

**Town of Boone
Public Hearing
6:00 PM, Apr. 29, 2019
Council Chambers, 1500 Blowing Rock Road**

The appearance times contained within this agenda are approximate and are subject to change at any time. No agenda item will be started after 10:30 p.m. Remaining items will be addressed at a continuation meeting or will be tabled until the next available meeting.

I. Call to Order - Town Council

II. Call to Order - Planning Commission

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

January 28, 2019 Public Hearing Minutes

IV. Case PL02285-021419 ASU General Use Zoning Map Amendment

Case PL02285-021419 ASU General Use Zoning Map Amendment -
Application Information

Case PL02285-021419 ASU General Use Zoning Map Amendment -
Staff Report

V. Case PL02333-030719 Initiation of Amendments - UDO Text Amendment

Case PL02333-030719 Initiation of Amendments - Application
Information

Case PL02333-030719 Initiation of Amendments - Staff Report

VI. Case PL02335-030719 Burden of Proof & Transitional Zone Clarifications - UDO Text Amendment

Case PL02335-030719 Burden of Proof & Transitional Zone
Clarifications - Application Information

Case PL02335-030719 Burden of Proof & Transitional Zone
Clarifications - Staff Report

VII. Case PL02336-030719 Wireless Communication Facilities - UDO Text Amendment

Case PL02336-030719 Wireless Communication Facilities - Application
Information

Case PL02336-030719 Wireless Communication Facilities - Staff Report

VIII. Case PL02337-030719 Awnings in the B1 - UDO Text Amendment

Case PL02337-030719 Awnings/Canopies in the B1 - Application Information

Case PL02337-030719 Awnings/Canopies in the B1 - Staff Report

IX. Case PL02338-030719 Permit Process - UDO Text Amendment

Case PL02338-030719 Permit Process - Application Information

Case PL02338-030719 Permit Process - Staff Report

X. Case PL02408-040419 Temporary Use 9.01 T-13 Temporary Use 9.01 Public Colleges & Universities Modification - UDO Text Amendment

Case PL02408-040419 Use T-13 Temporary Use 9.01 Public Colleges and Universities Modification - Application Information

Case PL02408-040419 Use T-13 Temporary Use 9.01 Public Colleges and Universities Modification - Staff Report

Case PL02408-040419 Use T-13 Temporary Use 9.01 Public Colleges and Universities Modification - Exhibit 1 Map of Buffer Area

XI. Adjournment of Town Council

XII. Approval of February 25, 2019 Planning Commission Meeting Minutes

February 25, 2019 Planning Commission Meeting Minutes

XIII. Consideration of Cases Heard at the Public Hearing

XIV. Other Matters

XV. Adjournment of Planning Commission

PUBLIC HEARING MINUTES
MONDAY, JANUARY 28, 2018, 6:00 P.M.
TOWN COUNCIL CHAMBERS

COUNCIL MEMBERS: Rennie Brantz-Mayor, Loretta Clawson-Mayor Pro-Tem, Marshall Ashcraft, Sam Furgiuele, Connie Ulmer, and Lynne Mason

PLANNING COMMISSION MEMBERS: Elizabeth Shay-Chairperson, Eric Plaag-Vice Chairman, Michael Sanchez, James Hedrick, Frank Veno, and Kennedy Kavanaugh

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Christy Turner-Senior Planner, Marty Little-Planner, and Brenda Henson-Board Secretary

OTHERS PRESENT: John Ward-Town Manager and Allison Meade-Town Attorney

CALL TO ORDER

Mayor Brantz called the Town Council to order at 6:00 p.m.

Chairperson Shay called the Planning Commission to order at 6:00 p.m.

APPROVAL OF PUBLIC HEARING MINUTES

Council Member Ulmer made a motion, seconded by Council Member Mason for Town Council to approve the November 26, 2018 Public Hearing minutes as written.

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

Vice Chairman Plaag made a motion, seconded by Commission Member Veno for Planning Commission to approve the November 26, 2018 Public Hearing minutes as written.

