

**PUBLIC HEARING MINUTES
MONDAY, MARCH 28, 2022, 6:00 PM
VIA WEBEX SOFTWARE**

COUNCIL MEMBERS: Mayor Tim Futrelle, Mayor Pro-Tem Edie Tugman, Dalton George, Becca Nenow, and Virginia Roseman

PLANNING COMMISSION MEMBERS: Elizabeth Shay-Chair, Eric Plaag-Vice-Chair, Chris Behrend, John Tippet, Frank Venno, and Smith Warren

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Mike James-Senior Planner, Brandon Wise-Environmental Planner, and Brenda Henson-Board Secretary

OTHER TOWN STAFF AND REPRESENTATIVES PRESENT: Amy Davis-Interim Town Manager, Allison Meade-Town Attorney, and Rick Miller-Public Works Director

OTHER ATTENDEES/PARTICIPANTS VIA WEBEX: Tyler Moffatt, Andrew Rice, and Todd Rice

Call to Order

Mayor Futrelle called the Town Council to order at 6:05 p.m. Chair Shay called the Planning Commission to order at 6:05 p.m. for the Public Hearing/Planning Commission meeting held via WebEx.

Moment of Silence

A moment of silence was observed.

Approval of Meeting Minutes

Council Member Roseman made a motion to approve the January 24, 2022 Public Hearing minutes. The motion was seconded by Council Member George.

Vote: Aye – All
Nay – None

The motion passed.

Vice-Chair Plaag made a motion to approve the January 24, 2022 Public Hearing minutes. The motion was seconded by Commission Member Behrend.

Vote: Aye – All
Nay – None

The motion passed.

Mayor Futrelle introduced Amy Davis, Interim Town Manager.

Case PL05551-030422 A&R Mountain Properties – General Use Zoning Map Amendment

The Town of Boone has initiated the zoning of 243/245 Bamboo Road, owned by A&R Mountain Properties, to R3 Multiple-Family Residential, SFHA, and WS-IV-PA. Zoning is to coincide with the property owner's voluntary annexation of the property. A&R Mountain Properties LLC has submitted a Voluntary Annexation Petition requesting the Town to annex 0.988 acres contiguous to the Town of Boone primary corporate limits. This area to be annexed, located at 243/245 Bamboo Road, is identified as Watauga County PIN 2920-20-5262-000.

Ms. Jane Shook, Director of Planning & Inspections, presented the request as it was outlined in the meeting packet. She noted that in 2017, the Town lost jurisdiction of this property with the removal of

the ETJ. Ms. Shook added that the former property owner requested sewer service to the property in 2018. That request was approved with the condition that the property owner petition to be annexed.

Ms. Shook stated that property owners within 300 feet of the subject property were notified of the request to have the property annexed and zoned as R3 Multiple-Family Residential, SFHA, and WS-IV-PA.

Vice-Chair Plaag asked if properties that were annexed into the Town were required to bring their existing uses and conditions into compliance with the UDO. Ms. Shook replied that they were not. Vice-Chair Plaag asked what happened if there were any non-conformities on the property. Ms. Shook replied that they would be considered legal non-conformities.

Vice-Chair Plaag asked if the staff was aware of any problematic non-conformities on the subject property. Ms. Shook replied that staff had not done an in-depth analysis of the property, but she anticipated that there were likely some legal non-conformities with respect to landscaping, parking and other items.

Council Member Roseman asked what services would be extended to the property if it was annexed. Ms. Shook responded that the property would be entitled to the same services as any other parcel located within Town limits. She added that the property would be served by Town sewer and not Town water. Mr. Rick Miller, Public Works Director, added that the property had a well and was not requesting to hook onto Town water. He noted that the Town's sewer line would need to be extended approximately 1,000 ft. in order to serve the property. Ms. Meade asked if it was correct that the property owner would be responsible for the cost of extending the sewer line. Mr. Miller replied that was correct. Ms. Meade asked if a water main was available if the property owner decided they would like to have Town water service. Mr. Miller stated that there was a water line across the road, and it would be easier to connect the property to water than to sewer. Ms. Meade asked if it was correct that the property already received some Town services such as trash pickup and police services. Mr. Miller stated that was correct.

Vice-Chair Plaag asked how the property was zoned when it was part of the ETJ. Ms. Shook replied that the property was zoned MH Manufactured Home.

Commission Member Veno asked if the reason the property was seeking to be annexed was that they had sewer problems. Ms. Shook explained that, in order to have Town water or sewer extended to a property outside of Town limits, the property owner must petition Town Council to request that the property be annexed into Town.

