discretion of the county commissioners and the proceeds be applied on the building of a new and modern jail, the new site to be back of the court house,

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[5] T. J. Coffey and wife Mollie E., and W. C. Coffey and wife Carrie L., to J. E. Finley, W. W. Presnell, and Joseph Mast, County Commissioners, May 22, 1889, Deed Book N, Page 47, Watauga County Register of Deeds. All subsequent deed records are from this source unless otherwise noted. On Burnsville Road, see Arthur, *Watauga County,* 147.
[6] *Watauga Democrat*, May 22, 1889: 3; "Actions of the Board of Co. Commissioners," *Watauga Democrat,* December 5, 1889: 2; Arthur, *Watauga County*, 127.
[7] WT0067 Watauga County Jail.

> on the county's property, and we further recommend that the old jail be given immediate attention.[8]

In response, the Watauga County Commissioners voted to sell bonds totaling $60,000 for the construction of a new jail. Noting that the old "jail has long been a disgrace to the county," the *Watauga Democrat* announced that "the present jail property, which is valuable, will be sold as a whole, not even the building is to be torn down."[9] In December 1926, county officials moved forward with the sale of the 1889 jail building, conveying a roughly 78' X 229' lot—presumably the remainder of the original jail lot, which had been subdivided in 1895—to T. S. Watson for $6,000.[10] The long edge of this land ran along what was then known as Jail Street (present-day Burrell Street) from the rear (southwest) boundary of the E. F. Lovill Law Office parcel at the west corner of King and Jail Streets to approximately the south corner of the present property. That same month, Sheriff L. M. Farthing appointed Poly Wyke as a deputy sheriff for Boone township and announced the Wyke would be moving into the old jail, "the new one not being ready for occupancy by quite a good deal," apparently as a result of bad weather hampering W. H. Gragg's efforts to complete the new jail.[11]

Additional Historic Context

As noted above, W. H. Gragg was contracted to complete the new jail. Once the 1889 jail closed two years later, many of the interior jail-related elements were disassembled and sent elsewhere. In March 1927, for example, an article in the *Watauga* Democrat proclaimed that "the cage and equipment of the old Watauga County jail will be moved to Blowing Rock and installed as the town jail." Mayor G. F. Sudderth of Blowing Rock explained that his town purchased the equipment "to save the expense of taking minor offenders to the county seat."[12] All that was left behind was the aforementioned door casing of the northeast jail room on the first floor and the graffiti that adorned the walls of that cell.

Other changes appear to have been made to the interior as well. Following T. S. (Thomas Sherman) Watson's purchase of the property in 1926, Watson apparently renovated the

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[8] "Grand Jury Asks for New Prison," *Watauga Democrat*, April 2, 1925: 1. As a testament to heightened race conflict during the mid-1920s in Boone, it should be noted that the Ku Klux Klan ran advertisements in the *Watauga Democrat* in late 1924, offering a reward for the capture of an individual; hired a Linville River Railway excursion train from Boone to accommodate Boone citizens flocking to Johnson City for a Klan rally in November 1924; and held a "grand parade and march in full regalia" in the streets of Boone on July 23, 1925. By 1926, the former courtroom in the 1875 courthouse had been renamed "Ku Klux Klan Hall." See "$50—Reward--$50," *Watauga Democrat,* November 13, 1924: 1; "Local Happenings," *Watauga Democrat*, November 27, 1924: 5; "Local Klansmen Will Stage Celebration," *Watauga Democrat*, July 9, 1925: 1; and "Notice," *Watauga Democrat,* April 8, 1926: 5.

[9] "$60,000.00 Prison Will Be Erected," *Watauga Democrat*, May 21, 1925: 1.

[10] S. C. Eggers, et al, County Commissioners, to T. S. Watson, December 4, 1926, Deed Book 36, Page 263. For the subdivision of the jail lot and sale of the northernmost portion along King Street, see W. F. Coffey, Chairman of the Board of Commissioners, to J. C. Fletcher and E. F. Lovill, September 16, 1895, Deed Book S, Page 349.

[11] "Local Affairs," *Watauga Democrat*, December 2, 1926: 5.

[12] Quotations from "Happenings in and about Blowing Rock," *Watauga Democrat*, March 31, 1927: 1.

building for use as a boarding house, which was operated under the management of a Mrs. Hall of Ashe County.[13] Watson fell ill in early 1928 and was hospitalized at Lenoir.[14] Following his death on February 10, 1928, his wife Susan V. Watson, was named as administratrix of his estate.[15] Forced by the local probate court to sell the jail property to raise funds for outstanding debts, Susan Watson relied on S. C. Eggers, the local county commissioner, to auction the property, which occurred on August 18, 1928. The auction included not only the jail house but also eight lots located around the jail. The jail house was described as "rebuilt so as to make one of the most modern homes in the city. The house is of brick construction and is in excellent repair and is modern."[16] M. C. Cook was the winning bidder at $3,865, acquiring the jail and four of the eight lots—Lots 7, 8, 9, and 10—as part of his bid.[17] Curiously, the jail lot in this instance was described as just 129 feet in length along Jail Street, the northern portion (Lots 3, 4, 5, and 6) having been sold separately to A. W. Hodgson on the same date.[18]