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

CASE PL02128-112918 UNIVERSITY OVERLOOK – CONDITIONAL DISTRICT ZONING MAP AMENDMENT MODIFICATION

Christy Turner stated there was an error in the staff report and noted that the project did not trigger transitional zone requirements. Ms. Turner then presented the case as it was outlined in the meeting packet, noting the request was to add Use 11.15, Other Personal Service Establishment and Use 11.21, Other Business or Professional Office to the Conditional District approval from 2016.

Tyler Moffatt, attorney for the property owner MET Holdings, LLC, further explained that 4 commercial spaces were located in the 2,700 sq. ft. first floor of the University Overlook building and, to date, only 1 was occupied. The lone retail tenant is High Country Disaster Pros. Mr. Moffatt stated that most inquiries about the vacancies were from office or personal service uses, which were not included in the original Conditional District approval. He stated that office and personal services uses would be open during regular business hours and would be equal to or less dense or intense uses than the already approved retail uses. Mr. Moffatt provided Council and Commission members with photos showing the outside of the building as well as the commercial spaces located on the first floor (on file). Mr. Moffatt noted that since the project was completed about 2 ½ years ago all 24 efficiency apartment units have been leased for the entirety of the time.

Council Member Furguele asked if 3 of the 4 spaces had been empty since the building was built. Mr. Moffatt replied that was correct and noted that the building was completed in the Fall of 2016.

Council Member Furguele asked about businesses being open from 10 p.m. to 6 a.m. Ms. Turner replied that Use 11.20 allowed for businesses with those hours and noted that the applicant was requesting Use 11.21 which allowed hours from 6 a.m. to 10 p.m. Council Member Furguele asked if personal service uses were the same as office uses. Ms. Turner stated that parking requirements were the same and they were both considered low impact uses. Discussion ensued regarding the variety of uses listed within the personal service establishment definition. Ms. Shook added that the Ordinance requires the uses within the definition be considered the same because they are in the same category. She stated if someone felt a particular use should not be included in a certain category and wished to have it removed then it would be considered as a text amendment. Council Member Furguele noted that laundry mats and dry cleaners that use harmful chemicals are listed in the UDO as a personal service use. Ms. Turner noted that the Fire Marshal indicated there might be a need to reconfigure the sprinkler heads. Ms. Shook added that the UDO did not consider those types of uses separately. Council Member Furguele asked Ms. Shook if she had knowledge of any contaminated site where dry cleaners were. Ms. Shook replied that she had no personal knowledge of any such sites. Council Member Furguele felt there might be some contamination issues at some old dry cleaner sites in Town and expressed concern about potential negative environmental impacts from dry cleaners in particular. Mr. Ward noted there are two different types of dry cleaners; the type that performs the actual dry cleaning and the type that receives the laundry and ships it off-site for cleaning.

Vice Chairman Plaag asked if restrictions could be placed on the approval that no dry cleaner or similar service would be allowed. Mr. Moffatt replied that his client would be okay with a condition not allowing laundry mats or dry cleaners.

Ms. Meade felt the condition would be lawful given the discussion.

Council Member Furguele stated the minutes of the original hearing seemed to indicate this was a good location for commercial business yet there are still 3 vacant spaces. Mr. Moffatt explained that the property owner was hopeful to fill those spaces with uses originally approved but has not been able to do that. He noted that there had been interest in the vacancies for office space but that use was not requested in the original approval. Council Member Furguele asked how large the commercial units were. Mr. Moffatt stated there was a 15' x 14' common area/conference room in the middle and the units are 19' deep x 22' wide and vary slightly based on configuration. Council Member Furguele asked if all the spaces fronted Blowing Rock Road. Mr. Moffatt replied that two of the units did not front Blowing Rock Road. Council Member Furguele asked if there was a requirement in the original approval that the commercial space be divided into 4 different businesses. Mr. Moffatt replied that to his knowledge it was not a requirement. Council Member Furguele suggested that the units might be too small, and two of the units are hidden, to attract commercial uses. Mr. Moffatt explained that the commercial space was not divided in the beginning but when tenants did not commit, the decision was made to build out the spaces to make them more marketable.