Ms. Shook noted that no one had signed up to speak regarding this case.

With no public comment, Mayor Futrelle closed the public hearing for this case at 6:25 p.m.

Case PL05502-021822 Consultation in Certificates of Appropriateness Process – UDO Text Amendment

To modify UDO Article 8 and Appendix D related to consultations in the Certification of Appropriateness (COA) process to (i) correct language regarding the COA process to provide a clearer path for COA applicants, (ii) to reduce any potential conflict regarding the Historic Preservation Commission's interactions with applicants prior to a case, and (iii) align text with subsequent text amendments related to COA. Conforming amendments may also be made to other Articles.

Ms. Shook presented the case as it was outlined in the meeting packet. She stated that this amendment would remove the text allowing pre-application consultations with HPC. Ms. Shook explained that staff initially thought this was an acceptable method used across the State, but upon further review, decided it should not be part of the process due to the quasi-judicial nature of the HPC.

Vice-Chair Plaag asked if he should be recused from this case because he was the Chair of the Historic Preservation Commission. Ms. Meade stated that the HPC had not considered this issue, so she did not feel Vice-Chair Plaag needed to be recused.

Ms. Meade stated that the original idea was for HPC to be consulted in a more informal way prior to a hearing about how applicants might best propose to comply with the standards. However, there was concern that this could constitute ex-parte communication between HPC members and applicants prior to the hearing. She felt it would be best to have staff handle any pre-hearing consultations.

Council Member Roseman asked if these changes would allow the efficiency of the department to move more smoothly. Ms. Shook replied that it would help staff firm the process up for an applicant and allow for more complete applications.

Vice-Chair Plaag urged staff to advise applicants that the decision of approval or denial of a COA was up to the Commission, and staff was there to provide guidance through the process. Ms. Shook replied that staff always tries to make sure that applicants understand that staff is not the arbiter of the decision and that the board was the final decision-maker.

Ms. Shook noted that no one had signed up to speak regarding this case.

With no public comment, Mayor Futrelle closed the public hearing for this case at 6:33 p.m.

Case PL05558-030922 Stormwater Modifications – UDO Text Amendment

To modify UDO Article 21 Stormwater Management, Article 34 Definitions, and Appendix C Details and Specifications Manual related to stormwater detention requirements for the following uses:

1. Use 1.01 Single-Family Dwelling
2. Use 1.02-1.04 Manufactured Home
3. Use 1.06 Duplex (one duplex building per lot)
4. Any other use that operates out of a single-family dwelling (Family Care Homes, Boarding House, Home for Survivors of Domestic Violence, etc.)

This modification also:

1. Introduces exemptions for impervious improvements of 500 square feet or less and for lots within subdivisions or developments that have an approved drainage plan where the proposed development was considered and
2. Revises the definition of “impervious area” to include exemptions set forth in NC General Statutes.

Ms. Shook outlined the request as it was presented in the meeting packet. She stated that, prior to 2014, single-family dwellings were not required to provide stormwater detention, and the Town received complaints due to the impacts to adjacent property owners both during and after construction. Ms. Shook explained that the Town Council at that time tried to take a middle ground approach by requiring that the applicant submit a drainage plan, but not be required to submit any final certification from a design professional for that drainage plan. She noted that this left the applicant with the expense of submitting an engineer’s plan but not a certification that the stormwater detention was constructed according to that plan. Ms. Shook stated that the cost for single-family homeowners to obtain this design professional’s plan was substantial, and it was sometimes challenging to find someone who could provide the plan quickly. Ms. Shook noted that drainage plans were also required for the placement of small storage sheds.

Ms. Shook stated that this amendment would allow applicants to choose between one or more of the stormwater control measures detailed in the North Carolina Department of Environmental Quality Stormwater Design Manual. Staff would approve the modifications and design details based on site

conditions. She noted there were a lot of simplified methods for stormwater run-off with simple math that a homeowner or contractor could do, such as; rain barrels, rain gardens, and berms.

Ms. Shook stated that once the stormwater control measures were installed, they would need to be maintained. The property owner would have to file with Planning & Inspections an operation and maintenance agreement saying they would continue maintaining the system after it was installed.