Like Watson's, Cook's ownership of the building was startlingly brief. In August 1929, M. C. Cook and his wife Geneva sold Lots 7, 8, 9, and 10 to G. W. Sebastian (sometimes spelled "Sebastin"), a local minister, and his wife.[19] Just two months later, the Sebastians sold Lot 7—"the lot upon which is located the brick building known as the old Jail Building"—to George N. Cook.[20] The Cooks (George, who also apparently went by "Niley G.," and his wife Maude) apparently also operated the building as a boarding house, as evinced by several local articles noting that various new residents in Boone were staying there temporarily.[21] The Cooks held onto the property until 1937, when they sold Lot 7 to nineteen-year-old Louise Wyke, daughter of David Pinkney Wyke and Ethel Agnes (Aldridge) Wyke.[22] Several months later, Louise Wyke also acquired Lots 8 and 9 of the old jail tract from D. L. Wilcox and his wife Florence.[23] A short time later, a blurb appeared in the *Watauga Democrat* announcing that "David Wyke, local grocery merchant, has purchased the old jail property and is thoroughly remodeling the building, which will be, when completed, one of the

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[13] "Local Affairs," *Watauga Democrat*, May 19, 1927: 4.
[14] "Local Affairs," *Watauga Democrat*, February 9, 1928: 4.
[15] "Thomas S. Watson," Caldwell, February 1928, Ancestry.com, *North Carolina, US, Death Certificates, 1909-1976*, database online, (Provo, UT: Ancestry.com Operations, Inc., 2007); "Notice of Administration," *Watauga Democrat*, March 8, 1928: 8.
[16] "Auction Sale of Lands," *Watauga Democrat*, August 9, 1928: 5.
[17] S. C. Eggers, Commissioner, to M. C. Cook, September 1, 1928, Deed Book 37, Page 188. This parcel was described as consisting of "Lot numbers 7, 8, 9, and 10 in the old Watauga County Jail tract, which is of record in the office of the Register of Deeds for Watauga County, North Carolina." This plat has not yet been located.
[18] S. C. Eggers, Commissioner, to A. W. Hodgson, September 1, 1928, Deed Book 37, Page 471. This parcel was described as consisting of "Lot numbers 3, 4, 5, and 6, in the plat of the old Watauga County Jail property."
[19] M. C. Cook and Geneva Cook to G. W. Sebastin and M. E. Sebastin, August 9, 1929, Deed Book 38, Page 527
[20] Rev. G. W. Sebastin and M. E. Sebastin to George N. Cook, October 7, 1929, Deed Book 39, Page 12.
[21] For examples, see "Local Affairs," *Watauga Democrat*, January 23, 1930: 6; and "Palmer Increases Population by 13," *Watauga Democrat*, April 19, 1934: 1.
[22] Niley G. Cook and Maude Cook to Louise Wyke, January 1, 1937, Deed Book 46, Page 432. David Pinkney Wyke's mother, named Louisa (Hodges) Wyke, died in 1894.
[23] D. L. Wilcox and Florence Wilcox to Louise Wyke, September 13, 1937, Deed Book 47, Page 393.

modern homes of the town."[24] In December 1940, Louise Wyke sold the property (Lots 7, 8, and 9) to her parents, who continued to live in the house until Ethel Wyke sold the property back to her daughter, by that time known as Louise (Wyke) Russell, in 1981.[25]

This October 2021 image shows various graffiti applied to the east wall of the first floor jail area by a combination of early twentieth-century prisoners and late twentieth-century fraternity brothers, among others. Image by Eric Plaag.

Louise Wyke Russell held the property for a relatively short period of time, selling it to a local developer, Donald B. Dunlap, and his wife Mary M. Dunlap, in December 1985.[26] Shortly thereafter, the Dunlaps completed some renovations to the building—primarily updating of electricity and similar infrastructure—before renting it out as a fraternity house. As part of the renovations, the Dunlaps removed stucco from the walls of the first floor jail cell area, thus exposing graffiti left by various prisoners on the exposed brick during the building's use as a jail. As a result, the subsequent fraternity tenants added their

24 "Local Affairs," *Watauga Democrat,* January 21, 1937: 5.

25 See Louise Wyke (Single) to D. P. Wyke and Ethel Wyke, December 17, 1940, Deed Book 56, Page 378; and Ethel Wyke to Louise Wyke Russell, July 22, 1981, Deed Book 211, Page 1142.