Vice Chairman Plaag asked Ms. Shook if an office use was considered commercial and she stated that was correct. Ms. Shook explained that the project was approved for commercial uses and the applicant has to identify the use categories they would like to have in the building. Ms. Shook also added that permits were obtained to divide the commercial space sometime within the last year and noted that sometimes tenants will take one or more of the units so the 4 units could become 2 or 3 depending on the need of the tenant.

Council Member Furgiuele asked if there were any examples of other retail tenants going into spaces that do not front on the street. Ms. Shook stated there was commercial space not fronting the street at Highland Crossing located at the old high school entrance but was unsure if there were any retail uses there.

Council Member Furgiuele asked if staff pressured the applicant to limit their original request to retail. Ms. Shook replied that staff did not pressure the applicant.

Council Member Furgiuele asked for the time lapse from the time of Conditional District approval to the building being complete. Mr. Moffatt stated it was about 2 ½ years for the building to be completed with the commercial space being only a shell at that time. The built out commercial spaces became available sometime last year when permits were obtained from the Town.

Vice Chairman Plaag referred to packet page 33 containing minutes of the original Public Hearing and pointed out that Ms. Rice had offered to give 2% of the net proceeds from the development for the first two years to the Town of Boone for the Greenway extension. Vice Chairman Plaag asked if this had taken place. Ms. Shook stated her recollection was that this topic was discussed but was not offered as a condition. Ms. Meade agreed and felt this was offered in a gratuitous spirit and not offered as a condition. Her recollection was that it was not a material part of the conversation and no one at that time felt the need for further discussion of the topic.

Commission Member Veno expressed some concern about the broad uses these classifications could allow as well as the number of parking spaces provided in the development. Mr. Moffatt explained that the minimum requirement for the commercial space was 6 parking spaces. He noted that the uses they were seeking to add have the same parking requirements as the current retail uses.

Council Member Furgiuele stated he could see some office uses needing as many or more parking spaces than retail. Mr. Moffatt replied that he felt the office uses would be less impact and the spaces provided meet the requirements of the UDO.

Council Member Furgiuele asked if it was contemplated that the commercial space would be divided into 4 spaces. Ms. Shook stated she did not know.

Chairperson Shay asked if the residential tenants leased the 22 spaces designated to the residential portion of the development. Mr. Moffatt responded that all 22 spaces were leased by the residents.

Vice Chairman Plaag asked if potential renters gave reasons why they did not find the commercial space desirable for retail use. Todd Rice with MET Holdings, LLC stated they had received inquiries about small offices such as an architect's office or a small nail salon. Vice Chairman Plaag asked why retail tenants did not want to lease the space. Mr. Rice explained that the commercial space was built as a warm, dry shell, meaning the building was left with a dirt floor in order to allow tenants to install underslab utilities as they needed for their use. Mr. Rice stated that the inquiries he had received were looking for turn-key space because of the expense of build-out costs. Because of this, they decided to go ahead and finish the space into 4 units. Vice Chairman Plaag asked if there were issues with the parking. Mr. Rice replied there has not been any issues with parking.

Council Member Furgiuele asked if there was any street parking available. Mr. Rice stated that students could walk to the development. Mr. Moffatt added that there was a metered parking lot beside Stick Boy.

Mayor Brantz asked if there was on-site management. Mr. Rice replied that the development was managed by High Country Rentals which was right down the street from the University Overlook building. Mayor Brantz asked if it was correct that there were single family homes behind the building and Mr. Rice stated that was correct. Mayor Brantz asked if the neighbors had been involved or informed of this request and Mr. Rice replied they had been involved in the original request.

John Ward stated that he drove by the building today at 4:45 p.m. and found about 50% of the parking spaces filled. He explained that he wanted to see what the intensity of the use was at a moment in time.

Mayor Brantz asked if there had been any problems with stormwater. Mr. Rice stated there had been no problems. Mr. Ward stated the planters in front of the building contained inlets to accommodate overflow. Council Member Furguele stated that flooding just down the street near Hardee's had been much worse this year and asked if the Town had ascertained if there was any connection. Mr. Ward replied that he did not believe so but did not really know.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 6:48 p.m.

