

**Town of Boone
Public Hearing
6:00 PM, Mar. 22, 2021
WebEx, WebEx**

Public Participation:

Watch the Meeting: Anyone can view the Council meeting live at: <https://townofboone.viebit.com/?folder=ALL>

Public Participation: Individuals who wish to address Council during remote public participation can do so through WebEx either online or by phone. If you wish to provide public comment, please email Town Manager, John A. Ward III at john.ward@townofboone.net or call in at 828-268-6205 and you will be provided with an invite to the meeting. All registrations must be completed by 5:45PM on the day of the meeting. Participants should complete the registration form provided in the meeting invite to be included in public participation and view further instructions. Staff will moderate the WebEx session to ensure all participants have an opportunity to address Council. Note: To preserve bandwidth and ensure an orderly meeting, only individuals who wish to address Council should use the WebEx link. Anyone who wants to watch the meeting, but not address Council, should view the livestream at the link above.

I. Call to Order of Town Council

II. Call to Order of Planning Commission

III. Approval of Public Hearing Minutes by Town Council & Planning Commission

January 25, 2021 Public Hearing Minutes

IV. PUBLIC HEARING

A. General Guidelines for Each Case Presented at Public Hearing

- i. Presentation of Case**
- ii. Questions by Town Council & Planning Commission**
- iii. Public Comment**
- iv. Discussion/Questions by Town Council and Planning Commission**
- v. Public Hearing for Case is Closed**

B. Case PL04196-090820 Compliance with Session Law 2019-111 UDO Text Amendment

Case PL04196-090820 Staff Report

V. Adjournment of Town Council

VI. PLANNING COMMISSION MEETING

VII. Public Comment

VIII. Approval of Planning Commission Meeting Minutes

February 22, 2021 Planning Commission Meeting Minutes

- IX. Planning Commission Consideration of Cases Heard at Public Hearing**
- X. Anti-Homeless Architecture**
- XI. Other Matters**
- XII. Adjournment of Planning Commission**

**PUBLIC HEARING MINUTES
MONDAY, JANUARY 25, 2021, 6:00 P.M.
VIA WEBEX SOFTWARE**

COUNCIL MEMBERS: Rennie Brantz-Mayor, Loretta Clawson-Mayor Pro Tem, Sam Furgiuele, Dustin Hicks, Nancy LaPlaca and Connie Ulmer

PLANNING COMMISSION MEMBERS: Elizabeth Shay-Chair, Eric Plaag-Vice Chair, Chris Behrend, John Tippet, Frank Venio, and Adam Zebzda

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Christy Turner-Senior Planner, Brian Johnson-Urban Design Specialist, and Brenda Henson-Board Secretary

OTHER TOWN STAFF AND REPRESENTATIVES PRESENT: John Ward-Town Manager, Allison Meade-Town Attorney, and Matt McGregor-Planning Intern

OTHER ATTENDEES/PARTICIPANTS VIA WEBEX: Tyler Moffatt, Joel Olsen, Michael Trew, Ole Christian Olsen, Olee Olsen, Sally Reynolds, Diane Blanks, Scott & Anne Peacock, Bill Aceto, and Adam Mancini

Call to Order

Mayor Brantz called the Town Council to order at 6:00 p.m. for the Public Hearing/Planning Commission meeting held via WebEx. He stated that Mayor Pro Tem Clawson wished to speak. Mayor Pro Tem Clawson then read her letter of resignation from Town Council. She stated she had enjoyed her time in Town government but due to health issues she felt it was time for her to retire effective January 31, 2021.

Mr. Ward stated the Town would advertise for interested parties to fill Mayor Pro Tem Clawson's unexpired term and Council would also need to select a new Mayor Pro Tem. Mr. Ward stated consideration of applicants and selection of Mayor Pro Tem would be placed on Council's agenda for February.

Chair Shay then called the Planning Commission to order at 6:12 p.m.

Approval of Meeting Minutes

Council Member Ulmer made a motion to approve the November 23, 2020 Public Hearing minutes. The motion was seconded Mayor Pro Tem Clawson.

Vote: Aye – All
Nay – None

The motion passed.

Vice Chair Plaag made a motion to approve the November 23, 2020 Public Hearing minutes. The motion was seconded by Commission Member Behrend.

Vote: Aye – All
Nay – None

The motion passed.

Case PL04401-120920 – Lovill House Inn – Conditional District Zoning Map Amendment

Olee and Tonje Olsen have requested a Conditional District Zoning Map Amendment to rezone the Lovill House Inn and associated properties (Watauga County PINs: 2901-40-7729-000, 2901-41-9326-000, and 2901-50-0737-000) from Conditional Use R3 Multiple-Family Residential to Conditional District B3 General Business with a site-specific development plan for Use 3.05 Bed & Breakfast Category 2; Use 2.07 Boarding House; and Use 12.06 Event Venue Category 2.

Vice Chair Plaag wished to disclose that he had been contacted by Joel Olsen with a request for him to endorse this rezoning request as his role as historic preservation expert but he declined to provide an endorsement. He stated that he did not feel that Mr. Olsen knew he served on the Planning Commission at the time. Vice Chair Plaag noted that Mr. Olsen appeared before the Historic Preservation Commission to present his vision for the Lovill House. Vice Chair Plaag stated that he had not been hired or paid by Mr. Olsen to provide professional consultation on the Lovill House property and would decline if asked.

Council Members Furguele, Ulmer, and Clawson were in agreement that Vice Chair Plaag should not be recused from this case. Ms. Meade stated that Vice Chair Plaag had consulted her regarding this issue and she had advised him that she did not feel the situation was grounds for recusal.

There was consensus that Vice Chair Plaag should not be recused.

Ms. Turner presented the request as it was outlined in the meeting packet. She stated there was an error on the application that indicated the request for rezoning was for three parcels when it was only for the 3-acre parcel containing the Lovill House and supporting structures. Ms. Turner explained that 3-acre tract has a portion located in Watauga County's jurisdiction which would need to be annexed before a zoning classification could be applied.

Council Member Furguele noted there was reference in the meeting packet from the applicant about a mature stand of trees. He asked if the trees were on the 3-acre parcel or on the adjoining parcel that is not part of the application and if both parcels would be under the same ownership. Ms. Turner replied that the properties would have the same owner but the applicant would need to clarify which parcel the trees were located on.

Council Member Furguele stated that the narrative indicated the property had been used for years for short and long term stays, as well as events. He asked Ms. Turner if the Town had any proof that use violations had occurred. Ms. Turner replied that, to her knowledge, no applications had been received by Planning & Inspections in the past to change the use of the property to allow long term stays and events.

Council Member Furguele referred to the desire by Mr. Olsen to install micro-hydroelectric near the waterfall on the property as indicated in the narrative of uses. He asked Ms. Turner if the state allowed hydroelectric and she replied that she did not know.

Council Member Furguele questioned parking for the event venue. Ms. Turner stated that parking was discussed with the applicant and she thought the applicant would have that information in their presentation but she had not been given a copy of that information.

Vice Chair Plaag stated he was intrigued by the boarding house use and asked why that use was chosen. He noted there was no limit of rental time. Ms. Turner provided the following definitions:

Use 3.05 Bed and Breakfast. Category 2 Definition from UDO Article 34 Definitions:

A dwelling with more than three guest rooms within one or more structures where overnight accommodations and meals are provided daily or weekly for compensation.

Use 2.07 Boarding House Definition from UDO Article 34 Definitions:

A dwelling unit where three (3) or more rooms (not to exceed nine (9)) are provided for lodging for definite periods exceeding seven days. Meals may or may not be provided, but there is only one common kitchen facility and no meals are provided to outside guests.

Ms. Turner explained that the boarding house use was chosen because as described the applicant wished to have guests that stayed longer than daily or weekly/7 days which exceeded the length of time authorized under the bed and breakfast use. She noted that the next use that covered the type of stay requested by the applicant would fall under the description of the boarding house. She noted the

applicant was requesting that multiple rooms be allocated for longer term guests. Ms. Shook noted the applicant had indicated during preliminary meetings that they would not be providing meals to boarding house guests.

Ms. Meade agreed with Vice Chair Plaag that the UDO lacked clarity regarding the length of stays both long and short term. Vice Chair Plaag stated a boarding house use might not be the correct use needed.

Commission Member Zebzda referenced the event venue and asked if the new LGBTQ+ ordinance would have an impact on the proposed use. Ms. Meade replied that there was still a lot of work to be done on the ordinance and it would be premature for her to speak on it at this time.

Joel Olsen began his presentation by introducing the following:

Scott & Anne Peecook – owners of the Lovill House Inn for 19 years

Tyler Moffatt – attorney representing the Olsens

Michael Trew – engineer with Municipal Engineering

Bill Aceto – real estate agent with Blue Ridge Property Management

Mr. Peecook stated he and his wife had received a higher offer than Mr. Olsen's to purchase the property but they appreciated Mr. Olsen's desire to maintain the historic nature of the property.

Mr. Olsen shared a PowerPoint presentation (attached) and stated that the house was built in 1875 and the Lovill family lived in the house for almost 100 years. In 1993 a Conditional Use Permit was granted for the house to become a bed & breakfast. Mr. Olsen stated they would like to maintain the bed & breakfast and offer breakfast to guests. He felt that the longer people stayed, the less disruption and in and out there would be. Mr. Olsen stated it was his goal to be the first 100% clean energy, grid-independent property in Boone. He noted that he owned and operated a clean energy installation company. Mr. Olsen stated he would like to do some energy efficient upgrades to the house to include windows, doors, lighting, and other items that would not jeopardize the historic nature of the building. Mr. Olsen felt that his plans for hydroelectric would not require special permitting through the state. He noted he had spoken with New River Light & Power regarding his plan.

Vice Chair Plaag questioned the number of units proposed and how that would fit with the bed & breakfast and boarding house occupancy limit.

Council Member LaPlaca asked if a 66 kW battery and 30 kW solar would be enough to cover most of their needs and Mr. Olsen stated that it would.

Mr. Olsen supplied in his presentation a letter of support from the Chamber of Commerce and ASU. He also noted that he received support from the adjacent property owners to the east of property he is purchasing (Tazewell). He noted there would be 9 units and the barn might be used for additional rooms but that could be addressed at another time. Mr. Olsen stated he would like to have a mix of short and long term stays with 8 rooms for guests and the owner's cottage for the owners to stay. He stated the business would be professionally managed and would not be used as a frat house, party house, or dorm however students could stay if they met certain conditions. Mr. Olsen explained that the student receiving the Olsen Scholarship would get to stay in the house and his son would live in the owner's cottage.

Mr. Olsen stated that indoor event space would be the dining area and the parlor and there were two outdoor grassy areas that could be used for events. He stated he was unsure if events were prohibited at bed & breakfasts when the original Conditional Use Permit was approved but noted that bed & breakfasts across the state hold events and he did not feel that the Peecoos tried to violate any rules by hosting events.

Mr. Olsen noted he had checked with the Police Department and they had received no complaints on the Lovill House Inn. He stated that the trees and topography would help mitigate sound for outdoor events and longer term stays would decrease traffic flow from checking in and out of the house. Mr. Olsen stated a great deal of the trees on the larger piece of property were located in the viewshed and could not be cut.

Mr. Olsen noted that satellite parking would be allowed by the County at the Human Services Center and the Lovill House was also accessed by AppalCART. He stated they would limit the number of parking spaces renters would be allowed.

Commission Member Zebzda referred to the conditions students would have to meet in order to be allowed to rent a room and asked if it was allowable to place additional rental restrictions on students. Ms. Meade replied that students were not a protected class.

Mr. Olsen stated the Lovill House would offer a higher end stay and their primary goal was to have their boarders be from the university's sustainability staff or other professional level tenants.

Ms. Shook noted that the site plan indicated new construction of the barn building. Mr. Olsen stated he did not plan to construct the building right away but did not want to lose the option to construct it in the future. Ms. Shook stated that staff reviewed the project based on the site plan that was submitted and suggested a request to phase the project if the building would not be constructed for some time. She added that a site specific plan approval had a 2 year vesting period.

Council Member Furguele asked Mr. Olsen if he was planning to purchase the neighboring Tazewell property in order to better accommodate outdoor events. Mr. Olsen replied that he was not planning to purchase the Tazewell property and that outdoor events would be held at the 2 grassy areas on the Lovill House property.

Vice Chair Plaag asked how boarders would prepare their own meals after the breakfast meal was served. Mr. Olsen explained that the kitchen would be used for breakfast and none of the stayers would be allowed to use the kitchen. Remaining meals would require stayers to eat out.

Vice Chair Plaag expressed concern about the use of Lovill House spaces by the university. Mr. Olsen stated the university would reserve and rent space for meetings as needed. Vice Chair Plaag asked if any of the rented spaces would be used long term by ASU. Mr. Olsen replied that was not the intent.

Vice Chair Plaag asked where the line would be drawn for ASU to rent spaces in the zoning classification. Ms. Shook replied that the university could have occasional events but something more long term or permanent would warrant further review.

Commission Member Veno asked if the Lovill House was currently in use. Mr. Olsen replied that it had been unoccupied since COVID hit and was suffering from mold, mildew, and some degradation. Commission Member Veno asked if events would be catered off-premises. Mr. Peacock replied that in the past off-site catering was used for small weddings, reunions, etc.

Commission Member Veno asked if the hedge along the street was a hemlock hedge. Brian Johnson, Urban Design Specialist, replied that it was a hemlock hedge. Commission Member Veno expressed concern for the health of the hemlocks. Mr. Peacock stated that though the hemlocks were endangered, he had worked very hard to preserve the hedge with treatments to keep them healthy. He stated he had relayed to Mr. Olsen the importance of continued care for the trees.

Council Member Furguele asked if there was a size limitation for events. Ms. Meade replied that the event category did not limit the size of the events allowed. Ms. Shook noted that hosting events that were unrelated with the use of the Lovill House was discussed with the applicant.

Council Member Furguele asked if the applicant would be willing to accept a condition that no trees be removed unless they are confirmed by the Town arborist to be diseased and a condition that, should development occur on the wooded tract not part of the current application, the applicant would submit a petition for annexation for that parcel. Mr. Olsen stated he was not familiar with the requirements of the viewshed regarding the removal of trees. Ms. Shook explained that the viewshed overlay would limit land disturbing activity but not prohibit it. She noted that the majority of the viewshed overlay was located on the larger tract and not on the parcel subject to the rezoning request.

Vice Chair Plaag asked Mr. Olsen if he would accept a condition to annex the 3-acre parcel in question and Mr. Olsen replied that he would.

Vice Chair Plaag noted that ASU abandoned its conference center and he worried that the Lovill House would become ASU's conference center. He asked Mr. Olsen if he would accept a condition that Planning & Inspections be notified of any proposed use contracts with ASU so those could be evaluated for possible use violations. Mr. Olsen stated he would have to confer with his attorney, Mr. Moffatt. He stated he needed a sustainable revenue stream in order to maintain and improve the property and he did not want to hamstring himself unknowingly. Vice Chair Plaag expressed concern with possible scope creep with use by the university. Mr. Olsen replied that, as owner of the property, he struggled to see the issue but did not want to create problem situations and asked for an opportunity to consult with Mr. Moffatt.

Mayor Brantz called a break in the hearing from 8:20 p.m. until 8:34 p.m.

Mayor Brantz invited public comment. Ms. Shook noted that 3 individuals had signed up to speak.

Diane Blanks, a resident of Green Street, was having technical difficulties so Sally Reynolds was asked to speak first.

Sally Reynolds stated she was a past resident of Green Street and she had stayed at the Lovill House years ago. Ms. Reynolds read a prepared letter (attached) expressing her concern with the continued quality of service for the Lovill House property.

Ms. Blanks stated that both ends of her neighborhood had been eaten up by apartments and she wanted the Lovill House to stay a bed & breakfast although she was terrified it would turn into a mini dorm. She asked if the allowance for student boarders could be limited to 2 or 3. Ms. Blanks stated that events caused a lot of traffic and there was a concern with parking. She provided examples of nuisances she had suffered due to students in her neighborhood.

Ms. Shook then read a letter submitted by Diane Brown of Green Street (attached). The letter stated that Ms. Brown was concerned with increased traffic, parking, noise, and students and she was opposed to the rezoning.

There were no other individuals wishing to speak.