Mr. Brandon Wise, Environmental Planner for the Town of Boone Planning & Inspections, introduced himself. Mr. Wise stated that his specialty was stormwater. He noted that he had worked on the private side designing stormwater infrastructure, mainly for commercial properties but also some residential properties. Mr. Wise stated he had also worked for the State of North Carolina with DEQ working with the stormwater manual. He added that he had seen some of the creativity you could get from the stormwater manual. Mr. Wise stated that he had worked with builders on implementation and ways to get creative with smaller detention systems, or more green detention systems where everything was not being put underground into a cistern. Mr. Wise stated he had also run an MS4 in Carolina Beach. He explained that an MS4 was the municipal separate storm sewer system permit, with requirements for how the Town maintained its infrastructure, how the community worked together in maintaining infrastructure and preventing stormwater run-off from causing issues from one house to impact the next house in the neighborhood.

Vice-Chair Plaag referred to Section 2.04.02(C) regarding the operation maintenance agreement and asked if this agreement would require a signature from the property owner. He also asked if this agreement could legally be made into a covenant that followed the land. Vice-Chair Plaag stated that a property owner could sell the property and asked how the Town would enforce the operation maintenance agreement with a new property owner. Ms. Shook replied that the property owner would sign the operation maintenance agreement. She added that the MS4 required commercial developments to record the maintenance agreement at the Register of Deeds, but staff did not feel it was necessary to require the document to be recorded for residential developments.

Ms. Meade stated that the applicant and the landowner were both charged with not only carrying out the plan but then maintaining it thereafter. She felt this was a permanent requirement once those facilities were in place under the UDO. While it was not a covenant per se, like other requirements of the UDO, it applied regardless of subsequent changes in ownership. Ms. Meade explained that new property owners were equally subject to the UDO requirements and to complying with the development plan that was approved. Ms. Meade suggested that it might be better, instead of specifying this as a contract, to provide this document for notice purposes so the property owner understood their obligations under the UDO for maintaining the stormwater system. She felt that Section 21.02.02 bound not only that owner but every subsequent owner to the maintenance obligation. Vice-Chair Plaag agreed that removing the illusion of the agreement being a contract was a good idea.

Commission Member Veno asked how subsequent property owners would know about the requirement to maintain the stormwater. Ms. Meade replied that stormwater system maintenance regulations were no different than any other regulation that applied to a home. She explained that if the home was sold, there was not a duty and there was nothing in the title records to tell the new potential purchasers that there were certain regulations that would apply to that home under the UDO. Ms. Meade stated it was the duty of new owners to review any pertinent government regulations for themselves. If they chose not to review the regulations, they were bound by them nonetheless.

Council Member Tugman asked if a title search would reveal what easements may be on a property. Ms. Meade explained that this agreement was a local government regulation and would not be the same as a recorded easement, so it would not be found in a title search.

Mr. Wise stated that education was important, and he hoped to do more to help people understand the regulations.

Commission Member Behrend asked if this change would affect current land owners. Ms. Shook replied that this amendment would affect new construction or any modifications where pervious surface would be added.

Ms. Shook noted that no one had signed up to speak regarding this case.

With no public comment, Mayor Futrelle closed the public hearing for this case at 7:05 p.m.

Adjournment of Town Council

Council Member Roseman made a motion to adjourn the Town Council at 7:06 p.m. The motion was seconded by Council Member Tugman.

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

Tim Futrelle, Mayor

Brenda Henson, Board Secretary

Elizabeth Shay, Planning Commission Chair

Continuation of Planning Commission Meeting

Chair Shay called a break in the meeting from 7:07 p.m. until 7:14 p.m.

Public Comment

Ms. Shook noted that no one had signed up to speak under public comment.

Approval of Meeting Minutes

Vice-Chair Plaag made a motion to approve the January 24, 2022 Planning Commission meeting minutes. The motion was seconded by Commission Member Tippet.

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

Case PL05551-030422 A&R Mountain Properties – General Use Zoning Map Amendment

The Town of Boone has initiated the zoning of 243/245 Bamboo Road, owned by A&R Mountain Properties, to R3 Multiple-Family Residential, SFHA, and WS-IV-PA. Zoning is to coincide with the property owner's voluntary annexation of the property. A&R Mountain Properties LLC has submitted a Voluntary Annexation Petition requesting the Town to annex 0.988 acres contiguous to the Town of Boone primary corporate limits. This area to be annexed, located at 243/245 Bamboo Road, is identified as Watauga County PIN 2920-20-5262-000.