CASE PL02133-113018 APPALACHIAN MOUNTAIN BREWERY – GENERAL USE ZONING MAP AMENDMENT

Ms. Shook presented the request as it was outlined in the packet. She referred to packet page 55 and explained that a 2014 revision to the UDO allowed microbreweries, brewpubs, and brewery/distilleries in the B3 General Business District by right. Ms. Shook stated that a Special Use Permit or Conditional District approval was required in order to allow a microbrewery at the time of the original approval of Appalachian Mountain Brewery.

Council Member Furguele noted the property in question was located within a flood hazard area with a portion being located in the floodway and asked if flooding had been an issue since this business went in. Ms. Shook stated there had been no flooding issues to her knowledge since this business started.

Council Member Furguele asked if the applicant has indicated some other type of enterprise that they want to do on this property or what the motivation is to ask for this rezoning. Ms. Shook noted that the business ownership had changed hands and the new owner would like to make some changes. In order to do this, they would have to modify the Conditional District or rezone the property back to general B3. Ms. Shook stated this would allow the owner to make changes to their business as allowed by right without having to go back through Public Hearing and Board approval to modify the Conditional District approval each time they wished to make a change. Ms. Shook noted the development did have some non-conformities but they are still required to provide sufficient parking.

Vice Chairman Plaag asked how "sufficient parking" was defined. Ms. Shook stated that sufficient parking is considered to be adequate parking to serve the need. She noted that the owner had obtained additional off-site parking to help serve the business.

Council Member Furguele asked if potential modifications to the business under a general zoning could cause potential issues. Ms. Shook replied that staff had never analyzed all potential uses when considering a request for general zoning. Council Member Furguele asked if there were uses that would not be appropriate in a floodplain. Ms. Shook stated the Use Table addressed uses that were felt to be appropriate uses and there were restrictions in place for uses located within flood hazard areas.

Vice Chairman Plaag asked if reverting to general B3 would affect AMB's food truck. Ms. Shook replied that if they continued operating the food truck as they currently were, there should be no problem.

Mayor Brantz asked if the request would affect water & sewer capacity. Ms. Shook stated she could not answer that. She noted that if the property was approved for general B3 zoning, any use allowed in B3 could potentially locate there and water & sewer usage would vary depending on what that use was.

Mayor Pro-Tem Clawson asked if there had been a difference in parking complaints since the off-site parking was obtained. Ms. Shook replied that she was unsure but the Planning & Inspections office had not received any more complaints. Commission Member Veno asked who had complained. Ms. Shook stated that there had been complaints from adjacent property owners as well as Town employees about

parking in the street. Council Member Furguele asked if Boone Creek Drive was a public street and Ms. Shook replied that it was.

Nathan Kelischek, acting manager with Appalachian Mountain Brewery, addressed Council and the Commission and stated that the 2014 UDO update allowed breweries in the B3 zoning district and having a general B3 zoning classification would allow AMB to operate in the same manner as other breweries in town.

Council Member Furguele asked Mr. Kelischek what they wanted to do with the property under general B3 zoning that they could not do under their Conditional District approval. Mr. Kelischek stated they would like to beautify the property. Ms. Shook added that the applicant had expressed a desire to make some exterior modifications to the structure that would affect their site-specific approval. Mr. Kelischek stated that those modifications had not been defined yet so he could not say at this time if they would or would not be doing the modifications. He stated that the new owners, Craft Brew Alliance, had no intention of moving from this location and wanted it to remain Appalachian Mountain Brewery.

Mayor Brantz asked what advantages other breweries had that Appalachian Mountain Brewery did not have. Mr. Kelischek replied that other breweries did not have conditions placed on them and could operate more freely under the general B3 regulations in the UDO.

Commission Member Venno asked if AMB wanted to incorporate a restaurant into their business. Mr. Kelischek replied that, while a restaurant was a great idea, he was all about the beer and not the food so there were no plans for a restaurant.