Mr. Olsen stated he was aware of the amount of care and dedication it took to run a bed & breakfast. He noted that public transportation, ride share, or public parking would be encouraged for all events. Mr. Olsen stated his son would be living on site and the business would be managed by Bill Aceto's firm, Blue Ridge Property Management.

Ole Christian Olsen, Joel Olsen's son, stated he moved here 3 years ago from Norway and he considered himself handy and loved to learn new things.

Ms. Blanks asked who would be running the business and doing the cooking. Mr. Olsen replied that he would hire someone to cook and clean.

Ms. Peacock stated she was extremely pleased with what Mr. Olsen had planned for the Lovill House and felt he would try to maintain the same level of service and care.

Vice Chair Plaag asked if Blue Ridge Property Management would be managing the rentals. Mr. Olsen replied that they would and they knew the area well.

Council Member Furgiuele asked Ms. Shook and Ms. Meade if it was correct that a zoning change went with the property and anyone who owned that property would be able to take advantage of that zoning, not just the Olsens. Ms. Meade confirmed that any approval ran with the property and not the property owner who sought the change.

Olee Olsen, Joel Olsen's father, stated that his son did not intend to ruin the property and it would be a good thing for Boone.

Commission Member Zebzda apologized to Ms. Blanks for the problems she had with students and offered to help with future student issues if possible. He offered to have Planning & Inspections supply Ms. Blanks with his contact information.

Ms. Meade referred to the barn construction and stated there may not be sufficient parking if the barn was converted to rooms. She suggested that the applicant return for board approval in the future when he was ready to address the use of the barn. Mr. Olsen stated he would like to proceed with the plan that was presented for the barn on their submittal.

Ms. Meade noted that a bed & breakfast was considered transient living and a boarding house was considered group living and noted that longer-term stays would not be consistent with the bed and breakfast use. She noted that the boarding house was restricted to a maximum of 9 rooms.

Ms. Shook asked the applicant to clarify the number of rooms, as there seemed to be confusion as to what was proposed. She asked if there were 9 rooms between the house and the barn. Michael Trew replied that the original Conditional Use Permit approved rooms in the barn but he was not sure if there was a certain number of rooms approved. He noted there was 6 rooms in the house, a room above the cellar, the caretaker's quarters, and enough space for one more room in the house.

Vice Chair Plaag referred to page 16 of the meeting packet that indicated there would be 9 bedrooms in the barn. Mr. Olsen replied he thought there would be 4 bedrooms in the barn. He also noted there was potential in the house for 2 more bedrooms instead of the one additional bedroom that Mr. Trew had mentioned. Mr. Olsen then clarified that the request was for 6 rooms in the house, 2 rooms in the owner's cottage, 4 rooms in the barn and 1 room in the spring house located behind the main house.

Vice Chair Plaag referred again to page 16 of the meeting packet that indicated an expansion of the barn from 1240 square feet to 3000 square feet and asked for clarification. Mr. Trew stated the original Conditional Use approval allowed a 40x45 building with 2 stories.

Ms. Shook stated that parking on-site was dictated by the number of rooms and that number would need to be specific about the number of rooms provided in order to calculate the number of required spaces. Mr. Olsen stated he intended to have 4 rooms in the barn. Mr. Trew calculated that 15 parking spaces would allow for 12 rooms.

Ms. Shook referenced events not associated with the Lovill House and asked how many vehicles could be accommodated during those events given the fact that the bed and breakfast and boarding house guests would be parked in the parking spaces. Mr. Olsen replied that they would encourage off-site parking and public transportation. Ms. Peacock stated that two cars could park on the gravel drive and cars could park in the circulation areas. She noted that they had used Sam Snyder's apartment parking lot sometimes in the past. Ms. Shook noted there was a 200' limitation of distance for satellite parking. Ms. Peacock replied that the Lovill House property was small and did not handle large venues. She noted they had never had a problem over the past 19 years with their events.

Ms. Shook wished to review the conditions that had been proposed so far. She presented the following:

1. When developing the adjacent parcel, a petition for annexation should be filed.
2. The 3-acre parcel must be annexed.
3. ASU contracts for rental of space must be reviewed by Planning & Inspections.

Council Member Furgiuele stated he had suggested the following condition:

4. Significant or historic trees may not be cut unless it is determined by the Town arborist that they are diseased.

Ms. Meade suggested consideration of the following:

- 9 rooms for boarding house use
- No kitchenettes
- Define boarding house
- Events associated with the bed & breakfast only

Council Member Furgiuele stated he was not comfortable approving something so fluid and he needed more certainty. He stated he was unsure what they would actually be approving.

Council Member LaPlaca stated she thought this was a great project, the applicant had done an exemplary job, and she would support the request as is.

Council Member Ulmer stated she thought it was a great project as well. However, she had some trepidation because some things were not clear.

Vice Chair Plaag stated he was supportive of the broad vision for the property but felt it put the Planning Commission in a difficult position to make recommendations of the project when there was not enough solid information. He suggested a continuation of the public hearing so the applicant could regroup.

Ms. Shook noted information has been provided by the applicant that indicated that there may be some time sensitivity on the part of the applicant and the Commission and Council may want to consult the applicant regarding the timing of any continuation.

Mr. Moffatt stated he disagreed that the applicant did not provide enough information and stated it was not necessary or appropriate to continue the hearing. He stated he could answer direct questions and provided the following responses to the suggested conditions:

1. Because the 8-acre tract was not part of the property in question and was basically undevelopable, they would not agree to annex.
2. They would agree to annex the subject property of 3 acres.
3. They would not agree to review of ASU rental contracts noting that, if the UDO were violated, Planning & Inspections could use enforcement action.
4. They would not agree to not cut trees on the adjacent 8-acre tract because that tract was not part of this request.

Vice Chair Plaag wished to clarify that he was concerned about long term rental agreements by ASU and would like to have those agreements be reviewed by Planning & Inspections so that they might provide feedback as to whether or not the use would be in violation of the UDO. Mr. Moffatt stated he would need much further detail as to how that would work but, as it stood, his answer was still no.

Chair Shay stated she liked the project but the concerns expressed by Vice-Chair Plaag about the lack of information and Mr. Moffatt's response to those concerns made her a little less certain about the request.

Ms. Meade counselled members that they could proceed with consideration of the request but should keep in mind the most intense uses that could be allowed in the requested zoning district.

Council Member Furguele noted if there were no limitations, they could have any size event they wanted as long as it was between the hours of 6 a.m. and 10 p.m. Ms. Meade offered that the event venue use could be dropped and the applicant would be allowed to have only events that were related to the Lovill House use.

Mr. Olsen stated he had contacted everyone he could that would be affected or provide input and he stated what was on his application was what should be voted on. He noted, however, that he may do less than what was being requested. Mr. Olsen stated he wanted to make space available for the community even if the event did not have guests staying at the Lovill House. He noted that he would accept reasonable conditions.

Chair Shay stated she liked the idea of the event venue space for everyone. She asked if the barn expansion was essential for the success of the project as a whole. Mr. Olsen replied that he hoped it would be successful without the barn expansion but would like to maintain the flexibility to have those rooms.

Ms. Shook wished to verify the room count. She stated her understanding was there would be 6 rooms in the Lovill House, 2 rooms in the owner's cottage, 1 over the spring house, and either 9 or 4 in the barn. She asked for clarification of the number of rooms for the barn. Mr. Olsen replied that he intended to have 4 units in the barn. Ms. Shook stated that would be a total of 13 rooms so an additional parking space would have to be provided.

Ms. Shook noted there would be a kitchen in the house and the owner's cottage and asked if there would be a kitchen in the barn. Mr. Trew replied that there would not be a kitchen in the barn.

Ms. Shook asked if the applicant had considered a limitation of the size of events. Mr. Olsen replied that he was open to suggestions. Ms. Shook noted that with parking for the rooms, there was no leftover parking for event attendees. Mr. Olsen suggested a size limitation of 50 guests.

Ms. Peacock stated they used to limit their event attendees to 25 and that number included guests that were staying at the Inn.

Mr. Olsen stated he may have classes come to observe the waterfall on the property as well. He felt 50 would be a good limitation between the indoor and outdoor visitors.

Council Member Hicks suggested the possibility of limiting the event length. He also suggested possibly limiting the number of vehicles that could attend the event.

Council Member Ulmer suggested wedding invitations include an RSVP for the number of vehicles.

Vice Chair Plaag stated he thought it would be appropriate to set a length of stay for bed & breakfast guests because the UDO was vague. He suggested bed & breakfast guests be allowed to stay for 2 weeks and anything beyond that would be considered a boarding house stay. Ms. Meade stated Vice Chair Plaag had a good suggestion. Mr. Olsen was in agreement with the suggested 2 week stay for bed & breakfast guests.

Ms. Meade asked Mr. Olsen if he would agree to a condition that the structures currently on the property were the only structures being approved under this requested rezoning. Mr. Olsen agreed to that condition. Ms. Shook pointed out that the current barn structure would be replaced with a newly constructed building in the same location, according to the plans that were submitted.

Vice Chair Plaag again asked about the condition that the Lovill House not engage in rental contracts with universities that would violate the UDO regarding university uses in a non-university district. Mr. Olsen replied that he hated to put restrictions on a credit-worthy client noting that it would make it difficult to sustain the business. Vice Chair Plaag stated the condition was not intended to discriminate against the

university but was an attempt to not create violations of the UDO. Ms. Meade stated she was uncomfortable with the condition as it was an implicit condition of all permits that the applicant comply with all requirements of the UDO.

Chair Shay noted that Planning Commission still had to consider the case and make recommendations. She asked what their options were given the late hour of the hearing. Ms. Shook explained that the UDO allowed the Planning Commission to remain after the hearing to make recommendations, table their meeting to a date certain, or delay their consideration of the case until their next regular meeting. Vice Chair Plaag expressed concern about Planning Commission's 30-day window to make recommendations to Council. Ms. Meade stated that the 30 days would not be up before Town Council met in February so Planning Commission should still have time to make recommendations within the allotted time frame.

Vice Chair Plaag made a motion that Planning Commission meet at 6 p.m. on Monday, February 1, 2021 to make recommendations on the Lovill House Inn Conditional District Zoning Map Amendment request. The motion was seconded by Commission Member Behrend.

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

Ms. Shook wished to review the items suggested as possible conditions or items for clarification.

1. The applicant will petition for annexation the portion of the 3-acre parcel that is located within Watauga County's jurisdiction.
2. The applicant will utilize the existing structures on the site with the exception that the barn may be renovated/reconstructed with a maximum building footprint of 1,800 square feet and second story of 1,200 square feet.
3. The development is limited to 13 rooms. Of the 11 rooms for rent, the boarding house use would be limited to 9 at any given time. These rooms are to be located in the existing structures on the lot. The room and kitchen allocations for the development are as follows:
 - a. Lovill House Inn – 6 rooms and 1 kitchen
 - b. Spring House – 1 room and no kitchen
 - c. Barn – 4 rooms and no kitchen
 - d. Owner's Cottage – 2 rooms and 1 kitchen
4. Events will be limited to 50 attendees. Additional discussion is needed on possible limitation of event length and how many cars can park on-site.
5. A room rented for up to 2 weeks (14 days) will be classified as a bed and breakfast use and a room rented for longer than that (15 days+) will be classified as a boarding house use.

Mr. Olsen thanked everyone for their attention, advice, and suggestions. He stated he made the commitment to purchase the Lovill House property in September and due to COVID the property had been vacant. With mold and mildew growing, he would like to get into the house to begin repairs as soon as possible.

With no further questions or comments, Mayor Brantz closed the public hearing for this case at 10:52 p.m.

Adjournment of Town Council

Mayor Pro Tem Clawson made a motion for Town Council to adjourn at 10:52 p.m. The motion was seconded by Council Member Ulmer.

Vote: Aye – All
Nay – None

The motion passed.

Adjournment of Planning Commission

Vice Chair Plaag made a motion for Planning Commission to adjourn at 10:54 p.m. The motion was seconded by Commission Member Behrend.

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

Rennie Brantz, Mayor

Brenda Henson, Board Secretary

Elizabeth Shay, Planning Commission Chair



**STAFF REPORT
PUBLIC HEARING
MARCH 22, 2021**

Case PL04196-090820 Session Law 2019-111 (Part 1) - UDO Text Amendment

Request

Modify the Town of Boone Unified Development Ordinance (UDO) in order to bring the regulatory document into compliance with Part 1 of Session Law 2019-111 (Senate Bill 355), "An Act to Clarify, Consolidate, and Reorganize the Land-Use Regulator Laws of the State".

Session Law 2019-111 contains two parts as follows:

- Part I: Provisions to Clarify and change the Land-Use Regulatory Laws of the State
- Part II: Provisions to Reorganize, Consolidate, Modernize, and Clarify Statutes Regarding Local Planning and Development Regulation.

Part I and Part II of Session Law 2019-111 were originally proposed through two separate bills in the NC General Assembly and were consolidated because the General Assembly at the time did not want to enact either bill without the other. Part 1 addressed technical issues such as permit choice and vesting, while Part II addressed a major reorganization of city and county enabling legislation for planning and development by consolidating and clarifying the language in a new Chapter 160D Local Planning and Development Regulation. Note: at the time Session Law 2019-111 was passed, Part I was not yet incorporated into Part II.

The UNC School of Government classifies the principal impacts of 160D as follows¹:

- (1) Consolidate current city and county enabling statutes for now in Article 18, Chapter 153A and Article 19, Chapter 160A into a single, unified new Chapter 160D of the General Statutes.
- (2) Place these statutes into a more logical, coherent organization, facilitating ease of finding relevant provisions and clarifying how the statutes relate to one another.
- (3) Provide uniform authority, definitions and procedures for cities and counties, while retaining broad substantive policy discretion for ordinances adopted by individual jurisdictions.

The amendments outlined herein, are related to Part 1. A subsequent UDO Text Amendment package where the entire UDO is brought into full compliance with the new Chapter 160D will be presented for consideration within the next couple of months (deadline for adoption of July 1, 2021).

See the link below for additional resources from the UNC School of Government on Planning and Development Regulation as related to the new 160D.

[Chapter 160D: A New Land Use Law for North Carolina | UNC School of Government](#)

¹ Lovelady, Owens, Hitchings. (n.d.). *Planning and Development Regulation Chapter 160D: A New Land Use Law for North Carolina*. UNC School of Government. Retrieved March 9, 2021, from <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation/ch-160d-2019#!#JustGettingStarted>

Proposed Ordinance Amendment**ORDINANCE #PL04196-090820****AN ORDINANCE TO REVISE THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE (UDO)**

WHEREAS, the Town Council wishes to amend the Unified Development Ordinance by making various technical and policy revisions to comply with state legislation; and

WHEREAS, it is the objective of the Boone Town Council to have the Unified Development Ordinance promote regulatory efficiency and consistency; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160A, Article 19; and

WHEREAS, this proposed UDO text amendment was duly noticed for public hearing; a public hearing was held with respect to the proposed amendment on March 22, 2021; and the Boone Planning Commission has had an opportunity to submit a written report to the Boone Town Council with respect to the proposed amendment;

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

SECTION 1. The following subsections of Article 1 of the Boone UDO are hereby amended as follows, with deletions and additions shown in ~~red~~ and blue respectively:

Article 4 Permits**4.01 Permits****4.01.01 Permits Required**

- A. Use of pProperty, including intensity of use, may not be initiated or substantially changed~~used, altered or changed~~, nor may clearing, grading, filling, ~~or~~ excavation or other alteration of land commence, nor may signs, buildings or other structures be constructed, erected, moved, demolished, or substantially repaired, altered or renovated, nor may property be subdivided ~~or altered~~ except in accordance with and pursuant to the issuance of a valid permit.
- B. Physical improvements to land to be subdivided may commence upon preliminary plat approval and the issuance of a valid zoning permit authorizing such work.
- C. No development permit shall be issued within:
 - 1. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought; or

2. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

4.01.02 Process Overview:

- A. Permits needed to authorize a proposed development, will be issued under this Ordinance only after a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Plans and applications which are approved are incorporated into any permit issued, as are representations made by the applicant, and except as otherwise provided in Section 4.16, all development shall occur strictly in accordance with such approved plans, applications, and representations.