Vice-Chair Plaag stated that his question regarding non-conformities in properties seeking annexation was because there was a potential for some outrageous uses on those properties that the Town might not be aware of, and those uses could continue as a legal non-conformity. Vice-Chair Plaag added that he had wanted it to go on record that there were not any strange uses on the property that staff was aware of. He hoped that future Planning Commission's and the current Planning Commission would make it a practice to ask if there was anything unusual about a property seeking annexation that may not align with the proposed zoning classification. Vice-Chair Plaag stated that he trusted staff to suggest a zoning classification that was appropriate to the existing uses, but that might not always be the case with future Planning Department staff.

Ms. Shook explained that the person applying for annexation had the opportunity to choose which zoning district they would like to have applied. She noted that Town Council was not required to select the zoning district the applicant requested. In this case, the applicant's request was to zone the property R3, and Town Council agreed with that request. Ms. Shook stated that staff tried to look at the development of the property and the surrounding uses so they could encourage applicants to request a zoning district compatible with their surroundings.

Chair Shay asked if any responses had been received from the residents within the 300 ft. notification area. Ms. Shook replied that she had not received any responses. Mr. Mike James, Senior Planner with the Town of Boone Planning & Inspections, added that he had not received any responses either. He noted that within the 300 ft. notification area were the airport, Deerfield Ridge, and several properties that were outside of Town limits.

Commission Member Veno asked if it was correct that there were three buildings on the subject property. Ms. Shook replied that was correct.

Commission Member Tippettt noted that there were quite a few land uses in the area. He stated that he could support the zoning of this property to R3 because of the protections it would provide, and it would be beneficial to get public sewer to that property.

First Motion and Vote: Vice-Chair Plaag made a motion that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and any other adopted plans of the Town that are applicable because the amendment is consistent with:

Comprehensive Plan Policy 2.2.2 Utilities

- B. Water and sewer services shall be concentrated within the limits of a geographically defined Urban Growth Area. The Primary Growth Area shall receive first priority for the provision or enhancement of water and sewer services.
- C. The Town shall consider the highest level of participation in the cost of providing water and sewer services within the Primary Growth Area with the next highest level of participation considered for the Secondary Growth Area.
- E. The Town shall employ incentives to encourage a concentration of intense urban type development within the Urban Growth Area.

Comprehensive Plan Policy 2.3.3 Housing & Neighborhoods

- A. The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.
- E. Factors in determining preferred locations for high density residential development shall include: close proximity to the university, employment or shopping centers; access to major thoroughfares and the

transit system; the availability of public services and facilities; and compatibility with adjacent land uses.

- F. The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development.

The motion was seconded by Commission Member Tippet.

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote: Vice-Chair Plaag made a motion that the Planning Commission recommends approval of Ordinance PL05551-030422 and believes approval is reasonable and in the public interest because the zoning concurrent with annexation applies an appropriate zoning classification for the known present uses of the property and should not have an adverse impact on the surrounding properties that are located within Town limits or in adjacent County lots. The motion was seconded by Commission Member Tippet.

Vote: Aye – All
Nay – None

The motion passed.

Case PL05502-021822 Consultation in Certificates of Appropriateness Process – UDO Text Amendment

To modify UDO Article 8 and Appendix D related to consultations in the Certification of Appropriateness (COA) process to (i) correct language regarding the COA process to provide a clearer path for COA applicants, (ii) to reduce any potential conflict regarding the Historic Preservation Commission's interactions with applicants prior to a case, and (iii) align text with subsequent text amendments related to COA. Conforming amendments may also be made to other Articles.

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

Comprehensive Plan Policy 2.1.5 Downtown

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

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

Comprehensive Plan Policy 2.3.2 Community Character

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

The motion was seconded by Commission Member Warren.

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote: Commission Member Tippet made a motion that the Planning Commission recommends approval of Ordinance PL05502-021822 and believes approval is reasonable and in the

public interest because it will reduce potential conflicts and it helps the review process between the applicant and staff. The motion was seconded by Commission Member Warren. Vice-Chair Plaag wished to amend the motion to add that the proposed amendment eliminates potential ex-parte communication or the perception thereof between members of the HPC as a quasi-judicial board and the applicant that had been previously permitted through the consultation process directly with the HPC. Commission Members Tippet and Warren accepted the amendment.

Vote: Aye – All
Nay – None

The motion passed.

Case PL05558-030922 Stormwater Modifications – UDO Text Amendment

To modify UDO Article 21 Stormwater Management, Article 34 Definitions, and Appendix C Details and Specifications Manual related to stormwater detention requirements for the following uses:

1. Use 1.01 Single-Family Dwelling
2. Use 1.02-1.04 Manufactured Home
3. Use 1.06 Duplex (one duplex building per lot)
4. Any other use that operates out of a single-family dwelling (Family Care Homes, Boarding House, Home for Survivors of Domestic Violence, etc.)