Ms. Shook explained that Conditional Districts have to stay within the parameters of the original approval of their site plan. Ms. Meade added that with a general zoning request Town Council is legally not supposed to consider specifics and whatever promises might be made about the continued use of the property. Council Member Furguele felt that some consideration needed to be given to uses that would not be appropriate for the location in question. For example, he felt the property was not an ideal location for residential development due to flooding. Ms. Meade stated it sounded as though this was a suggestion to not allow any development that was not approved by Town Council and she felt that was problematic.

Ms. Shook stated that commercial buildings in the floodway can flood proof the building but residential uses have to be elevated. Council Member Furguele asked if the only reason Appalachian Mountain Brewery got a Conditional District approval was because microbreweries were not allowed by the UDO at that time and not because they were seeking special concessions. Ms. Shook stated that was correct.

Michael Button, who owns apartments on Boone Creek Drive, stated he was still experiencing heavy traffic, mostly in the summer, with cars parking at the end of the street and along the stream where there were no parking spaces. He stated there was mud and damage to landscaping. Mr. Button stated the street gets blocked with cars when the brewery is busy. He noted that extra parking spaces were being leased at the old Employment Security Commission office but if things changed at that building those spaces might not always be available.

Mr. Kelischek stated they now had about 80 parking spaces and he wished they had more but it was in their best interest to keep all that they could.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 7:21 p.m.

CASE PL02156-121718 CHARLES PERRY – GENERAL USE ZONING MAP AMENDMENT

Vice Chairman Plaag asked to be recused from this case because he is a good friend of Mr. Perry and from the next case because he is the applicant.

Commission Member Venio made a motion, seconded by Commission Member Sanchez to recuse Vice Chairman Plaag from Case PL02156-121718 and Case PL02177-010319.

Vote: Aye – All
Nay – None

The motion passed.

Ms. Shook presented the case as it was outlined in the meeting packet. She explained that the property had been located in the ETJ and was zoned RA at that time. The property was recently annexed into the Town and now needs a zoning classification designated. Ms. Shook stated that the Town was requesting the property be zoned R1 or RA with a Viewshed Protection overlay.

Council Member Furguele asked if R1 allowed fewer uses than RA and Ms. Shook stated that was correct and added that R1 was one of the most protected residential zoning districts. Council Member Mason stated that RA seemed to have a higher impact than R1 due to the broader range of uses allowed in RA. Council Member Furguele noted that the property in question was carved into RA zoned property and other properties near the subject property were zoned R1A and R1. He asked if zoning this property R1 would create any kind of spot zoning issues given its proximity to RA zoning. Ms. Meade replied that, in her opinion, it would not, given how the adjacent property was being used and the fact that R1 zoning was the most restrictive.

Council Member Mason felt this area might be a good place to look at rezoning properties to R1 in order to achieve extra protection offered by R1 restrictions. She noted that un-zoned properties provide no protection to the neighborhood.

Council Member Furguele stated some of the uses that could be allowed in RA include custom slaughter houses and gas stations. It was mentioned that maybe the RA district should be eliminated. Ms. Shook stated that it might be a good idea to retain the RA in case the Town ever got the ETJ back. Ms. Shook also questioned if it was appropriate to zone property inside the Town limits as RA when it was a zoning jurisdiction created for property in the ETJ.

Commission Member Sanchez stated it looked like the property had a lot of trees on it. Mr. Ward responded that the property contained a former house site. Ms. Shook noted that an R1 or an RA zoning designation would have no different impact on tree preservation.

Chairperson Shay asked about stormwater management. Ms. Shook replied that the property would be required to install stormwater detention to capture a 25-year storm.

Charles Perry, owner of the subject property, stated it did not really matter to him if the property was zoned R1 or RA. He stated he did want to have chickens and because chickens are allowed in the RA he would probably choose RA. Mr. Perry informed Council and Commission members that his intent with the property was to build a 1,450 sq. ft. single family home for which he had already submitted permit applications to the Town.

Ms. Shook stated that chickens and small livestock were allowed in both the RA and the R1 and she read the allowance and restrictions from the UDO. Mr. Perry replied that he was fine with an R1 zoning if it allowed chickens.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 7:37 p.m.