1. For purposes of this Ordinance, “development” shall unless the context clearly indicates otherwise and without altering the scope of any regulatory authority granted by statute or local act, the term “development” means any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- ~~a.d. The initiation of or substantial change in the use of land or the intensity of use of land include the use or occupancy of any land or structure, the construction, erection, alteration of moving of any structure and land disturbing activity.~~

2. Revisions ~~which~~ that affect the ~~intent of the~~ design or ~~the~~ capacity of ~~the~~ any stormwater system shall require prior written approval by the Town.

~~3.—Applications~~ Plans shall be submitted in accordance with section 4.05.01 and the requirements listed in Appendix A.

- B. All permits shall be issued in the name of the applicant, and shall identify the property involved, and the proposed use. The permit shall incorporate by reference the plans submitted and representations made, and shall recite any special conditions or requirements imposed by the permit issuing authority.

4.02 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled

- 4.02.01 Issuance of a zoning permit authorizes the recipient to commence development work. ~~designed to use, alter, change, clear, grade, excavate, construct, erect, move, or alter signs, buildings or other structures or to make necessary improvements to a subdivision.~~

- A. ~~No~~~~The intended~~ use may ~~not~~ be ~~commenced~~initiated or substantially changed, no building may be occupied, no structure may be used, and in the case of subdivisions, no lot may be sold until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a zoning, special use permit, preliminary plat or conditional zoning district approval have been complied with, and the applicant has obtained one or more of the following as required: Certificate of Compliance, Certificate of Occupancy, Certificate of Completion and Certificate of Zoning Compliance.
1. **Certificate of Compliance:** A Certificate of Compliance certifies compliance with applicable building, mechanical, plumbing, electrical, fire protection or gas codes. It does not alone authorize occupancy or use of any building, structure or land.
 2. **Certificate of Occupancy:** A Certificate of Occupancy may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Occupancy certifies compliance of a building with all applicable requirements of the UDO and other relevant State and local laws. No building may be occupied or used until a Certificate of Occupancy is issued. A Certificate of Occupancy is inclusive of a Certificate of Zoning Compliance and a Certificate of Compliance.
 3. **Certificate of Completion:** A Certificate of Completion may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Completion certifies compliance of a structure other than a building with all applicable requirements of the UDO and other relevant State and local laws. A structure which requires a Certificate of Completion may not be used until the certificate is issued. A Certificate of Completion is inclusive of a Certificate of Zoning Compliance.
 4. **Certificate of Zoning Compliance:** A Certificate of Zoning Compliance certifies, when neither a Certificate of Completion nor a Certificate of Occupancy is needed, compliance with all applicable requirements of the UDO and other relevant State and local laws. A Certificate of Zoning Compliance authorizes a use.
- B. The Administrator shall retain the authority to withhold building or zoning permits and withhold or revoke any Certificate of Compliance, Certificate of Occupancy, Certificate of Completion or Certificate of Zoning Compliance which has been improvidently issued until all relevant requirements of State law and this Ordinance have been met.

4.03 Who May Submit Permit Applications

- 4.03.01 An application will be accepted only from a person having the legal authority to take action in accordance with the permit or the subdivision plat approval.
- A. An application shall be made by the owner or the agent of the owner accompanied by proof of agency.

- B. When a person other than the owner of the property applies for a permit or approval including a lessee or a person who has contracted to purchase the property, the application must be accompanied by the written approval of the property owner or other proof of authority.
- C. No application may be accepted on behalf of a non-human entity unless it is registered and in good standing with the North Carolina Secretary of State, or such other authority as legally mandated.
- D. When an application involves development on multiple properties owned by multiple owners, it must be accompanied by proof of authority or permission of all owners.
- E. Property owners, or their agents or assigns, are responsible for ensuring that provisions of this UDO are adhered to; including activities contracted for, or performed by those under their employ.

4.03.02 The Administrator shall require an applicant to submit evidence of ~~his~~ authority to submit the application in accordance with Subsection 4.03.01.

4.04 Staff Consultation Before Formal Application

4.04.01 Even if not required, 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 strongly encouraged.

4.04.02 Upon request or as mandated, the Administrator shall meet with the applicant as soon as feasible to review the proposed application.

4.05 Applications

4.05.01 Application Submittals:

~~A. An application is considered submitted when the:~~

- ~~1. An application form provided by the Administrator is fully completed with information included or attached which enables the Administrator to discern what approval is being sought, and~~
- ~~2. The application is signed by a person with lawful and established authority to submit the application, and~~
- ~~3. All required fees are paid, and~~

A. The application is delivered to the Administrator. Preliminary review for completeness of application. An application shall not be considered submitted for purposes of this ordinance unless it is complete. The Administrator shall review a purported application for completeness if it meets all of the following requirements:

- 1. An application form provided by the Administrator is fully completed with all information required pursuant to Appendix A included or attached;

2. The application is signed by a person with lawful and established authority to submit the application;

3. All required fees are paid, and

4. The application is delivered to the Administrator.

B. A separate, non-refundable fee may be assessed by the Administrator for preliminary review of the completeness of an application.

C. If an application is deemed incomplete, it shall be rejected with comments, as appropriate, by the Administrator. Any resubmittal shall be reviewed and processed as a new application.

D. An application shall not be deemed to be accepted by the Administrator for processing until it has been initially reviewed for completeness and deemed by the Administrator to be complete.

~~A.~~E. Decisions of the Administrator pertaining to completeness may be appealed to the Board of Adjustment pursuant to Article 4.

4.05.02 ~~**Incomplete Applications:**—An application must be completed to the satisfaction of the Administrator and all requested supplemental documentation provided in accordance with this Section before the permit issuing authority is required to consider the application.~~

~~An application is deemed withdrawn if the applicant does not fully respond to the Administrator’s request(s) for the materials, plans, analyses, etc. (hereafter, “supplemental documentation”), needed to fully evaluate the application for its compliance with the UDO and all other pertinent adopted plans and codes of the Town, in accordance with the following schedule:~~

~~Following submission and initial review of an application, the Administrator shall direct a written list of all supplemental documentation required by the Ordinance or needed by the Administrator or a reviewer in another Town department to evaluate the application for its compliance with the UDO and all other duly adopted requirements of the Town.~~

~~Said list shall be hand delivered to the applicant or mailed by first class mail or electronic mail to the applicant per the contact information provided in the application.~~

~~Receipt by the applicant shall be presumed to have occurred (i) three days after the date of mailing by first class mail or (ii) on the date of hand delivery or email.~~

~~Following receipt of the written list, the applicant shall have thirty (30) calendar days to provide all supplemental documentation requested by the Administrator, which shall be considered provided when actually delivered to the Administrator.~~

~~If an applicant fails to timely provide all supplemental documentation, the application shall be deemed withdrawn and no further consideration will be given to it.~~

~~Following the timely provision of all supplemental documentation by the applicant, the Administrator may request additional supplemental documentation, using the same method as stated in Subsection 4.05.02(A)(1), and the applicant shall again have thirty (30) calendar days to provide all additional requested information or the application shall be deemed withdrawn.~~

~~This process may be repeated until all materials needed by the Administrator or other department reviewer to evaluate the application's compliance with the requirements of the UDO and all other duly adopted requirements of the Town have been provided.~~

~~Ordinarily, if the application is still incomplete after the third supplemental response, it will be deemed withdrawn. In exceptional circumstances, and in the sole discretion of the Administrator, one or more additional requests for information and supplemental responses may be allowed where the need for additional information arises due to circumstances that are beyond the control of the applicant and the applicant's agents and representatives. Examples include needs for information arising unexpectedly due to modified demands or errors or omissions made by state authorities with concurrent authority over the project, or the oversight or error of the Administrator. The Administrator's determination to allow or not allow a fourth or subsequent supplemental response shall be final and nonappealable.~~

~~At each stage of a series of requests by the Administrator, should an applicant fail to provide all requested information, the application shall be deemed withdrawn and no further consideration will be given to it.~~

~~The burden of submitting all materials needed for a full evaluation of an application at all times nevertheless remains upon the applicant.~~

~~With respect to applications for which the Board of Adjustment is the permit issuing authority, unless the application has been deemed withdrawn pursuant to this Section, if the applicant demands that the application be scheduled for consideration before the Board, it shall be so scheduled, and the Board shall decide whether the application is complete.~~

4.05.03 — Application Complete: ~~Subject to Subsection 4.05.02, an~~[An](#) application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether the development, if completed as proposed, will comply with all of the requirements of this Ordinance and all other duly adopted requirements of the Town.

- A.** The presumption established by this Ordinance is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this Section.
 - 1. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case.

2. For applications submitted to the Town Council or Board of Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix A should be submitted.
- B.** In this Ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more appendices to this Ordinance. It is not always necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information, in the judgment of the Administrator, to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in the text of this Ordinance and all other duly adopted requirements of the Town.
1. However, whenever this Ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article 12.
- C. Traffic Impact Analysis:** In addition to the information included in Appendix A, certain developments may by, virtue of size, location or configuration of access points to the public road system, be required to have a traffic impact analysis performed. In those instances where a traffic impact analysis is required by the Administrator, the study must be completed and submitted in order for the application to be considered complete. A traffic impact analysis may be required when any of the following conditions exist:
1. The development proposes to have an access to the public road system within 100' of the STOP bar of any traffic control signal; or
 2. The development proposes to have an access to the public road system within 200' of the STOP bar of any traffic control signal and based upon Institute of Transportation Engineers (ITE) trip generation rates is projected to generate eighty (80) or more exiting trips during any one (1) hour period of any day; or
 3. The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500'; or
 4. The development proposes access onto a public road that does not have a paved width of at least eighteen feet (18'); or
 5. The development proposes access to a public road that currently operates at a level of service of D or less and based upon ITE trip generation rates is projected to generate 1,500 weekday trips; or

6. The Administrator or Public Works Director determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system; or determines that there are safety concerns with the driveway location and design.

If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system; the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the Town in which the time for the improvement is specified the improvement shall be completed prior to issuance of a certificate of occupancy. The fact that the obligation to construct lies with the applicant does not preclude the Town from entering into an agreement to participate if that will be in the interest of the Town.

4.05.03 **Discontinued Applications:** An application that has been deemed complete and accepted for processing shall be deemed withdrawn if:

- A. The application is placed on hold at the request of the applicant for a period of six consecutive months or more, or
- B. The applicant fails for a period of six or more consecutive months to fully respond to the Administrator's comments or request(s) for additional information.

4.05.03 **Permit Choice:**

- A. Upon submission and acceptance of a complete application for a development permit, if this unified development ordinance is amended between the time the development permit application was submitted and the time a development permit decision is made, the development permit applicant may choose which adopted version of the ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application.
- B. Where multiple development permits are required to complete a development project, the development permit applicant may choose the version of this ordinance applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.
- C. For purposes of this subsection, "Development permit" means an administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:
 1. Zoning permits.

- [2. Site plan approvals.](#)
- [3. Special use permits.](#)
- [4. Variances.](#)
- [5. Certificates of appropriateness.](#)
- [6. Plat approvals.](#)
- [7. Development agreements.](#)
- [8. Building permits.](#)
- [9. Subdivision of land.](#)
- [10. State agency permits for development.](#)
- [11. Driveway permits.](#)
- [~~1.~~12. Erosion and sedimentation control permits.](#)
- [~~2.~~Sign permit.](#)

(Ord. PL02338-030719, 050919)

4.06 Staff Consultation After Application Submitted

4.06.01 Upon receipt of an application and all necessary supplemental documentation and materials, the Administrator shall:

- A.** review the application and confer with the applicant regarding Staff's interpretation of the applicable requirements of this Ordinance, and
- B.** that the applicant has submitted all of the information that the applicant intends to submit, and
- C.** that the application represents precisely and completely what the applicant proposes to do.

4.06.02 Applications Requiring Hearings: The Administrator shall place an application on the agenda of the appropriate Board or Commission as soon as feasible after the applicant has provided all information requested by the Administrator or the applicant, in writing, refuses to provide requested information and demands the application be forwarded to the appropriate Board or Commission for action.

- A.** If the Administrator believes that the application is incomplete, the Administrator shall recommend to the appropriate Board or commission that the application be denied on that basis, and shall provide detailed information to the appropriate Board or commission as to the elements, supplemental documentation or materials which the Administrator believes are lacking.

~~B. Except for an application for conditional district rezoning, if an application is submitted for zoning approval and the site specific development plan or accompanying details of the plan are materially different from the site specific development plan or accompanying details presented to Council in connection with an application for an allocation of vested rights to connect to the Town's water or sewer system, the Administrator must treat the application as an application for a special use permit. This provision does not apply with respect to CD applications.~~

~~1. A "material" difference shall consist of any "minor modification", if the modification relates to a detail or characteristic of the UDO the application which was specifically discussed in the hearing before the Council, or any "major modification."~~

(Ord. 20150028, 11-19-2015; Ord. PL01265-011618, 03-22-2018)

4.07 Applications to be Processed Expeditiously

4.07.01 The Town shall make reasonable efforts to process applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance and all other duly adopted requirements of the Town.

(Ord. PL02338-03072019, 05-09-2019)

4.08 Zoning Permits

4.08.01 Following the submission of a complete application for a zoning permit including all duly requested supplemental documentation, the Administrator shall issue the zoning permit unless the Administrator concludes that:

- A.** The requested permit is not within the Administrator's jurisdiction, or
- B.** If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance or any other duly adopted requirements of the Town.

4.08.02 The permit is issued when the earlier of the following takes place:

- A.** A copy of the fully executed permit is delivered to the applicant; or,
- B.** The applicant has been notified that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions.
- C.** For purposes of this Section, delivery is accomplished when a notice or permit is hand-delivered to the applicant or his representative or three (3) days after the notice of permit is deposited in the U.S. Mail, addressed to the applicant or his representative at the address provided on the application.

- 4.08.03** A proposed development which otherwise is allowable by right but has extraordinary impacts as defined herein shall require a special use permit and shall be processed accordingly.
- 4.08.04** A proposed development has an extraordinary impact if the Administrator determines:
- A.** Applicable firefighting or law enforcement capabilities are inadequate to serve the development as proposed, or
 - B.** The proposed development will have a substantial, negative impact on an environmentally sensitive area as defined by the U.S. Environmental Protection Agency or the N.C. Department of Natural Resources.
 - C.** The proposed development will have a substantial, negative impact on adjacent properties and the provisions of the Ordinance designed to address those impacts are clearly inadequate.
- 4.08.05** Should the Administrator exercise his authority pursuant to this Section, the Board shall not deny the permit unless it cannot craft conditions which satisfactorily mitigate the substantial, negative impacts, or it determines that the plan as proposed does not have a substantial negative impact.
- 4.08.06** No person shall willfully resist, delay, or obstruct the Planning and Inspections Department, or its duly appointed agent, attempting to inspect a development that has made application for a development permit.
- 4.08.07** A condition of approval will be the right to physical inspection of the development. In the enforcement of this Ordinance, Staff may perform random independent inspections of the development to ensure compliance with the approved plan.
- 4.08.08** It shall be unlawful to deviate from the approved Zoning Permit unless the Administrator has provided written approval for the requested modification.
- 4.08.09** **Permit Extension**
- A.** Unless expressly prohibited, the Administrator may extend a zoning permit for a period up to six (6) months if the Administrator concludes that:
 - 1. The permit has not yet expired, and
 - 2. The permit recipient has proceeded with due diligence and in good faith, and
 - 3. Applicable regulations have not changed so substantially as to warrant a new application.
 - B.** Permit extensions are not allowed for temporary zoning permits unless explicitly authorized.
 - C.** Successive extensions may be granted for periods up to six (6) months upon the same findings.