This modification also:

1. Introduces exemptions for impervious improvements of 500 square feet or less and for lots within subdivisions or developments that have an approved drainage plan where the proposed development was considered and
2. Revises the definition of “impervious area” to include exemptions set forth in NC General Statutes.

Chair Shay stated that this amendment introduced an interesting partnership between the Town and an applicant where staff could review the project and provided the ability to allow a variety of ways to address stormwater, including opening it up to creative new ideas. Ms. Shook stated that this would allow for creativity outside of the stormwater control measures that were listed in the State's manual, but the applicant would still be required to show evidence that the particular stormwater control measure best controlled their stormwater run-off.

Chair Shay asked Ms. Shook what type of burden she anticipated this change to have on staff. Ms. Shook replied that this amendment and the addition of the MS4 would be an increase of responsibility for Mr. Wise. She added that these types of responsibilities were anticipated when Mr. Wise was hired as the Environmental Planner.

Vice-Chair Plaag asked that any motion for approval include a condition that C2.04.02(C) be modified to remove references to an agreement or anything suggesting a contract between the property owner and the Town in order to not create an illusion of there being a separate contract from what was already required under the UDO. This language would be revised by Planning staff and Ms. Meade.

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

Comprehensive Plan Policy 2.2.5 Environmental Health

- D. Runoff and drainage from development activities shall be of a quality and quantity as near to natural conditions as possible, with special emphasis given to critical watershed areas.

- E. Development which preserves the natural features of the site, including existing topography, streams and significant trees and vegetation, shall be reflected in the Town's Development Standards.
- F. Recognizing the economic and environmental costs of commercial and residential stormwater runoff, innovative stormwater management techniques such as permeable sidewalks, driveways, and parking areas shall be encouraged.
- G. The development of a comprehensive drainage and flood plain management plan, including public and private actions in support of plan implementation, shall be supported.

The motion was seconded by Commission Member Warren.

Chair Shay wished to amend the motion to add Vice-Chair Plaag's suggestion that C2.04.02(C) be modified to remove references to an agreement or anything suggesting a contract between the property owner and the Town in order to not create an illusion of there being a separate contract from what was already required under the UDO. This language would be revised by Planning staff and Ms. Meade.

Commission Members Behrend and Warren accepted the amendment.

Vice-Chair Plaag wished to amend the motion to include:

Comprehensive Plan Policy 2.1.1 Economic Development

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

A.2 Adopt analytically sound, technically based hillside development regulations to preserve natural beauty.

Comprehensive Plan Policy 2.3.3 Housing and Neighborhoods

D. Innovative and flexible land planning and development practices shall be encouraged to create livable developments which better safeguard land, water, energy and historic resources.

D.1 Continue to evaluate opportunities in the zoning ordinance for flexibly designed and located single-family and multi-family residential developments.

Commission Members Behrend and Warren accepted the amendment.

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote: Chair Shay made a motion that the Planning Commission recommends approval of Ordinance PL05558-030922 and believes approval is reasonable and in the public interest because it strikes a balance between protecting watersheds and managing stormwater with the burden on property owners. It offers creative but data-based pathways for analysis, and it reduces the burden on both the applicant and the staff. The motion was seconded by Vice-Chair Plaag.

Vote: Aye – All
Nay – None

The motion passed.

Other Matters

Ms. Shook noted that staff had recently reached out to Commission members to gauge their preference for virtual or in-person meetings. She stated that those preferences were presented to Town Council, and, as a result, Council decided that commission and board meetings would remain virtual, with the

exception of quasi-judicial decisions where there was a party that did not consent to a virtual or remote meeting. Ms. Shook stated that Town Council would, at some point, investigate a hybrid model utilizing technology within Council chambers. She noted that Council would be meeting in person for the first meeting in April. Ms. Shook stated Council was reminded that the majority of Planning Commission members were in favor of virtual meetings, and she was unsure how the joint Town Council and Planning Commission meetings would be held. She noted she was not expecting to have a Planning Commission meeting next month.

Adjournment of Planning Commission

Vice-Chair Plaag made a motion to adjourn the meeting at 7:48 p.m. The motion was seconded by Commission Member Veno.

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

Elizabeth Shay, Planning Commission Chair

Brenda Henson, Board Secretary