CASE PL02177-010319 PLAAG/TAIT – GENERAL USE ZONING MAP AMENDMENT

Ms. Shook presented the case as it was outlined in the meeting packet noting these 5 properties also used to be zoned RA, located in the ETJ, and were recently annexed into the Town. Ms. Shook stated that R1 or RA zoning with a Viewshed designation were the zoning classifications to consider.

Council Member Furguele asked what the minimum lot size would be if the property was zoned RA versus R1. Ms. Shook stated that RA required 10,000 sq. ft. of land area and R1 required 8,000 sq. ft. and the property in question contained 2.99 acres. Council Member Furguele asked how many lots could be developed under each zoning classification. Marty Little, Planner replied that a maximum of 9 lots could be developed under RA and 11 lots under R1, based on square footage. Ms. Shook added that discussions for this property have included an architecturally integrated subdivision much like Weekapaug Grove which is across the street.

Council Member Furguele asked about access from Eastview and Junaluska. Ms. Shook replied there was potential access from both streets.

Council Member Furguele asked about subdivision requirements. Ms. Shook discussed the differences between major and minor subdivisions with a major subdivision requiring a Special Use Permit if it were 11 lots and a minor subdivision if it were 9 lots. Council Member Furguele asked if the trigger for a major subdivision was 10 lots or more. Ms. Shook stated that was correct.

Commission Member Veno asked if the property owners had a preference of zoning classification.

Council Member Mason stated that RA allowed more high impact uses while R1 provided the most protection.

Eric Plaag, one of the property owners for this case, explained that the plan for these properties was for cottage housing with strict covenants, much like those of the Weekapaug Grove Subdivision. Mr. Plaag stated he preferred an R1 designation because he wants the area to stay residential. He added that he had no desire to build slaughter houses or movie theaters on the property. Mr. Plaag stated they would have to meet a 25-year water retention and planned to have 2 driveways off of Eastview and 4 driveways off of Junaluska to serve a 9 lot subdivision. He went on to say they had a preliminary plan and the Fire Department was looking at driveway slopes. Mr. Plaag stated they planned to upgrade the 8" sewer line near Wyn Way to the base of their property at their expense.

Commission Member Veno questioned possible traffic issues on Eastview. Mr. Plaag explained that there was currently driveway access onto Eastview from an old house on the property and that driveway will be re-used. This driveway and the new driveway will both be located in straight areas.

Ms. Meade reminded Council and Commission members that they were only to consider the general zoning request of R1 or RA and not take into consideration future plans for the property.

Roberta Jackson, who lives in the Junaluska neighborhood, stated she had spoken with 10-12 people and they would all like to see the property zoned R1.

Adrian Tait, who owns some of the properties included in the request, stated he had lived in the neighborhood for 12 years and would like to have the properties zoned R1.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 7:57 p.m.

CASE PL01817-082318 UDO SECTION 15.11 – UDO TEXT AMENDMENT

Commission Member Hedrick made a motion to reinstate Vice Chairman Plaag. The motion was seconded by Commission Member Sanchez.

Vote: Aye – All

Nay – None

The motion passed.

Ms. Shook presented the case as it was outlined in the meeting packet and outlined the changes previously requested by Town Council.

Vice Chairman Plaag asked if it was correct that in the past a mixed-use project could allow the parking on the first floor to count toward the commercial space required. Ms. Shook stated that was correct as long as they were still meeting all of the other standards and they would still be required to have street level commercial uses along the front. Ms. Shook noted that the Town currently has no parking structures with residential above or below but it has been conceptually proposed.

Ms. Meade asked how this text amendment would have affected The Standard. Ms. Shook replied that it would not have affected them because they have a single use, stand-alone parking structure.

Council Member Mason added, by way of explanation, that current mixed-use developments did not have the standards in terms of unit sizes to allow for diversity of occupants and unit configurations to meet housing needs for different sectors of the community and this text amendment would allow for that diversity in mixed-use.