4.08.10 Expiration of Zoning Permits

- ~~A. Except as specifically provided otherwise in this section, in sections 4.13 or 4.14 or elsewhere in this ordinance, or by other applicable law, zoning permits shall expire 12 months after issuance unless development authorized by such permit has substantially commenced. automatically if, within one (1) year after the issuance of such permits:~~
- ~~B. The use authorized by such permits has not commenced, or~~
- ~~A. Less than ten percent (10%) of the total cost of all clearing, grading, excavation, construction, erection or alteration authorized by such permits has been completed on the site. If, after development is substantially commenced, development is discontinued for a period of 12 months, the zoning permit shall immediately expire.~~
- B. ~~Site-specific~~Site-specific development plans.** After development approved pursuant to a site-specific development plan is substantially commenced, a zoning permit shall immediately expire if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months
- C.** Development shall be considered “substantially commenced” only if substantial on-site construction has been undertaken relative to the total project cost of construction. Development shall not be considered “substantially commenced” if less than ten percent (10%) of the total cost of all on-site clearing, grading, excavation, construction, erection or alteration authorized by such permit has been completed. Activities that take place or expenses incurred prior to approval of the zoning permit authorizing the development shall not be taken into account in determining whether development has “substantially commenced.”
- ~~C. A permit shall not expire or be revoked because of the running of time while a vested right under section 4.14 is outstanding.~~
- ~~D. If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one (1) year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4.15.~~

(Ord. 20140384, 08-18-2014)

4.09 Special Use Permits and Major Subdivision Preliminary Plat Approval

- 4.09.01 Special Use Permit:** A special use permit must be approved by the Board of Adjustment according to the procedures set forth in Article 6 and the standards set forth in Section 6.02.
- 4.09.02 Major Subdivision Preliminary Plat Approval:** A major subdivision preliminary plat must be approved by the Board of Adjustment according to the procedures set forth in Article 6 and the standards set forth in Section 6.02.

4.10 Uses Previously Approved by Conditional Use Permit

4.10.01 Amendments and modifications to uses currently subject to the terms and conditions of a previously approved conditional use permit, except those issued with conditional use zoning approvals, will be processed subject to the provisions of Section 4.16 dealing amendments and modifications to special use permits or major subdivision preliminary plat approvals.

4.11 Variance

4.11.01 A variance must be approved by the Board of Adjustment according to the procedures set forth in Article 6.

4.12 Authorizing Use, Occupancy, or Sale Before Completion or Dedication of Development

4.12.01 Before Completion: In cases when, because of weather conditions or other factors beyond the control of the permit recipient or applicant for subdivision, exclusive of financial hardship, it would be unreasonable to require the permit recipient to comply with all of the requirements of this Ordinance before commencing the intended use of the property or occupying any buildings or selling any lots in a subdivision, the Administrator may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this Ordinance are concerned) subject to the following:

- A.** For a subdivision, the applicant must provide a surety bond, irrevocable letter of credit or cash (hereafter, the “performance guarantee”), at the choice of the applicant, in an amount which ensures compliance with all Ordinance requirements.
- B.** For all zoning permits, the applicant must provide an irrevocable letter of credit or cash, at the choice of the applicant, in an amount which ensures compliance with all Ordinance requirements.
- C.** The outstanding requirements to be bonded may not be related to conditions affecting safety; and
- D.** All of these outstanding requirements will be fulfilled within a reasonable period not to exceed twelve (12) months.

4.12.02 Before Dedication, Protection Against Defects

- A.** Whenever occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance guarantee that is posted shall guarantee that any defects in such improvements or facilities that appear within one (1) year after the dedication of such facilities or improvements is accepted shall be corrected.

- B. Whenever all public facilities or improvements intended for dedication are installed before occupancy, use, or sale is authorized, then a performance guarantee shall be posted to guarantee to ensure that all defects in such utilities or improvements that occur within one (1) year after the offer of dedication of such facilities or improvements are corrected.
- C. An engineer shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of this Ordinance. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.

4.13 Completing Developments in Phases

- 4.13.01** If a permit authorizes a development to be constructed in phases, the provisions of Sections 4.02 and 4.12 shall apply to each phase as if it were the entire development.
- 4.13.02** No phasing shall be approved unless the applicant submits plans that clearly show the various phases of the proposed development and the requirements of this Ordinance that will be satisfied with respect to each phase.
- 4.13.03** If a development that is to be built in phases includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval:
 - A. The applicant shall submit a proposed schedule for completion of such improvements; and
 - B. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit.

(Ord. 20140384, 08-18-2014)

4.14 Vested Rights for Certain Approvals

- 4.14.01** A vested right shall be deemed established upon proper and lawful approval of a site-specific development plan for special use permit, major subdivision, or ~~of a site specific development plan by the Board of Adjustment (in the case of an application for a special use permit or major subdivision) or by the Council (in the case of an application for a Conditional District).~~
- 4.14.02** **Duration:** Except as provided for in Subsection 4.14.02(C), a right that has been vested as provided for in this Ordinance shall remain vested for a period of two years.

- A. This vesting shall not be extended by any amendments or modifications to a site-specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- B. A site-specific development plan shall be deemed approved upon the effective date of the approval authority's action or Ordinance relating thereto.
- C. The permit issuing authority may provide that rights vest for a period of time exceeding two (2) years but not exceeding five (5) years, inclusive of all amendments, modifications and phasing, where warranted in light of all relevant circumstances, including but not limited to, the size and phasing of the development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site-specific development plan is approved or modified.

4.14.03 The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type and intensity of use, or Ordinances or regulations that are general in nature and are applicable to all property subject to regulation by the Town, including, but not limited to building, fire, plumbing, electrical and mechanical codes.

- A. Applicable new or amended regulations shall only become effective with respect to property that is subject to a site-specific development plan upon the expiration or termination of the vested right in accordance with this Ordinance.

4.14.04 A vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site-specific development plan, all successors to the original landowner shall be entitled to exercise such rights while applicable.

4.14.05 Termination/Expiration: A right that has been vested as provided for in this Ordinance shall terminate/expire:

- A. Automatically aAt the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed, or

B. With written consent of the affected landowner, or

~~B.~~C. With respect to development with vesting periods of 2 years or more, automatically if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, or

~~C.~~D. Upon findings by the permit issuing authority, by Ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan, or

~~D.~~E. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action, or

~~E.~~F. Upon findings after notice and an evidentiary hearing~~by the permit issuing authority, by Ordinance after notice and a public hearing,~~ that the landowner or ~~his~~the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the ~~site specific development plan~~vested right, or

~~F.~~G. Upon enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the ~~site specific development plan~~vested right, in which case the approval authority shall modify the affected provisions, upon finding that the change in state or federal law has a fundamental and retroactive effect on the ~~plan~~development, ~~by Ordinance~~ after notice and a public hearing.

~~G.~~H. Upon a failure by the permit holder to abide such terms and conditions as have been attached to the approval or otherwise required by this Ordinance.

4.14.06 Nothing in this Section is intended or shall be deemed to create any vested right other than those established pursuant to N.C. Gen. Stat. § ~~160A-385.1~~160D-108.

4.14.07 Any petition for voluntary annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any vested right with respect to the property subject to the petition has been established under G.S. ~~160A-385.1~~ ~~or G.S. 153A-344.1~~160D-108. A statement that declares that no vested right has been established, or the failure to sign a statement declaring whether or not a vested right has been established, shall be binding on the landowner and any such vested right shall be terminated.

(Ord. 20150028, 11-19-2015; Ord. PL01265-011618, 03-22-2018)

4.15 Effect of Permit on Successors

4.15.01 Permits authorize the applicant to develop and use land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof authorized by a permit continues to be used for the purposes for which the permit was granted, then:

A. No person (including successors and assigns of the person who obtained the permit) may make use of the land or structures except in accordance with all the terms and requirements of that permit, and

- B.** The terms and requirements of the permit run with the land and are binding on successors in interest.

4.16 Modification of Permits

4.16.01 A permit with vested rights pursuant to NC Gen. Stat. ~~160A-385.1~~ 160D-108 may be modified pursuant to the provisions of this section. The proposed modification of a permit authorizing a development or phase of development that has been completed shall be considered only as a new application.

4.16.02 Minor modifications to any permit or major subdivision preliminary plat approval issued pursuant to this Ordinance are permissible and the Administrator may authorize such minor modifications subject to the following:

- A.** A modification is minor if, whether taken alone or together with other proposed modifications, it has no material negative impact on any one or more neighboring properties or on the general public. In addition, in no case may a minor modification:
1. Exceed ten percent (10%) of any measurable standard; or
 2. Change the approved use(s); or
 3. Modify a feature of an application which was central to the deliberations of the permit issuing authority; or
 4. Modify an express condition imposed by the permit issuing authority.
- B.** The Administrator shall determine whether or not a proposed modification, whether taken alone or together with other proposed modifications, is minor. With respect to permits authorized by the Board of Adjustment or Town Council, in the event of doubt the proposed modification shall not be considered minor.
- C.** An applicant requesting approval of one or more minor modifications shall submit a written request for such approval to the Administrator.
1. The request shall identify the proposed changes.
 2. The request shall be processed in accordance with Section 4.05.
 3. Approval of all changes shall be in writing.

4.16.03 All proposed modifications of a permit or major subdivision preliminary plat approval that are determined by the Administrator not to be minor must be processed as new applications and approved by the original permit issuing authority.

(PL02632-060518, 09-19-2019)

4.17 Maintenance of Common Areas, Improvements, and Facilities

4.17.01 The recipient of any zoning, special use permit, preliminary or final plat approval, his successors and assigns, shall be responsible for maintaining all common areas, improvements, or facilities required by this Ordinance or any permit issued in accordance with its provisions, except and until those common areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority.

A. As illustration, private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended in accordance with Town Codes, and required vegetation and trees used for screening, landscaping, or shading must be properly maintained or replaced if they die or are destroyed.

4.17.02 A permit holder may create a property owners association or similar legal entity (association) to succeed to its responsibilities under this Section, so long as such association is established in accordance with Appendix A.

4.18 Design and Other Professionals

4.18.01 All professionals associated with an application shall be competent for the task undertaken, and licensed by and in good standing with the appropriate licensing Board in the State of North Carolina.

A. If problems with the project are encountered that result from the failure by a design professional to properly discharge his responsibilities, the Town may initiate appropriate action(s) including filing a complaint with the appropriate licensing Board and refusing to accept certifications regarding analysis of design or construction from the individual or firm.

4.18.02 If a geotechnical engineer performs a subsurface investigation, that engineer shall review the plans and specifications prior to submittal to the Town. A report of this review shall be submitted to the Town along with the permit application.

4.18.03 If retaining walls are required, and a geotechnical engineer has performed a subsurface investigation, the design professional shall provide a statement that the report on the subsurface investigation was reviewed and recommendations incorporated into the design.

A. The design professional shall also require the geotechnical engineer to prepare a global slope stability analysis of the retaining walls.

B. The global slope stability analysis shall be submitted with the plans for the retaining walls.

- 4.18.04** Whenever the Administrator is considering and reviewing an application which involves data or representations within the exclusive purview of a professional in a particular field, the Administrator may demand a certified statement from an appropriate professional confirming that the data or representations are accurate and meet the requirements of this Ordinance.
- 4.18.05** Whenever the Administrator considered and reviewed an application which involved data or representations within the exclusive purview of a professional in a particular field, the Administrator shall require a certified statement from an appropriate professional confirming that the work was completed in compliance with the approved plans.
- 4.18.06** The Administrator shall require verification that plant material was installed by a landscape contractor registered in the State of North Carolina.
- 4.19 Project Manager**
- 4.19.01** In order to provide adequate coordination of the various design professionals on all development projects, every project shall designate and identify a project manager.
- A.** Single family and two family projects involving less than ½ acre of land disturbing activity or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity are exempt from this requirement.
- 4.19.02** The project manager shall be responsible for coordination of all design and construction monitoring activities related to the project. This shall include, but not be limited to:
- A.** Coordination of design, including ensuring that adequate consideration is given in the design of recommendations made by professionals who performed preliminary exploration of site conditions, and
- B.** Monitoring of construction, and
- C.** Ensuring all final certifications indicating that the project was constructed in compliance with the approved design documents are completed.
- 4.19.03** Prior to issuance of a Certificate of Occupancy the project manager shall submit a certification that the project was constructed in accordance with the approved plans and specifications.
- A.** Attached to the project manager's final certification shall be all the certifications required from the design and other professionals as described in Section 4.18.

...Board of Adjustment Hearings

4.20 Provisions Applicable to All Hearings

6.01.01 General Provisions

- A. All hearings of the Board shall be conducted in a quasi-judicial manner as described herein.
- B. Subject to the specific provisions of Section 6.04 as to appeals, the Board shall hear and decide every appeal and application within a reasonable time.
- C. The Board's packet shall include the Administrator's analysis of the issues, identifying any information, documents, and adopted plans material to the case. The Administrator's analysis may also include recommendations as appropriate.
- D. Each hearing conducted by the Board shall provide an opportunity for parties and interested members of the public to testify and offer competent evidence, but the Board may limit the time available for each person offering testimony and may exclude testimony and evidence which is cumulative or redundant.
- E. Hearings shall be conducted in compliance with the Board's duly adopted Rules of Procedure.
- F. The Town is considered a party in every hearing before the Board.
- G. The Board may continue any hearing until a subsequent meeting and may keep a hearing open to take additional information up to the point a final decision is made.

6.01.02 Quorum

- A. A quorum is necessary for the Board to take official action.
 - 1. For cases involving property located in whole or in part in the ETJ, a quorum for the Board shall consist of seven (7) members.
 - 2. For cases involving property located wholly within the Town's corporate limits, a quorum for the Board shall consist of five (5) members.
- B. A member who has withdrawn from the meeting and left the premises shall not be counted as present for purposes of determining whether a quorum is present.

6.01.03 Voting

- A. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused or has been allowed to withdraw from the meeting in accordance with this Section.
- B. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:
 - 1. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
 - 2. Undisclosed ex parte communications;

- 3. A close familial, business, or other associational relationship with an affected person; or
- 4. A financial interest in the outcome of the matter.
- C. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- D. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- E. Except as authorized in this Section, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- F. A roll call vote shall be taken upon the request of any member.
- G. Both ETJ and resident members must participate and vote on all matters coming before the Board involving property located in whole or in part in the ETJ. On all other matters coming before the Board, only resident members may participate and vote.

6.01.04 Notice of Hearing

- A. The Administrator shall give notice of any hearing of the Board as follows:
 - 1. **Contents of Notice:** Every notice shall state the date, time, and place of hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
 - 2. **Mailed Notice:** Notice shall be mail by depositing in the mail at least 10 days, but not more than twenty-five (25) days, prior to the date of the hearing to:
 - a. The person or entity whose appeal, application, or request is the subject of the hearing;
 - b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
 - c. The owners of all parcels of land abutting the parcel of land that is the subject of the hearing;
 - d. The owners of real property located within 150 feet of the subject lot(s);
 - e. The owners of any real property in a protected district, whose property boundary has triggered application of transitional zone standards; and
 - f. Any other persons who have submitted a written request for notice and intervening parties so long as the request for notice or intervention request have been filed prior to notification being mailed.

3. **Posted Notice:** At least ten (10) days, but not more than twenty-five (25) days prior to the date of the hearing, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The signs to be posted shall include the date, time and location of the hearing and shall direct the public to detailed information about the hearing.

6.01.05 Subpoenas

- A. The Board through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence.
- B. To request issuance of a subpoena, persons with standing must make a written request to the Chair, on a form provided by the Administrator, explaining why it is necessary for certain witnesses or evidence to be compelled.
- C. The Chair shall issue requested subpoenas the Chair determines to be relevant, reasonable in nature and scope, and not oppressive.
- D. The Chair shall rule on any motion to quash or modify a subpoena.
- E. Decisions regarding subpoenas made by the Chair may be appealed to the full Board.
- F. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board 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.

6.01.06 Modification of Applications After Distribution of Board Book Except Appeals of Staff Decisions.

- A. **Modification of Application Between Distribution of the Board Book and the Board Meeting:**
 1. **Modification in Response to Administrator's Recommendation or Request:** An applicant may not significantly modify an application between the distribution of the Board Book containing the Staff Report of the case and the Board meeting unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.
 - a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.

- b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.
2. **Insignificant or Minor Modifications in an Application:** An applicant may make a non-substantial modification to an application between the distribution of the Board book containing the Staff Report and the scheduled hearing.
 - a. A proposed non-substantial modification shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to an application during the scheduled hearing, and the Administrator indicates that adequate time exists to evaluate the insignificant modification can be fully evaluated with or without a recess by the Board, the modified application may be acted upon by the Board.
 - b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.
3. **Major Modification of an Application:** An applicant seeking to significantly modify an application between the distribution of the Board Book containing the Staff Report of the case and the Board meeting, whether in response to Staff recommendations or self-initiated, must file a new application.
4. **Determination as to whether a Proposed Modification is Insignificant, Minor or Major:** The Planning Director shall make the determination as to whether a modification is “insignificant”, “minor” or “major” in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the Town and is not appealable.