26 Louise W. Russell to Donald B. Dunlap and Mary M. Dunlap, December 6, 1985, Book of Record 28, Page 59.

own graffiti to the same walls, essentially obliterating the integrity of the walls as a chronicle of its jailhouse residents.[27]

In 1989, the Dunlaps officially transferred the Jail property to Don Dunlap Construction, Inc., including the Jail lot (0.22) and approximately 1.08 acres of land located to the northwest, as depicted on Dunlap's subdivision plat for the property created in August 2000.[28] By that point, the Jail was in serious danger of being demolished as Dunlap pursued plans to erect a large student housing building on the lot to the northwest of the Jail. Fortunately, local residents Samuel F. Furgiuele, Jr., and his wife Peggy Mendel-Furgiuele convinced Dunlap to sell them the Jail property in August 2000 in the interest of preserving local history.[29] Thereafter, the Jail building was renovated once again to house a restaurant (the Old Jail Restaurant). The building is presently home to Proper Southern Dining, another restaurant.

IV. Historical Significance

The Watauga County Jail is significant at the local level under Criterion A in the area of in the areas of Politics/Government, Law, and Social History for its association with the early correctional institution history of Watauga County from 1889 to 1927. The fourth of Watauga County's early jails, it is the only extant, nineteenth-century, governmental building within the county's boundaries, and it remains a popular local symbol of Boone's early history as a sleepy county seat prior to Boone's rapid commercial development in the 1920s shortly after the arrival of the Linville River Railway connection in 1918.[30] The pressures of that commercial development, coupled with ongoing concerns about the safety and suitability of the Watauga County Jail for a modernizing county seat, prompted local officials to secure funding and community support for construction of a new jail behind the 1905 Watauga County Courthouse about a block away on King Street. In many respects, the old jail was a victim of Watauga County's success as a commercial hub in the mountains of northwest North Carolina.

The jail's transformation into a boarding house first, then a permanent family residence, following its decommissioning as a jail in 1927 also fits the prevailing pattern in Boone during this period to encourage the adaptive reuse of historic structures. Other examples

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[27] For information on the Dunlaps' renovations, see Jeni Gray, "Old Watauga Jail Soon to Have New Life, Look, and 'Guests,'" [*Watauga Democrat*], undated clipping [March 19, 1986, 6A] in WT0067 Watauga County Jail, Architectural Survey File, North Carolina State Historic Preservation Office, Asheville ("Western") Office. For a description of the damage caused by fraternity residents, see Betsy Lawson, "Abandoned, Abused, and Adapted: Old Buildings of Watauga County," paper for History 4575 course at Appalachian State University, included in WT0067 Watauga County Jail.

[28] Donald B. Dunlap and Mary M. Dunlap to Don Dunlap Construction, Inc., March 15, 1989, Book of Record 118, Page 41. For the subdivision plat, see Municipal Engineering Services, Inc., Subdivision Plat prepared for Don Dunlap Construction, Inc., August 15, 2000, Plat Book 15, Page 117.

[29] Don Dunlap Construction, Inc., to Samuel F. Furgiuele and Peggy Mendel-Furgiuele, August 15, 2000, Book of Record 582, Page 156.

[30] For a discussion of the impact of the Linville River Railway's arrival on the development of Boone, as well as the Watch Boone Grow campaign of the early 1920s, see Plaag, "Comprehensive Architectural Survey," 33-51.

included the conversion of the former Boone Methodist Church, located opposite the 1905 courthouse, into a retail establishment in the early 1920s; adaptive reuse of the 1875 courthouse, located at the northwest corner of King and Water Streets, into the home of the Watauga County Bank and later into a meeting hall; and the repurposing of the original tack and harness operation and stables of the Coffey brothers, located on the south side of King opposite the J. Walter Jones Building (presently Mast General Store), into a cheap annex for the Critcher Hotel in the early twentieth century. By 1950, most of these repurposed nineteenth-century buildings of old Boone were gone. Today, other than a few residences on the north side of King, the Watauga County Jail is the lone survivor of Boone's old, pre-1920s downtown, and it is the only known governmental resource from nineteenth-century Watauga County that still stands.

The Watauga County Jail retains an impressive degree of exterior integrity, given its changes in ownership and function since the 1920s. The jail retains its general original form and exterior appearance, and in those few cases where newer exterior materials have been applied, the original materials are known to survive underneath. While there are also important interior elements that are reflective of the Watauga County Jail's period of significance, these elements tend to be mere vestiges of the original interior layout and design, and modern alterations of and damage to some of these elements have had an adverse impact on their integrity. While these interior elements are noted here for their historical importance, the proposed local landmark designation applies only to the exterior elements of the building. In short, the Watauga County Jail, taken as a whole, retains a startlingly high degree of integrity in terms of design, setting, workmanship, materials, feeling, and association.

V. Property Included in the Local Landmark Designation

The property to be designated includes the parcel containing the original Watauga County Jail, which essentially consists of the land that for many decades was referred to as "the jail lot" in deed references. The Watauga County Jail remains at its original site and has undergone minimal exterior alterations in the years since it ceased functioning as the county jail.

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VII. Photographs

Eric Plaag took the attached images during a resurvey of the property on October 4, 2021.