Chairperson Shay asked if the King & College project would have failed to meet the requirement in 15.11.01 (F) *No one type of dwelling units, as defined by the number of bedrooms, shall comprise more than 50% of the total units.* Ms. Shook replied that she didn't know the bedroom makeup of the project at the moment and couldn't answer the question.

Vice Chairman Plaag suggested defining the percentage of common area. Ms. Shook felt that would be difficult. Council Member Ulmer stated she would not use a common area no matter how large it was if she did not know the other people using it or did not feel comfortable there.

Council Member Furgiuele felt that developers chose to develop mixed-use projects as a way to avoid using the family-oriented provisions.

Vice Chairman Plaag felt that having small sized common areas could technically meet the requirement of family oriented but would still be attractive to students.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 8:19 p.m.

OTHER MATTERS

There were no other matters discussed at this hearing

ADJOURNMENT OF TOWN COUNCIL

Mayor Pro-Tem Clawson made a motion for Town Council to adjourn at 8:19 p.m. The motion was seconded by Council Member Mason.

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

Rennie Brantz, Mayor

Brenda Henson, Board Secretary

Elizabeth Shay, Planning Commission Chairperson

Chairperson Shay called a break in the Planning Commission meeting from 8:19 p.m. until 8:28 p.m.

Chairperson Shay announced there was a new Planning Commission member and Kennedy Kavanaugh introduced herself. There were roundtable introductions.

APPROVAL OF PLANNING COMMISSION MINUTES

Commission Member Sanchez made a motion to approve the November 26, 2018 Planning Commission meeting minutes. The motion was seconded by Commission Member Venio.

Vote: Aye – All
Nay – None

The motion passed

Due to the time, Commission members discussed how they wanted to proceed. Ms. Shook stated that the Perry and Plaag/Tait cases were time sensitive and suggested the Commission try to address those tonight. After further discussion, the Commission decided to begin with the first case and see how things went regarding time.

CASE PL02128-112918 UNIVERSITY OVERLOOK – CONDITIONAL DISTRICT ZONING MAP AMENDMENT MODIFICATION

Vice Chairman Plaag stated he was troubled by the idea that the Town would resist applicants who wanted to have the zoning that would normally apply to a property for a use that would normally be permitted under that general use zoning. He felt it seemed to put a special onus on an applicant that, had they waited in time, would not otherwise have had to go through a Conditional District process. Vice Chairman Plaag stated he understood the concerns about the parking and the dividing of the commercial space and suggested asking the applicant to consider re-designating the parking spaces. Ms. Shook explained that Planning Commission could make the recommendation to Council to place a condition on the approval regarding re-designation of parking spaces and noted the applicant would have to agree to the condition. Ms. Shook noted that under current ordinance requirements the development would be required to retain a minimum of .7 parking spaces per bedroom for the residential use.

Chairperson Shay agreed with Vice Chairman Plaag's comments and added that she felt having vacant units filled was good for the Town. She also felt the market would sort out the tenants of the spaces and their parking needs.

Discussion ensued regarding maximum parking spaces. Ms. Shook noted Staff had noticed concerns with just having a maximum parking and noted Staff had presented the concept of having minimum and maximum parking requirements to Town Council.

Vice Chairman Plaag felt that a redistribution of parking spaces would allow more spaces for commercial uses.

Chairperson Shay felt comfortable with leaving the parking as it was.

First Motion and Vote:

Vice Chairman Plaag made a motion, seconded by Commission Member Kavanaugh, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because the proposed amendment is in alignment with:

Comprehensive Plan Policy 2.1.1 Economic Development:

- B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.

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

Comprehensive Plan Policy 2.1.2 Commercial Development:

- B. Commercial and Office development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development.
- I. Office and institutional development may be encouraged as a transitional land use between residential areas and higher intensity commercial activities.

Comprehensive Plan Policy 2.3.2 Community Character:

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

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

There was some discussion of placing a condition on the approval about parking redistribution.

Second Motion and Vote:

Vice Chairman Plaag made a motion, seconded by Commission Member Sanchez, that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest because of the Comprehensive Plan Policies listed in the first motion and vote and recommend a condition be placed on the permit that the applicant agree to meet the minimum requirement of 17 parking spaces for residential and the balance of parking spaces be dedicated to commercial uses, with an allowance for existing contracts and transition to take place by August 31, 2019.