B. Modification of Application In Response to Concerns & Issues Raised at the Hearing

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board, an applicant may agree to modify an application, including the plans and specifications submitted.
2. Unless such modification is so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Board may approve the application with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

6.01.07 Testimony and Documentary Evidence

A. Oaths: All persons who present testimony to the Board shall be sworn. The Chair of the Board or any member temporarily acting as Chair, and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board.

1. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

B. Speakers: At any meeting of the Board, when the meeting is opened for public testimony:

1. Speakers shall be recognized in the order in which they have signed up unless a different order is requested by the Board and agreed upon by the speakers.
2. Each speaker wishing to address the Board shall state his or her name and then shall be sworn.
3. All persons addressing the Board shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. The Board may address in its Rules of Procedures under what circumstances the presiding officer or Board may direct that a person who violates proper decorum may be removed, but the Chair shall have inherent authority to have removed a person who threatens other participants or member of the Board as well as any person whose behavior is so disruptive as to prevent the Board from continuing the hearing.

C. Competent Evidence: The Board may address the standards for authenticating and admitting evidence in its duly adopted Rules of Procedure.

1. The rules of evidence as applied in the trial division of the General Court of Justice do not strictly apply. However, no evidence shall be consider unless:
 - a. The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it; or
 - b. The evidence was admitted without objection,
2. To be considered "competent", testimony shall generally meet the following:
 - 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.
3. To be considered "competent", documentary evidence shall generally require authentication. A document is 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 documents origin and reliability.
4. If a copy is used in place of an original, testimony must be offered by a witness establishing the date and author of the document and confirming that such document is a true and accurate copy of the original document.
 5. Photographs must be accompanied by testimony as to the date and place where the photograph was taken and a statement that the photograph fairly and accurately represents the subject is depicted.
 6. Notwithstanding the forgoing, and regardless of the lack of a timely objection, the term “competent evidence” shall not be deemed to include the opinion testimony of lay witnesses as to any of the following, and such testimony shall be deemed conclusively incompetent:
 - a. The use of property in a particular way would affect the value of other property; or
 - b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or
 - c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

6.01.08 Burden of Presenting Evidence; Burden of Persuasion

- A. Evidence:** The burden of presenting evidence shall be upon the party or parties urging a particular position. However, at a minimum, the applicant or appellant must provide substantial competent and credible evidence which addresses every material issue to be determined by the Board.
- B. Credibility:** In making its decision the Board may explicitly or implicitly make credibility determinations regarding the testimony of any witness, and where the Board has concluded that the testimony of a particular witness is incredible or 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 asserted.
- C. Persuasion:** The burden of persuasion shall be on the applicant or appellant or other party or person advocating a particular position.

6.01.09 Decisions of the Board

- A.** The Board’s decision shall resolve all contested facts and their application to the applicable standards. The decision shall include individual findings of fact which support its conclusions of law.

- B. All findings and conclusions made by the Board shall be based upon competent, material, and substantial evidence presented at the hearing, including all information in the Board's packet, unless objected to by a party and excluded by the Board.
- C. Each decision, including any conditions adopted by the Board, shall be reduced to writing and signed by the Chair or other authorized member of the Board.
- D. The decision shall be effective upon filing with the Clerk of the Board.
- E. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective.
 - 1. The Clerk of the Board shall certify that proper notice shall be made.
- F. Any conditions attached to an approval shall be entered on the face of any necessary zoning permit.

6.01.10 Reconsideration of Board Action

- A. Whenever the Board denies an application for a special use permit, major subdivision preliminary plat approval or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time unless the applicant clearly demonstrates that:
 - 1. Circumstances affecting the subject property have substantially changed, or
 - 2. New information is available that could not, with reasonable diligence, have been presented at a previous hearing and is submitted to the Administrator within thirty (30) days of the denial.
 - a. The submission of purported new information under this Section shall not, however, toll the period during which an applicant may seek judicial review of the denial and does not extend the period within which an appeal must be taken.
- B. Notwithstanding Subsection 6.01.10(A), the Board may at any time consider a new application affecting the same property as an application previously denied.
 - 1. A new application is one that differs in some substantial way from the one previously considered.

6.01.11 Judicial Review

- A. Every decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. ~~160A-393~~160D-1402.
- B. A petition for review by the superior court shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Subsection 6.01.09(E).

- C. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Ord. PL02335-030719, 05-09-2019)

4.21 Special Use Permit, Transitional Zones and Major Subdivision Preliminary Plat Applications

6.02.01 An applicant for a special use permit, or major subdivision preliminary plat approval must produce substantial competent and credible evidence demonstrating each of the following:

- A. The application is complete;
- B. If completed as proposed, the development or subdivision:
 - 1. Will comply with the requirements of this Ordinance;
 - 2. Will not materially endanger the public health or safety;
 - 3. Will not substantially injure the value of adjoining or abutting property;
 - 4. Will be in harmony with the area in which it is to be located;
 - 5. Will be in general conformity with the Comprehensive Plan and all other relevant plans officially adopted by the Town; and
 - 6. In cases involving transitional zones, meets the standards of Subsection 6.02.02.

6.02.02 Transitional Zones

- A. Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this Section.
- B. Transitional zones attach to each R1, R1A, RR, R2, and RA district, (hereinafter, “the protected district”) without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a “one size fits all” approach.
- C. The location of a transitional zone shall be determined as follows.
 - 1. For designated development in an adjacent zone, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected district as measured from all points along that boundary, the nearest point controlling applicability of this Subsection.

2. For development subject to transitional zones within the protected districts, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected lot, the nearest point controlling applicability of this Subsection.
- D.** The size of the transitional zone varies with the type of development proposed. The following are the transitional zones as shown in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses:
1. T50: transitional zone equal to fifty feet (50')
 2. T75: transitional zone equal to seventy-five feet (75')
 3. T125: transitional zone equal to 125 feet (125')
 4. T200: transitional zone equal to 200 feet (200')
 5. T300: transitional zone equal to 300 feet (300')
- E.** Whenever a permit is sought to authorize development within a transitional zone, and any area used or disturbed for the development will be located within the pertinent transitional zone, a special use permit is required. If any portion of the area used or disturbed for the development falls within the transitional zone the standards of this Section shall apply to the entire development. The Board may deny the application if the requirements of this Section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.
1. Exemption: Development within an approved Industrial Park shall not be subject to the requirements of Subsection 6.02.02.
- F.** In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this Section, the applicant must produce substantial competent and credible evidence demonstrating the following:
1. That the planned development will effectively and to the greatest degree reasonably possible mitigate the impacts of the proposed development upon the protected district, including but not limited to:
 - a. noise impacts;
 - b. light impacts; and
 - c. any other predictable negative effect, including but not limited to:
 - i. negative visual effects;
 - ii. negative traffic effects; and

iii. negative health effects.

- G.** Because of the variable topography and characteristics of particular tracts of land within the Town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate by clear and convincing evidence that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the ~~site-specific~~site-specific development plan.

6.02.03 Board of Adjustment Action on Special Use Permits and Major Subdivision Preliminary Plat Applications

- A. Conclusions of Law:** In deciding whether to approve or deny an application for a special use permit or a major subdivision preliminary plat, the Board shall proceed according to the following format:

1. The Board shall determine whether the application is complete.
 - a. The burden of presenting a complete application to the Board shall be upon the applicant. The fact that the Administrator believes the application is complete or the applicant has submitted all requested supplemental documentation to the Administrator shall not bind the Board to conclude that the application is complete. The Board is the final arbiter of whether an application is complete.
 - i. If the Board concludes that the application is incomplete in a hearing conducted following a demand by the applicant for immediate action by the Board pursuant to Subsection 4.06.02(A) or the applicant refuses to provide the information determined by the Board necessary to complete the application, the application shall be denied.
 - ii. If the Board otherwise concludes that the application is incomplete the Board may deny the application or may give the applicant an appropriate opportunity to complete the application if the applicant expresses an interest in timely supplementing the application to make it complete.
 - A. A motion to continue the hearing in order to afford the applicant an opportunity to complete the application shall state the location, date and time of the reconvened hearing.
 - B. A case continued under these circumstances shall not require the same Board identity at the reconvened hearing, as the applicant will be expected to present his full case at that time.

- b. If an application includes features which must be approved by another Town board, commission or department, then such approvals must be obtained prior to the hearing.
 2. If the Board concludes that the application is complete, the Board next shall consider whether the application complies with all of the applicable requirements of this Ordinance. If the Board concludes that an element of the application does not fully comply with this Ordinance but has a minimal effect on the issues before the Board, it may conditionally approve the application. If the Board concludes that the application does not comply with all applicable requirements of this Ordinance and conditions will not sufficiently cure the deficiencies or the Board concludes that the deficiency is material to the Board's approval, then the Board shall deny the application.
 3. If the Board concludes that the application is complete and will comply with this ordinance if completed as proposed, then before it may approve the permit or subdivision it must find all the following based upon substantial competent and credible evidence in the record:
 - a. The development or subdivision as proposed will not materially endanger the public health or safety, and
 - b. The development or subdivision as proposed will not substantially injure the value of adjoining or abutting property, and
 - c. The development or subdivision as proposed will be in harmony with the area in which it is to be located, and
 - d. The development or subdivision as proposed will be in general conformity with the Comprehensive Plan and all other relevant plans officially adopted by the Town.
- B. Conditions:** Even when a development or subdivision meets the criteria above, the Board may still impose conditions on an approval.
1. All conditions shall be reasonable and appropriate and shall be related to the predicted impacts of the development.
 2. Unless the Board explicitly orders otherwise, every approval is conditioned upon the development being completed in accordance with the plans submitted by the applicant, the commitments and representations concerning the proposed development made by the applicant and representatives at the public hearing, and final conformity with all requirements of the UDO.

3. The Board may attach to a special use permit a condition limiting the permit to a specified duration and in appropriate situations may provide additional process including another public hearing after the special use has begun to evaluate unanticipated impacts, provided such a condition shall not be employed to terminate a special use for which substantial construction or reconstruction has occurred.
4. Without limiting the foregoing, conditions should normally require measures to address impacts on the:
 - a. public health or safety, and
 - b. values of adjoining or abutting properties, and
 - c. harmony with the area in which it is located, and
 - d. in the case of Transitional Zones, noise, light, and other predictable negative effects such as visual, traffic and health.
5. Conditions imposed under this section shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by a municipality, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b); driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307; or other unauthorized limitations on the development or use of land.

6.02.04 Voting: The adoption of each conclusion of law under Subsection 6.02.03(A), which is required in order to issue the permit, authorize the preliminary plat or deny the application shall be by majority vote. Should any conclusion of law fail to be adopted, the application shall be denied.

6.02.05 Special Use Permits shall be recorded at the office of the Watauga County Register of Deeds.

(Ord. 20140384, 08-18-2014; Ord. 20150272, 06-18-2015; Ord. PL01298-02022018, 04-19-2018; Ord. PL02335-030719, 05-09-2019)

4.22 Variances

6.03.01 A variance is specific to the lot and to the development for which it is requested and neither the nonconforming use of lands, buildings, or structures in the same zoning district; nor the permitted use of lands, buildings or structures in other zoning districts are grounds for the granting of a variance.

6.03.02 A variance granted must be specific and the minimum variance required.

6.03.03 Financial hardship alone does not constitute grounds for the granting of a variance.

- 6.03.04** The fact that a lot may be utilized for greater profit if the variance is granted is not grounds for the granting of a variance.
- 6.03.05** No change in permitted uses may be authorized by variance.
- 6.03.06** A variance may not enlarge or expand nonconformities.
- 6.03.07** In order for a variance to be granted, the applicant must produce substantial competent and credible evidence to show, and the Board must conclude, the following:
- A.** Unnecessary hardship would result from the strict application of the Ordinance; however it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and
 - B.** The hardship results from conditions that are peculiar to the property such as location, size or topography; however hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and
 - C.** The hardship did not result from actions taken by the applicant or the property owner however the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - D.** The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.
- 6.03.08** In granting variances, the Board may impose appropriate conditions reasonably related to the condition or circumstance that give rise to the variance and which will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.
- 6.03.09** A variance may be granted for a limited or indefinite duration.
- 6.03.10** **Water Supply Watershed Variances**
- A.** Before a Water Supply Watershed Variance is heard by the Board, the Administrator shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption.
 - 1. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Administrator prior to a decision by the Watershed Review Board, which for this purpose shall be the Board of Adjustment. Such comments shall become a part of the record.
 - 2. In considering the decision whether to recommend that a major variance from the requirements of Article 29 be granted, the Board shall apply the criteria of Subsection 6.03.07.

3. The Board may place appropriate conditions on the recommended approval of the major variance but they must be reasonably related to the variance.
- B.** If the Board recommends that a major variance be granted, the Administrator shall promptly prepare a preliminary record of the hearing and transmit it to the North Carolina Environmental Management Commission, (hereafter “EMC”) for its consideration. The preliminary record shall include:
1. The variance application; and
 2. The hearing notices; and
 3. The evidence presented; and
 4. Motions, offers of proof, objections to evidence, and rulings on them; and
 5. Proposed findings and exceptions; and,
 6. The proposed decision, including all recommended conditions to be added to the permit. Proposed conditions should be appropriate and reasonably related to the variance.
- C.** The Board shall take final action in accordance with the decision by the EMC:
1. If the EMC approves the variance as proposed, the Administrator shall prepare a final decision granting the recommended major variance and the Board shall adopt the decision at its next meeting.
 2. If the EMC approves the variance but makes modifications to the recommended major variance, the Administrator shall prepare a final decision, in accordance with the action of the EMC, and the Board shall adopt the modified decision at its next meeting.
 3. In the EMC denies the recommend major variance the Administrator shall prepare a final decision in accordance denying the major variance, and the Board shall adopt the denial at its next meeting.

6.03.11 Special Flood Hazard Area Variance

- A.** A Special Flood Hazard Area variances may be issued for:
1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 2. Functionally dependent facilities if determined to meet the definition as stated in Article 34, provided such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 3. Any other requirements of Article 30.

B. Limitations on Variances:

1. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or Ordinances.
2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued prior to development permit approval.
5. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

C. A written report addressing each of the factors in 6.03.11(D) shall be submitted by the applicant with the application for a variance.

D. The Board shall consider all technical evaluations, all relevant factors, all standards specified in other Sections of Article 30, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location as a functionally dependent facility, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

- E. Upon consideration of the factors listed in Subsection 6.03.11(D) and the purposes of this Article 30 Flood Damage Prevention, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of Article 30.
- F. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- G. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

6.03.12 Voting: The adoption of each conclusion of law under Subsection 6.03.07 and the granting of a variance shall require a four-fifths vote of the Board. Should any conclusion of law receive less than a four-fifths vote, the variance shall be denied.

6.03.13 Variances shall be recorded at the office of the Watauga County Register of Deeds.

(Ord. PL02335-030719, 05-09-2019)

4.23 Appeal of Administrative Decision

6.04.01 The Board shall hear and decide appeals from decisions of administrative officials charged with enforcement of the ordinance. For purposes of this Section a "decision" includes any final and binding order, requirement, or determination.

6.04.02 An appeal of an administrative decision is initiated by a person timely filing an Appeal to Administrative Decision application, in accordance with Article 4, accompanied by the required fee.

- A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed.
 2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.
 3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.
 4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.
 5. A person who was the applicant for the decision in question.
 6. Any other person who will suffer special damages as the result of the decision being appealed.
 7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
 8. The Town.
- B.** An appeal of an administrative decision, including the imposition of penalties, must be taken within thirty (30) days after the date of the receipt of the notice of the decision in the case of the owner or the applicant, or thirty (30) from actual or constructive notice by any other person with standing to appeal.
1. The date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail by the Administrator, with proper postage affixed, and addressed in accordance with the provisions of Section 1.13 except that an earlier date can be established by a return receipt for a certified mail notice. The date of receipt of an email is the date of transmission.
 2. Constructive notice shall include, but shall not be limited to, any visible signs of the initiation of construction work on a site.

3. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches (6") high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Any such posting shall be the responsibility of the landowner or applicant, and verification of the posting shall be provided to the official who made the decision. Posting of signs however is not required.

C. An appeal is taken by filing a notice of appeal with the Town Clerk on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient to allow for a thorough understanding by the Board of the decision appealed.

D. The Clerk shall stamp the appeal with the date received and shall promptly transmit it to the Administrator. The Clerk shall maintain a chronological log of the appeals which are filed.

6.04.03 Once the appeal has been filed, the Administrator shall schedule a public hearing at the first available Board meeting and give public notice in accordance with Subsection 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

6.04.04 Appeal Stays Enforcement Action:

A. An appeal of a decision of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:

1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or
2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance.

B. The appellant shall be notified of the Administrator's certification.

C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.

1. The Board shall meet to hear the appeal within fifteen (15) days after such a request is filed.

E. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

6.04.05 Deviations from Matters Presented in Notice of Appeal: The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

6.04.06 Scope of Hearing: The hearing shall be based on the record below and the scope of review shall be as follows:

A. The Board shall ensure that the rights of the appellant have not been prejudiced because the Administrator's findings, inferences, conclusions, or decisions were:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the statutory authority conferred upon the Town by ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. When the issue before the Board is whether the Administrator erred in interpreting an ordinance, the Board shall review that issue de novo. The Board shall consider the interpretation of the Administrator, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

6.04.07 The parties to an appeal that has been made under this Section may agree to mediation or other forms of alternative dispute resolution. If all parties confirm they wish to engage in alternative dispute resolution, the Board shall adjourn the hearing to give them a reasonable opportunity to do so.

6.04.08 Decision

- A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Administrator who made the decision.
- B. When hearing an appeal regarding the amount of a civil penalty, the Board shall consider the following, to the extent relevant, in addition to such other circumstances as the Board deems relevant:
 - 1. The timing and effectiveness of any action taken by the appellant to remedy the situation;
 - 2. The cost of the action required to remedy the violation;
 - 3. The timeframe of any previous violation and the similarity of the previous violation to the current violation committed by the appellant; and
 - 4. Penalties incurred as a result of delay in the appellant's obtaining a determination with respect to the violation as a result of the Board's meeting schedule.
- C. The Board may reduce the penalty imposed if it determines:
 - 1. That the appellant has acted in good faith; and
 - 2. That the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control; or
 - 3. That there are other circumstances which make the amount of the presumptive civil penalty unfair in that particular case.

(Ord. PL01810-082218, 10-16-2018)

6.04.09 Voting: The decision shall be by majority vote.

4.24 Appeal of Decisions of the Historic Preservation Commissions

6.05.01 The Board shall hear and decide appeals of any decision by the Historic Preservation Commission granting or denying a Certificate of Appropriateness.

6.05.02 An appeal is initiated by a person timely filing a Notice of Appeal, in accordance with Article 4, accompanied by the required fee.

- A. An appeal may be filed by any of the following:
 - 1. A person who has an ownership interest in the property that is the subject of the decision being appealed.
 - 2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.
 - 3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.

4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.
5. A person who was the applicant for the decision in question.
6. Any other person who will suffer special damages as the result of the decision being appealed.
7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
8. The Town.

B. An appeal must be taken within thirty (30) days after decision by the Commission.

C. An appeal is taken by filing a notice of appeal with the Administrator on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient information to allow for a thorough review by the Board.

D. The Administrator shall stamp the appeal with the date received

6.05.03 Once the application has been filed, the Administrator must schedule a public hearing at the first available Board meeting and give public notice in accordance with Section 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant.

6.05.04 **Appeal Stays Commission Decision:**

A. A decision by the Historic Preservation Commission granting a Certificate of Appropriateness shall be stayed while the appeal is pending.

6.05.05 **Burden of Proof:** The burden of proof and burden of persuasion shall be on the party appealing the decision of the Commission.

6.05.06 **Scope of Action:** An appeal of a Commission decision shall be in the nature of certiorari. The hearing shall be based on the Commission record and the scope of review shall be as follows:

A. The Board shall uphold the decision of the Commission unless it finds the decision is:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the authority conferred upon the Commission by statute or ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. The term "competent evidence," as used in this Section, shall not preclude reliance by the Commission on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if the evidence appears to be sufficiently trustworthy and was obtained under such circumstances that it was reasonable for the Commission to rely upon it.

6.05.07 Board Action

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Commission which made the decision.

Article 7 Nonconformities

7.01 General Regulations

7.01.01 Scope: The regulations of this Article govern lots, uses, structures, signs and other aspects of development that came into existence lawfully but do not conform to one or more requirements of this Ordinance. A "nonconformity" as used herein, must always have been legally created or as result of an acquisition pursuant to Section 7.02.

7.01.02 Continuance: A nonconformity may be continued, enlarged or modified only in accordance with the provisions of this Article.

7.01.03 Classification of Nonconformities: Nonconformities are divided into the following categories:

- A.** Nonconforming Use
- B.** Nonconforming Lot
- C.** Nonconforming Sign
- D.** Nonconforming Situation

- 7.01.04 Determination of Nonconforming Status:** The burden of establishing a legal nonconformity shall be solely upon the owner of such nonconformity.
- 7.01.05 Duration:** Except as provided hereafter, a nonconformity runs with the land.
- 7.01.06 Variance:** Where a variance or an insignificant deviation has been granted for a development standard or feature that does not otherwise conform to the requirements of this Ordinance, that development standard or feature shall be deemed conforming.
- 7.01.07 Financial Hardship:** Financial hardship shall not be a basis for finding that compliance with this Article is not reasonably practicable or impossible.
- 7.01.08 Determination of Practicability or Impossibility:** The Administrator shall make the final determination as to the extent compliance with the Ordinance is practicable and to the extent which it is impossible.
- 7.01.09 Contiguous Ownership:** When possible, nonconforming lots must be combined with other undeveloped lots to create conforming lots. If full compliance can be achieved with the combination of contiguous lots in single ownership or control, no reduction in any standard authorized under this Article may be applied.
- 7.01.10 Extent:** The extent or boundary of any nonconformity shall be based upon its condition, extent or location at the time it became nonconforming.
- A.** With respect to uses of open land, such as mining, in which a permit has been obtained from the State of North Carolina and the activity pursuant thereto has commenced prior to the time the use became nonconforming, the extent or boundary or the nonconformity shall be considered the limits of land authorized for mining pursuant to the permit.
- 7.02 Nonconformities Created by Public Acquisition**
- 7.02.01** A structure, situation or lot of record that is rendered nonconforming as a result of acquisition of a portion of the lot by an entity authorized and for the purposes described N.C. Gen. Stat. § 40A-3 shall be considered conforming only through a receipt of a Certificate of Conformity.
- 7.02.02** An application for a Certificate of Conformity shall be processed pursuant to Article 4 and shall include:
- A.** A legal description of the land subject to the public acquisition; and
 - B.** The name and address of the owner of the land; and
 - C.** The name and address of the acquiring entity and its representative; and
 - D.** Proof of the public acquisition proceeding; and

- E. A certified as-built survey, no greater than one year old, of the development subject to the acquisition proceeding. The survey must demonstrate:
 - 1. The boundaries of the acquisition, and
 - 2. All structures, including parking, and any other relevant development features.
 and
- F. A site plan, in compliance with Appendix A, indicating the post-acquisition development.

7.02.03 The Certificate of Conformity shall be issued if the following standards are met:

- A. The site plan is designed for the development, consistent with the use requirements, which minimizes to the greatest degree practicable any nonconformities including but not limited to: lot dimensions, parking, landscaping, stormwater infrastructure, lighting, and pedestrian infrastructure.
- B. The development can function adequately for the use.
- C. If a change of use is proposed, it is approved by the appropriate permit issuing authority; provided, a new nonconforming use may not be allowed.

7.03 Nonconforming Use

7.03.01 A nonconforming use may continue indefinitely unless discontinued as described in Section 7.03.05.

7.03.02 Extension or Enlargement of a Nonconforming Use:

- A. No increase in the volume, frequency or intensity of a nonconforming use is allowed.
- B. A nonconforming use may not be expanded, enlarged, or extended to occupy a greater area of land or floor area.
 - 1. A single-family dwelling (Use 1.01) may expand floor area of a principal structure but may not expand the footprint.
- C. A nonconforming use may not be relocated, in whole or in part, to another portion of the subject lot.

7.03.03 Repair, Maintenance, and Change in Equipment:

- A. Normal repair and maintenance may be performed to allow the continuation of a nonconforming use.
- B. A change in equipment may be allowed as long as it does not result in an increase or expansion of activity.

7.03.04 Change of Use:

- A. Any change of use may only be to a permissible use.

- B. A change of use for an existing development which does not trigger transitional zone standards to a use which does trigger transitional zone standards may only be initiated by a special use permit or a Conditional District zoning map amendment.
- C. All other changes of use that do not involve any new development do not require increased compliance with current Ordinance standards.
- D. All changes of use that involves new development are governed by Section 7.05.

7.03.05 Discontinuance of Nonconforming Use:

- A. A nonconforming use that ceases operations for any reason for a period of 180 days within any twelve (12) month time period may not be reestablished. Any subsequent use of such land must be a permitted use. However, when a use is involuntarily discontinued because an essential structure is destroyed or damaged by fire, flood, wind, other act of God, the use shall not be considered discontinued so long as a building permit for the repair or restoration is issued within six (6) months and the use is resumed within twelve (12) months of the date the permit is issued. For nonconforming structures see Section 7.05.
- B. Discontinuance of one nonconforming use in a development containing multiple principal nonconforming uses does not affect the right to maintain remaining nonconforming uses.
- C. A use that is accessory to a principal nonconforming use may not be continued after the principal use has been discontinued, unless the use is also permissible as a principal use.

(Ord. 20150028, 11-19-2015; Ord. PL01265-011618, 03-22-2018)

7.04 Nonconforming Lot of Record

7.04.01 A nonconforming lot of record can generally be used as proposed as if it were conforming.

- A. When a use is proposed which requires a greater lot size than the minimum established for the district the use may not be approved.

7.04.02 The development plan for a nonconforming lot of record must be consistent with all use requirements, and must minimize the impacts of any existing nonconformity to the greatest degree practicable. No new nonconformity may be created.

7.04.03 Setbacks: Notwithstanding Subsection 7.03.02, no required setback may be reduced without the following findings by the permit issuing authority:

- A. The lot cannot be developed for a permissible use without such deviation.
- B. No significant adverse impact on surrounding properties or the public health or safety will result from the proposed development.

- C. A proposed single-family dwelling (Use 1.01), conforming in all other respects except for area or width, which cannot meet the applicable minimum setbacks, may be approved with the following limitation: Absent a variance, there may be no reduction greater than fifty percent (50%) of a setback and the dwelling must be at least ten feet (10') from all other structures on an adjacent lot.
- D. For all other developments which cannot meet the applicable minimum setbacks, absent a variance, there may no reduction greater than twenty percent (20%).

7.04.04 This Section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structure upon it.

7.05 Nonconforming Situation

7.05.01 Alteration of a Nonconforming Situation:

- A. Subject to Subsection 7.05.03, a nonconforming structure may be altered so long as no new nonconformity is created nor existing nonconformity increased.

7.05.02 Development which requires compliance with UDO:

- A. Cost of development as referenced herein shall be measured by adding together the costs incurred in all development activity as proposed, together with the development activity other than normal maintenance and repair that has been permitted within the prior thirty-six (36) months.
- B. All new structures or portions of structures must comply with all Ordinance requirements to the extent reasonably practicable. However, when a structure is destroyed or damaged by fire, flood, wind, other act of God, the structure may be repaired or restored to its original dimensions and conditions as long as the structure is not located in a Floodway or Special Flood Hazard Area and a building permit for the repair or restoration is issued within six (6) months and the structure is occupied within twelve (12) months of the date the permit is issued. A nonconforming structure damaged by other cause to such extent that repair, reconstruction or restoration is expected to cost more than fifty percent (50%) of the total value of the structure, must be removed.
- C. Compliance of existing development with the requirements of the Ordinance shall be triggered by the costs of proposed new development in accordance with the following tiers. The Administrator may require certification of the new development by a competent professional. The following tiers are cumulative in effect:
 - 1. **Tier 1:** Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed ten percent (10%) of the value of the development shall require compliance with the following, to the extent practicable:
 - a. Bicycle parking in accordance with Section 24.08.

- b. Lighting in accordance with Section 25.05.
- 2. **Tier 2:** Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed twenty-five percent (25%) of the value of the development shall require compliance with the following, to the extent practicable:
 - a. Solid waste and recycling containers pursuant to Section 22.13.
 - b. Signs pursuant to Article 26.
 - c. Color requirements in accordance with Subsection 25.02.05.
 - d. Landscape Standards pursuant to, with a priority given to shade tree installation.
- 3. **Tier 3:** Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed fifty percent (50%) of the value of the development, or in the case of a structure located in a Floodway or Special Flood Hazard Area in which the cost exceeds fifty percent (50%) of the value of the structure, shall require compliance with the following, to the extent practicable:
 - a. Drainage and stormwater requirements pursuant to Article 21.
 - b. Pedestrian circulation and sidewalk requirements pursuant to Section 23.08.
 - c. Parking requirements pursuant to Article 24.
 - d. All other Community Appearance requirements of Article 25.
 - e. Corridor District requirements pursuant to Article 14.
 - f. Special Flood Hazard Area compliance pursuant to Article 31.
- 4. **Tier 4:** Repair, 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.

7.05.03 Discontinuance of Nonconforming Structure:

- A.** A nonconforming building that is unused for any reason other than destruction by an act of God (which is governed by Subsection 7.05.02(B)), for a continuous period of twenty-four (24) months may no longer be used unless in compliance with all Ordinance requirements to the extent practicable.
- B.** A nonconforming structure, other than a building, which is the principal structure on a lot, which is unused for a continuous period of six (6) months, may no longer be used except in compliance with all Ordinance requirements to the extent practicable.
- C.** A nonconforming structure which is in such a state of disrepair or neglect so as to no longer function as intended may no longer be used and must be removed.

- D. Discontinuance of one nonconforming structure in a development containing multiple principal nonconforming structures does not affect the right to maintain remaining nonconforming structures.

(Ord. PL00258-020917, 04-20-2017)

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Article 9 Amendments

9.01 Amendments in General

- 9.01.01 Amendments to the text of this Ordinance (hereafter, “the UDO”) or to the Town’s officially adopted zoning map shall be made in accordance with the provisions of this Article.

9.02 Initiation of Amendments

9.02.01 Text and Map Amendment

A. Citizen/Property Owner Requests.

1. **Text Amendments.** Any person may request that Council set a proposed text amendment for consideration at the next available public hearing. The petition shall be filed with the Administrator and shall include at a minimum: (i) the name, address, and phone number of the applicant, and (ii) a summary of the specific objective of any proposed change in the text of this Ordinance. Such request shall be scheduled for consideration at the next available regularly scheduled Council meeting.

The Administrator may, in his or her discretion, prepare a written analysis of the proposed text amendment to assist Council in consideration of whether to forward the amendment for public hearing. Any such analysis by the Administrator shall address the conformity of the proposed amendment with the Comprehensive Plan and other officially adopted plans of the town, as well as such other matters as the Administrator deems relevant.

2. **Map Amendments.** Except as provided at subsection (C), ~~A~~any person may petition for a map amendment by submitting the required fee and a petition in such form and including such information as may be required by the Administrator. A completed map amendment will be set for hearing at the next available public hearing.

The petition shall be filed with the Administrator and shall include at a minimum:

- a. The name, address, and phone number of the applicant;
- b. A description of the land affected by the proposed amendment;
- c. A description of the proposed map change; and

- d. In the case of a Conditional District map amendment, those items described at Subsection 9.02.02 below.
- B. In addition to proposed amendments submitted per subsection (A) above, the drafting of proposed text amendments and consideration of any text or map amendment at a public hearing may proceed:
 - 1. Upon direction given by Council to staff either upon Council's own initiative or upon Council's consideration of a petition submitted pursuant to section (A) above; or
 - 2. Upon the initiative of the Administrator or the Town Attorney, with the concurrence of both.
- C. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall any such amendment be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the city. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land (1) by decreasing the development density of the land to be less dense than was allowed under its previous usage, or (2) by reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

9.02.02 Conditional District (CD) Map Amendments

- A. A property may be placed in a CD only in response to a petition by the owners of all property to be included.
 - 1. No State owned property may be placed in a CD without prior approval by the Council of State.
- B. The petition shall be filed with the Administrator and shall include at a minimum:
 - 1. The name, address, and phone number of the applicant,
 - 2. A description of the land affected by the proposed amendment, and
 - 3. A description of the proposed map change, and
 - 4. A ~~site-specific~~ site-specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined Ordinance requirements, will govern the development and use of the property.

9.02.03 Council Consideration of Proposed Amendments

- A. Upon consideration of a proposal to amend the UDO text or zoning map, Council may take any one or more of the following actions:
 - 1. Direct further consideration and/or development of the amendment by Staff and/or the Planning Commission,
 - 2. Authorize drafting of a proposed amendment if such has not already been drafted,

3. Set the proposed amendment for public hearing and consideration by the Planning Commission, and/or
 4. Decline to authorize further consideration of the proposed amendment.
- B.** In the event Council directs a proposed amendment to be considered at a public hearing, such hearing may be scheduled at any such date, time and location as will allow proper notice to issue in advance of the hearing.
- C.** No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed amendment to assist the Planning Commission and Council in determining the conformity of the draft amendment with this Ordinance, the Comprehensive Plan and any other officially adopted plan of the Town that relates to the proposed amendment.

9.02.04 Modification of Applications After Distribution of Agenda Packet

A. Modification of Petition Between Distribution of the Agenda Packet and the Public Hearing:

1. **Modification in Response to Administrator's Recommendation or Request:** An applicant may not significantly modify an application between the distribution of the Agenda Packet containing the Staff Report of the case and the public hearing unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.
 - a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.
 - b. If the Administrator determines that the applicant did not submit the proposed modification prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the public hearing being rescheduled until the next regularly scheduled public hearing or withdrawal of the proposed modification.
2. **Insignificant or Minor Modifications in a Petition:** An applicant may make a non-substantial modification to an application between the distribution of the Agenda Packet containing the Staff Report and the scheduled public hearing.
 - a. A proposed non-substantial modification shall be submitted to the Administrator prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to a petition during the scheduled hearing, and the Administrator indicates that adequate time exists to fully evaluate the impacts of the modification with or without a recess by the Council, the modified application may be acted upon by the Council.

- b. If the Administrator determines that the petitioner did not submit the proposed modification prior to the public hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled public hearing or withdrawal of the proposed modification.
3. **Major Modification of an Application:** A petitioner seeking to significantly modify an application between the distribution of the Agenda Packet containing the Staff Report of the case and the public hearing, whether in response to Staff recommendations or self-initiated, must file a new application.
4. **Determination as to whether a Proposed Modification is Insignificant, Minor or Major:** The Planning Director shall make the determination as to whether a modification is “insignificant”, “minor” or “major” in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the Town and is not appealable.

C. Modification of Petition In Response to Concerns & Issues Raised at the Hearing

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board an applicant may agree to modify an application, including the plans and specifications submitted.
2. Unless such modification is so substantial or extensive that the Council cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Council may approve the petition with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

(Ord. 20150028, 11-19-2015; Ord. 20150149, 05-19-2016; Ord. PL00421-041017, 05-18-2017; Ord. PL01265-011618, 03-22-2018; Ord. PL02333-030719, 05-09-2019)

9.03 Hearing Required: Conduct of Hearing; Notice of Hearing

9.03.01 Hearing Required

- A. Text, General, and Conditional District Map Amendments are a legislative processes subject to judicial review.
- B. No action that amends or repeals any of the provisions of this Ordinance may be adopted until a public hearing has been held on such.

9.03.02 Conduct of Hearing

- A. The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present.
- B. Public hearings on proposed amendments shall be conducted in accordance with the meeting schedule adopted by Council, so long as there are items for consideration.

- C. A record of the public hearing will be prepared by Staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing.
- D. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council.
- E. The Mayor or other presiding officer may, at a minimum:
 - 1. Limit the length of time for each speaker, and
 - 2. Require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons, and
 - 3. Provide for the maintenance of order and order the removal from the hearing room of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and
 - 4. Limit the number of persons in the hearing room at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hearing room.
- F. Public hearings shall be conducted as follows except as otherwise directed by Town Council:
 - 1. The applicant or other proponent of the proposed amendment shall present the requested amendment and answer questions posed by Planning Commission and Town Council members.
 - 2. Town staff (if not the proponent of the amendment) shall comment upon the proposed amendment and answer questions posed by Planning Commission and Town Council members.
 - 3. Any other persons wishing to speak on the proposed amendment shall be given an opportunity to do so and to answer questions posed by Planning Commission and Town Council members.
 - 4. The meeting shall then be opened to comment and discussion by and among Planning Commission and Town Council members, who also may in their discretion seek further information from or otherwise involve Town staff, the applicant, and any other interested persons in the discussion.
- G. Town Council and Planning Commission member shall endeavor to use the public hearing as a forum to voice and address concerns about the proposed amendment, so that each body can have the benefit of understanding the views and concerns of members of the other body.

- H. In the case of Conditional District zoning applications, Town Council and Planning Commission members shall endeavor to use the public hearing as a forum to explore possible conditions that could be placed on the proposed development with the agreement of the applicant.

9.03.03 Hearing Notice

- A. **Legal Ad:** For all amendments, the Administrator shall publish a notice of the public hearing no less than once a week for two (2) successive weeks in a newspaper having general circulation in the area.
 - 1. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing.
 - 2. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.
- B. **Adjacent Property Owner Notification:** With respect to General and Conditional District map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administration, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within 150 feet of the subject property.
 - 1. Each notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
 - 2. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator's analysis of the proposed petition to the Council and Commission.
 - a. However, if the proposed zoning map amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described above, supra, alone, but the notice must be not less than one-half a newspaper page in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.
- C. **Posting:** With respect to General and Conditional District Map Amendments, the Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.

1. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons.
2. In addition, the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.

D. Every notice required by this Section shall:

1. State the date, time, and place of the public hearing, and
2. Summarize the nature and character of the proposed change, and
3. Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification, and
4. State that the full text of the proposed amendment can be obtained from the Town Clerk, and
5. State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

(Ord. 20150028, 11-19-2015; 20160149, 05-19-2016; Ord. PL01265-011618, 03-22-2018; Ord. PL01809-08218, 10-16-2018; Ord. PL02455-041619, 06-27-2019)

9.04 Citizen Comment

- 9.04.01** If any resident or property owner in the Town submits a written statement regarding a proposed amendment, ~~modification, or repeal to a zoning~~ to thisg unified development ordinance, including a zoning map or text amendment, to the clerk to the board at least two (2) business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to Council.

(Ord. 20150028, 11-19-2015; Ord. 20160027, 05-19-2016)

9.05 Planning Commission Consideration of Proposed Amendments

- 9.05.01** A proposed amendment shall be deemed submitted to the Planning Commission for review and comment upon the holding of the public hearing on the proposed amendment as provided at Section 9.03. Following the public hearing, the Planning Commission, may proceed to consider the proposed amendment:

- A.** In that same meeting,
- B.** At its next regularly-scheduled meeting and/or
- C.** At a subsequent special meeting, so long as proper notice is given thereof.

- 9.05.02** The Planning Commission may not reopen a public hearing or hold a second public hearing except as approved by Town Council.

- 9.05.03** The Planning Commission may at any time in connection with its review and recommendation duties seek additional information from Town Staff, and such shall not be deemed the reopening or holding of a public hearing.
- 9.05.04** The Commission shall endeavor to provide a written report and written recommendation to the Council within 30 days of the public hearing. However, the Commission may apply to Council for an extension of time to submit its recommendations.
- A.** The Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan and other officially adopted plans that are applicable and whether the Commission recommends adoption of the proposed amendment.
 - B.** In its report to the Council, the Commission may comment, as it deems appropriate, on any matter related to the proposed amendment. By way of example and without limiting the foregoing, in the case of a proposed text amendment, the Commission may propose changes to the proposed text; and in the case of a Conditional District rezoning application, the Commission may propose that one or more conditions be requested by Council.
- 9.05.05** Rather than or in addition to making its written report, the Commission may recommend to Council that a second public hearing be held on the amendment in order to gather additional public comment or other information. Such a request shall not, however, preclude the Council from acting on the amendment once 30 days have elapsed from the initial public hearing. If Town Council approves a second public hearing, the Planning Commission shall have 30 days from the date of that second public hearing to make a written report to Town Council, and the Town Council shall not act on the application until that 30 days has elapsed.
- 9.05.06** No member of the Commission shall participate in the discussion or vote on any recommendations regarding any amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(Ord. 20150149, 05-19-2016; Ord. PL01298-02022018, 04-19-2018; Ord. PL02455-041619, 06-27-2019)

9.06 Council Action on Amendments

9.06.01 Council Action After Referral to the Commission:

- A.** At any meeting following the receipt of a written report and recommendation from the Commission or after thirty (30) days following the public hearing on a proposed amendment if the Commission fails to submit a written report, the Council may proceed with its consideration of the proposed amendment. Council may:
 1. Adopt the proposed amendment; or

2. Adopt the proposed amendment with modifications; or
 3. Reject the proposed amendment; or
 4. Continue its consideration of the amendment to a later meeting date; or
 5. Refer the proposed amendment back to Staff and/or the Planning Commission for such further consideration as Council may direct, including but not limited to a second public hearing.
- B.** The Council should endeavor to take action no later than sixty (60) days after the Commission submits its written recommendation.
 - C.** A comment by the Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council.
 - D.** The Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected.
 - E.** In the event Council fails to act on a proposed amendment within ninety (90) days of submission of the Commission's recommendation, such action shall be deemed a denial of the proposed amendment.

9.06.02 When adopting or rejecting any UDO text or map amendment, the Council shall adopt a statement describing whether its action is consistent with the Comprehensive Plan and other officially adopted plan that is applicable and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

9.06.03 A proposed amendment submitted by an applicant may be withdrawn by the applicant at any time prior to final Town Council action on the application.

- A.** If an applicant fails to pursue the application for a period of six (6) months thereafter, the application shall be deemed to have expired.

(Ord. 20150149, 05-19-16; Ord. 20160149-05192016: Ord. PL01298-02022018, 04-19-2018; Ord. PL02455-041619, 06-27-2019)

9.07 Ultimate Issue Before Council on Amendments

9.07.01 In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Council is whether the proposed amendment advances the public health, safety, or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and be excluded. In particular, when considering proposed general use map amendments:

- A. The Council shall not consider any representations made by the petitioner that if the change is granted the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- B. The Council shall only consider the impact of the proposed change on the public at large.

9.08 Action Subsequent to Council Decision

- 9.08.01 The Administrator shall notify the petitioner of the disposition of the amendment petition and file a copy of the decision in the office of the Planning and Inspections Department.
- 9.08.02 Any amendments pertaining to watershed protection must be filed with the North Carolina Division of Water Quality, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.
- 9.08.03 In the case of approval of an amendment, all necessary changes to the Ordinance or zoning map shall be entered within fifteen (15) working days of the effective date of the amendment. The Administrator shall authenticate the entry of each amendment and shall maintain a record of the nature and date of the amendment.

9.09 Conditional Districts (CD)

- 9.09.01 The authorization of a Conditional District ("CD") for any use which is permitted only as a special use in the zoning district which corresponds to the conditional district shall preclude any requirement for obtaining a special use permit for any such use from the Board of Adjustment.
- 9.09.02 All variances proposed by the petitioner must be obtained from the Board prior to the scheduling of the public hearing for the CD.
- 9.09.03 **Transitional Zones.** Any proposed CD development within a transitional zone is subject to the standards and requirements of 6.02.02 herein.
- 9.09.04 Specific conditions applicable to a CD may be proposed by the applicant or the Town or its agencies, but only those conditions mutually agreed upon by the Town and the applicant may be incorporated into the permit requirements.
 - A. Conditions and site-specific standards imposed in a CD shall be limited to those that address the conformance of the development and use of the site to Town Ordinances and the comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

1. Conditions imposed under this section shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by a municipality, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b); driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307; or other unauthorized limitations on the development or use of land.

~~A.~~B. Town Council members and the applicant shall endeavor to discuss and agree to conditions as part of the public hearing process provided at Section 9.03; notwithstanding the foregoing, proposed conditions may be discussed or negotiated at any time that Town Council is considering the proposed application.

~~B.~~C. The applicant shall forthrightly answer any request by a Town Council member to agree to a proposed condition. Before doing so, however, the applicant may request continuance of the meeting or postponement of the applicant's response until a subsequent meeting so that the applicant may further consider the requested condition before making a response. Such request for delay in responding may be granted by a consensus of the Town Council or, there being none, majority vote. Town Council shall continue or postpone the meeting to the next available public hearing or such earlier meeting as it shall deem appropriate.

~~C.~~D. An applicant's refusal to answer a request to agree to a proposed condition shall be deemed a withdrawal of the application per Subsection 9.06.03.

~~D.~~E. After the Town has published the notice of public hearing for the application, the applicant shall make no changes to the conditions or ~~site-specific~~ site-specific standards that are less restrictive than those stated in the application, including but not limited to smaller setbacks, more dwelling units; greater height; more access ways; new uses; and fewer improvements. More restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least ten (10) business days before the date scheduled for final Town Council action on the application.

9.09.05 Changes to an approved petition or to conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning map and shall be processed as a new application.

- A. Except for a proposed minor modification to a previously approved CD, no proposal to amend or change any CD may be accepted nor considered within twelve (12) months of the date of the original approval of the CD or within twelve (12) months of a hearing upon any previous proposal to amend or change the CD.
- B. A minor modification is one which does not significantly change the essential character of the use or activity that has been previously authorized through the CD zoning approval.

- C. The Administrator shall determine whether a proposed modification to a previously approved CD is a minor modification, and the determination of the Administrator shall constitute the final decision of the Town and is not appealable.

- 9.09.06** If a petition for a CD is approved, a copy of the approval and all conditions relative to the approval, including ~~site-specific~~site-specific development plan(s), shall be kept on file in the Planning and Inspections Department office. A copy of the approval will also be recorded with the Watauga County Register of Deeds.
- 9.09.07** Should, by the end of the applicable vesting period, the property fail to develop in accordance with the terms and conditions of the CD approval, no subsequent use of the property shall be permitted without a new petition for zoning map amendment being filed.
- 9.09.08** Should a petition for a CD be denied, then no new petition for making similar use the same property shall be considered within twelve (12) months of the date of the original denial.
- 9.09.09** If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to construct an approved ~~site-specific~~site-specific development plan in accordance with any condition agreed upon in the rezoning process, the authorization of the CD shall be null and void and of no effect and proceedings shall be instituted to rezone the property.

(Ord. 20150028, 11-19-2015; Ord. 20160178, 06-16-2016; Ord. PL02335-030719, 05-09-2019; Ord. PL02455-041619, 06-27-2019)

9.10 Reserved

(Ord. 20150028, 11-19-2015; Ord. 20160178, 06-16-2016; Ord. PL01265-011618, 03-22-2018)

9.11 Previously Approved Conditional Use Zoning Districts

- 9.11.01** Applications for amendments to the use of property currently subject to the terms and conditions of a previously approved conditional use zoning district will be processed as new conditional district applications.

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Article 12 Enforcement

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12.07 Civil Penalties

- 12.07.01** Any act constituting a violation of this Ordinance shall subject the person liable to a civil penalty per day in the amount specified below. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense. Where a per day per violation and a one-time assessment are described, both apply.

- 12.07.02** A penalty accrues from the date imposed until the date the violation is corrected ~~or the date of a court's judgment, whichever is earlier~~, except as the accumulation of penalties is stayed during appeal as provided in this section.
- 12.07.03** The penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt and may recover its court costs and attorney's fees.
- 12.07.04** The appeal of a civil penalty must be in accordance with the requirements of Article 6. The time period for appeal begins to run upon receipt of the Notice of Violation imposing the penalty. A properly filed appeal stays action by the Town to collect any civil penalty assessed and stays accrual of the penalty.
- ~~Although a properly filed appeal stays action by the Town to collect any civil penalty assessed, the penalty continues to accrue during the pendency of the appeal, and if the decision by the Board on appeal affirms the action, order, decision or determination by the Administrator, unless the penalty is modified by the Board of Adjustment in compliance with Subsection 6.04.08(B), the amount of a penalty shall be calculated as though no appeal was filed.~~
- 12.07.05** When authorized by the Town Council, this Ordinance may also be enforced by any available equitable action or proceeding(s) instituted by the Administrator or Town to prevent, restrain, correct or abate a violation of this Ordinance.

...

Article 31 Definitions

31.01 **Definitions of Basic Terms**

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this Article shall have the meaning indicated when used in this Ordinance.

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Building

Any structure ~~designed to be used as a place of occupancy, storage or shelter~~ used or intended for supporting or sheltering any use or occupancy.

...

Development

Unless the context clearly indicates otherwise, and without altering the scope of any regulatory authority granted by statute or local act, the term means any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.

c. The subdivision of land as defined in ~~G.S. 1690-376 [to be 160D-8-2]~~ G.S. 160D-802.

d. The initiation of or substantial change in the use of land or the intensity of use of land. ~~The use or occupancy of any land or structure, or the construction, erection, alteration or moving of any structure.~~

...

Dwelling

Dwelling. - Any building, structure, manufactured home, or mobile home, or part thereof, used, intended or designed to be used, rented, leased, let or hired out to be occupied for human habitation, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. ~~Any building or structure that is or is intended to be used for living or sleeping by one or more human occupants.~~

...

Dwelling Unit

~~A room or group of rooms within a dwelling forming a single independent habitable unit~~ providing complete, containing living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. ~~independent kitchen, sanitary, and sleeping facilities; and provided such dwelling unit complies with Boone's Minimum Housing Code.~~

...

SECTION 2: This Ordinance shall be effective upon the date it is adopted by Town Council.

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.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

Mass Transit: Enhance and support the mass transit system as an effective alternative to the congestion created by the individual automobile.

Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

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

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.

2.3 THE COMMUNITY

...

2.3.4 Public Involvement

- A. Public involvement shall be encouraged in decisions concerning land use and development by making the public aware of proposed developments at the earliest opportunity, as well as fostering communication among developers, the Town, the County, the University, and the general public.
 - A.1 Offer continued support to the recently created Community Council. A number of appropriate issues for consideration by the committee are included among these implementation actions.
 - A.2 Maintain and update a mailing list of architects, engineers, surveyors, landscape architects, realtors, builders, developers and contractors for notification and distribution of changes in Town policies and regulations.
 - A.3 Encourage periodic articles in all available media outlets about land use decisions, how they are advertised, and how they are made. Continue school presentations by Town planning staff to explain land use and how it affects each citizen.
 - A.4 Post all zoning change requests, special use and variance requests to the Town of Boone web site with date of application and date of impending and completed actions. Explore the possibility of providing links to the Town web site from local newspaper online editions in which the Town posts public notices.
- B. Neighborhood and special area planning shall be encouraged to foster public involvement in the production of closely tailored, action oriented special area plans and programs.
 - B.1 Prepare at least two small area or neighborhood plans within the year.
- C. Specific functional plans and implementation tools shall be supported as part of the comprehensive planning program for the Town and County.
- D. Special committees, advisory panels, educational forums, public workshops, leadership seminars, town meetings and media contacts shall be encouraged and fostered to enhance the effectiveness of citizen involvement in community planning and action.
 - D.1 Hold an annual Town Meeting to hear citizen concerns about growth and development and the progress made. In addition to the annual Town Meetings, consider special workshops, open houses and a newsletter or annual report to keep citizens involved and informed about the future of the town and the action being taken.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: 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 *[describe elements of controlling land use plans and how the amendment is or is not consistent]*:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment to the Town's Zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: 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 is applicable because *[describe elements of controlling land use plan(s) and how the amendment is or is not consistent]*:

Second Motion and Vote: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

**PLANNING COMMISSION MEETING MINUTES
MONDAY, FEBRUARY 22, 2021, 6:00 P.M.
VIA WEBEX SOFTWARE**

PLANNING COMMISSION MEMBERS PRESENT: Elizabeth Shay-Chair, Eric Plaag-Vice Chair, Chris Behrend, John Tippet, Frank Veno, and Adam Zebzda

HISTORIC PRESERVATION COMMISSION MEMBERS PRESENT: Phoebe Pollitt

COMMUNITY APPEARANCE COMMISSION MEMBERS PRESENT: Margaret Trumpower, Sarah Davis Cagle, and Brian Williams

TOWN COUNCIL MEMBERS PRESENT: Rennie Brantz-Mayor, Connie Ulmer-Mayor Pro Tem, Sam Furguele, Nancy LaPlaca, Virginia Roseman, and Dustin Hicks

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Mike James-Senior Planner, Brian Johnson-Urban Design Specialist, and Brenda Henson-Board Secretary

OTHER TOWN STAFF AND REPRESENTATIVES PRESENT: John Ward-Town Manager, Lane Moody-DBDA Director, and Matt McGregor-Planning Intern

OTHER ATTENDEES/PARTICIPANTS VIA WEBEX: Kayla Lasure

Call to Order

Chair Shay called the Planning Commission meeting, held via WebEx, to order at 6:03 p.m.

Public Comment

Ms. Shook stated that no one had signed up for public comment.

Approval of Meeting Minutes

Commission Member Behrend made a motion to approve the February 1, 2021 Planning Commission meeting minutes. The motion was seconded by Vice Chair Plaag.

Vote: Aye – All
Nay – None

The motion passed.

Downtown Planning Projects

Ms. Shook welcomed everyone and introduced those that were present. She noted that the Community Appearance Commission and the Historic Preservation Commission had been working on their respective Downtown planning projects for many years and they were at a point where they were ready to bring them to the Planning Commission for review and comment. Ms. Shook explained that the B1 Expansion and the Downtown Boone Local Historic District were two separate projects that happened to occur in the same area.

Ms. Shook stated that the B1 Expansion created separate design guidelines for Downtown than the guidelines for the rest of the town. She stated that two districts were being proposed for Downtown; the B1 Downtown Core, and the B1 Downtown Interface. This proposal would expand the area that people traditionally consider the Downtown area to encompass property from Greasy Corner to the Poplar Grove Connector. Ms. Shook explained that this project would require revisions to the UDO to create standards for both new B1 districts. She stated that, with this change, they would also be taking the opportunity to create a separate article for each zoning district that would have all the use and district intensities specific to that zoning district and create comparative tables placed at the end of the UDO. Ms. Shook noted that

the B1 Expansion would involve both UDO text and zoning map amendments, where approximately 254 parcels in the Downtown area were affected.

Mr. Johnson noted the CAC standards were adopted in 2006 and, upon review, it became apparent that the Downtown needed different standards. He stated that they were basically looking to create a new Downtown boundary. Mr. Johnson explained that the regulations in the Downtown Core and the Downtown Interface were intended to preserve and maintain a small town, High Country atmosphere, preserve the adaptive reuse of existing historic buildings, require new construction to be appropriately scaled to be sympathetic to the existing built environment, reinforce the character of Downtown as a pedestrian friendly area, and encourage architectural solutions that were visually interesting and compatible to the scale and character of the surrounding area.

Mr. Johnson stated that the B1 Downtown Core would be the center of the Downtown area and contained the greatest concentration of historic commercial buildings. He noted it was the intent for the Core district to align closely with the Historic Preservation Commission's proposed district so there was not a lot of overlap or confusion between the two districts. Mr. Johnson stated the B1 Downtown Core district would establish a continuous building facade at the street frontage to strengthen the identity of Downtown as a pedestrian destination through careful selection of building materials, human scale design, and ground floor fenestration. He noted that the intent of the Downtown Interface area was to allow some flexibility outside of the Core district and provide a transition into Downtown, while being sensitive to issues of compatibility with the Downtown area. Mr. Johnson referenced the project area map contained in the meeting packet and pointed out the Core and Interface areas. Flexibility in landscaping and wider setbacks on streets were proposed in the Downtown Interface area. Mr. Johnson stated there were a few properties that would not be included in the B1 districts and would be zoned R1A.

Ms. Shook stated there were 254 parcels that would be zoned either B1 Downtown Core or B1 Downtown Interface. She noted there were some residential properties along Straight Street that were identified by previous Council planning efforts to be rezoned as R1A. Ms. Shook stated these properties were currently zoned B1. She noted several other properties that were proposed to be zoned residential.

Ms. Shook then presented the Downtown Boone Local Historic District information. She stated this would be an overlay district whose standards would overlap one or more general use districts and contain standards in addition to the general use district zoning standards that lie below. Where requirements conflict, the overlay district standards would supersede the general use district standards. Ms. Shook explained that the creation of the Local Historic District required a comprehensive architectural survey of Downtown Boone as well as a designation report and the district area would involve approximately 120 parcels in the Downtown area.

Vice Chair Plaag, speaking as the Chair of the Historic Preservation Commission, stated the process to develop the Downtown Boone Local Historic District started in 2011 and he provided some background on the process. He explained that the comprehensive architectural survey included photographing all of the buildings in the survey area and researching the history of each building, including the ways in which the buildings had changed over time. Vice Chair Plaag stated they chose to do a really comprehensive history of each building that got into the minutiae of how the buildings had changed over time, who the tenants had been, etc. so that it would create a better research survey than what you would normally see in survey projects. Vice Chair Plaag stated that the survey report was not a legally binding document but the designation report was legally binding in relationship to the zoning overlay. He explained that the designation report required Town Attorney review and State Historic Preservation Office review, which were both currently in progress. Vice Chair Plaag stated that once the designation report was approved, Town Council could officially designate a historic district. He noted that the next step was to create a set of specific design standards for the district which outlined how property owners should handle the various

architectural components of their historic properties, as well as any historic landscapes that might be located within the district.

Vice Chair Plaag stated that the design standards being proposed would take precedence over the design standards in the B1 Core and B1 Interface if the overlay is adopted. He noted that the suggested boundaries for the district had to be cohesive in order to meet the State Historic Preservation Commission's standards.

Ms. Shook reiterated that the Local Historic District overlay was a project but would work together with the B1 Core and B1 Interface to create the final products. She referred to the story maps of each property that contained parcel specific analyses, which could be used as an introductory tool when making a presentation of the projects to the public. Ms. Shook suggested the creation of a website and recording a presentation to put on this website with some q&a or some other information on there.

Ms. Shook suggested scheduling a special Planning Commission meeting so that PC could give initial comments to Planning staff and once that took place they could invite everyone back together or invite just HPC and CAC committee chairs and vice chairs, to answer any questions. Any changes would be taken back to Council and then public input meetings could be scheduled. Ms. Shook explained that all of this would need to take place before going to public hearing.

Council Member Furgieuele asked about the overlap between the Historic District and the Downtown Core and why there might be usefulness despite the fact that they were very close to the same borders. Ms. Shook replied that Council authorized the HPC chair and the CAC chair to meet with staff to discuss the potential boundaries and there was consideration of expanding the Historic District overlay, especially in the area along Hippy Hill. Through that discussion it was determined that the Historic District boundaries would have to be different based upon whether or not a property had contributing factors that would qualify for historic distinction. Ms. Shook stated that some people felt there might be confusion if the Historic District overlay did not match the underlying zoning of the Core, but she noted there were other overlays within the Town of Boone, such as the Corridor District overlay, the Special Flood Hazard overlay, the Watershed overlay, and the Viewshed Protection overlay, and none of those overlays actually coincided completely with the general use zone of the parcels underneath.

Council Member Furgieuele stated the borders of an Historic District could be amended but it would be unlikely once the district had been established that it would ever happen. He stated that, in the future, there may be areas that would naturally become part of the Downtown Core and that could happen without having to go through the much more difficult and extended process of expanding the Historic District.

Council Member Roseman asked about the possibility of making the neighborhood behind the proposed Historic District its own Historic District. Ms. Shook replied that the neighborhood was not being considered in the current proposal but was on the list for HPC to look at.

Vice Chair Plaag added that the guidance from the North Carolina State Historic Preservation Office was to essentially hold those properties on Hippy Hill for inclusion in a possible future district that would encompass the Grand Boulevard area, Daniel Boone Park, and a couple of other historic subdivisions that get into Cherry Drive.

Ms. Shook noted there had been some concern about preservation outside of the Historic District and stated there was an opportunity to do this through an Historic Landmark Designation, which was different than a district. Vice Chair Plaag added that they may possibly consider a Landmark Designation for the Rivers' House. He explained that it was outside of the Historic District but it was on the radar for Historic Designation and historic protection. He noted that three properties had already been designated as Historic Landmarks; the Downtown Boone Post Office, the Linney House, and the Linney Law Office. Vice Chair Plaag stated that the Jones house was also being considered for Landmark designation. He noted

that with individual property designations or Landmark designations there was a property tax deferment of 50% which meant that the town would be looking at a loss of tax revenue when that happened.

Council Member LaPlaca asked if the tax deferment was permanent. Vice Chair Plaag replied that nothing was permanent. He stated he did not completely understand the logistics of how it worked but stated, in order to receive the tax deferment, the owner of that designated property committed to preserving the character defining elements of the property or the historical context for that property. However, there was a penalty mechanism where the Town could say the property owner did not preserve the character defining elements and the property owner would have to pay the deferred taxes for some period of time.

Council Member Roseman asked if a property was proposing to build or be revamped would they have to change their planning to be appropriate for the current standard. Ms. Shook replied that, if adopted, any change to the exterior of the property would have to be reviewed from a zoning perspective and the Certificate of Appropriateness perspective and those changes would have to be consistent with whatever standards were adopted. She explained that minor changes could be signed off on by staff but more significant changes would go to the Historic Preservation Commission for review. Ms. Shook stated there was a minor process and a major process and those were outlined in the draft document of Design Guidelines.

Commission Member Veno stated he would put a priority on public input but was curious how that would work during the pandemic. Ms. Shook replied that there were concerns about not being able to have the traditional processes of meetings in Council Chambers where people could come in at their own time, but she did not think it was impossible to make something work. She felt that some people might be satisfied with just reviewing online content while some might want individual appointments. Ms. Shook stated that one idea was to have staff dedicate certain days for scheduled appointments with property owners or community members who wanted to know more about how these changes might impact them. She felt there were a variety of options that would ensure they were being transparent. Ms. Shook suggested there could be comment and public information forms on the website that could be submitted online. Ms. Shook noted there was a Planning Commission meeting in March that would have a text amendment regarding Session Law 2019-111 and she was sure how long that would take to go over. She stated they could add discussion of the Downtown Projects to the agenda or schedule a special meeting just to discuss this topic.

Mr. Ward stated he wanted to make sure they had the financial resources available for advertising. Ms. Shook replied that dates had not been finalized and they were trying to get the Planning Commission meeting scheduled so they could give their initial feedback before trying to figure out how to do public input meetings. Ms. Shook stated that after all the public input was received they would make decisions and hoped to have a conclusion to the Downtown Projects by the summer. She explained that one of the options was to have a discussion of the Downtown Projects at the regular March 22 meeting, in addition to the one text amendment item that was currently on the agenda. Ms. Shook stated if they could get comments back from the Planning Commission prior to the March Council meetings, Council could then have discussions on when to set up public input meetings and the framework of those public input meetings.

Vice Chair Plaag stated this process had dragged on for a long time and he did not want to lose momentum. He stated he would be in favor of a special meeting of the Planning Commission to discuss the Downtown Projects and invite the Chair and Vice Chair from CAC and HPC to attend to answer any questions.

Chair Shay asked Vice Chair Plaag to lead the discussion while she stepped away from the meeting for a few moments.

Possible meeting dates for a special Planning Commission meeting were discussed.

Chair Shay rejoined the meeting. Vice Chair Plaag explained that three dates had been mentioned; March 8 which Commission Member Zezda could not attend, March 12 which worked for everyone, and March 15 which did not allow time for Planning Commission's input to be given to Town Council before their meeting on March 16. Chair Shay replied that all of those dates worked for her so it sounded like Friday, the 12th was the date that should be chosen for the special Planning Commission meeting. Ms. Shook asked if there was interest in meeting earlier than 6 p.m. and Commission members agreed to meet at 5 p.m.

Adjournment

Commission Member Behrend made a motion to adjourn the meeting at 7:37 p.m. The motion was seconded by Vice Chair Plaag.

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

Elizabeth Shay, Planning Commission Chair

Brenda Henson, Board Secretary