Vote: Aye – 3 (Plaag, Sanchez, Hedrick)
 Nay – 3 (Veno, Shay, Kavanaugh)
The motion failed.

Commission Member Kavanaugh asked if there needed to be a condition regarding the exclusion of laundry mats and dry cleaners included in the motion.

Vice Chairman Plaag suggested 8 spaces for commercial and 17 spaces for residential.

Second Motion and Vote:

Commission Member Kavanaugh made a motion, seconded by Commission Member Hedrick, that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest because of the Comprehensive Plan Policies listed in the first motion and vote and recommend a condition be placed on the permit that no laundry mat or dry cleaner or high intensity uses are allowed. Commission Member Sanchez wished to amend the motion to strike high intensity uses. Commission Members Kavanaugh and Hedrick accepted the amendment.

Vote: Aye – 5 (Kavanaugh, Sanchez, Hedrick, Shay, Veno)
 Nay – 1 (Plaag)
The motion passed.

Chairman Plaag explained that he voted against the motion because he was concerned that 6 parking spaces would not be enough for the commercial uses.

CASE PL02133-113018 APPALACHIAN MOUNTAIN BREWERY – GENERAL USE ZONING MAP AMENDMENT

Vice Chairman Plaag stated he felt it was wrong to say to an applicant who used the Conditional District process to get their project approved because it was not allowed by right at that time that they have to stay a Conditional District when the Ordinance changes to allow the use by right. Vice Chairman Plaag stated there were parking issues at Appalachian Mountain Brewery and he urged them to be good neighbors and work toward a resolution.

Commission Member Kavanaugh stated she did not feel this change to general B3 would make any difference to the parking situation.

Chairperson Shay agreed there were parking concerns.

Ms. Shook pointed out that parking requirements are the same under their Conditional District approval or the general B3 zoning classification.

First Motion and Vote:

Commission Member Veno made a motion, seconded by Commission Member Kavanaugh, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because the proposed amendment is in alignment with:

Comprehensive Plan Policy 1.1 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.

Comprehensive Plan Policy 1.1 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.

Comprehensive Plan Policy 2.1.1 Economic Development:

B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.

Commission Member Hedrick wished to amend the motion to include Comprehensive Plan Policy 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.

Commission Members Veno and Kavanaugh accepted the amendment.

Vote: Aye – All

Nay – None

The motion passed.

Second Motion and Vote:

Commission Member Veno made a motion, seconded by Commission Member Kavanaugh, that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest because of the Comprehensive Plan Policies listed in the first motion and vote as well as Comprehensive Plan Policy 2.3.2 Community:

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

Vice Chairman Plaag wished to amend the motion to include that the approval is a better form of public policy where we recognize why an applicant originally sought Conditional District approval for this site, which was because there was a hole in the Town's planning for these kinds of businesses. The Town has now patched that hole and the applicant is simply being asked to be treated like every other business in the B3 and being permitted by right to do those things as other businesses are currently allowed to do. This is a matter of fairness. Commission Members Veno and Kavanaugh accepted the amendment.

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

CASE PL02156-121718 CHARLES PERRY – GENERAL USE ZONING MAP AMENDMENT

Vice Chairman Plaag stated he wished to recuse himself from the Perry case and the Plaag/Tait case.

Commission Member Sanchez made a motion to recuse Vice Chairman Plaag from the Perry case and the Plaag/Tait case. The motion was seconded by Commission Member Hedrick.

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

Commission Member Hedrick stated that, given the possibilities in an RA, he would recommend an R1 zoning of the property.

Commission Member Sanchez felt the property should be zoned RA because it was surrounded by property zoned RA.

Ms. Shook reminded Commission members that the Town no longer had the ETJ and the property did not have to be zoned RA just based on the fact the neighboring property was zoned RA.

Commission Member Kavanaugh felt the property should be zoned R1 due to environmental concerns and less impact.

Commission Member Veno stated that, since the property owner was okay with either R1 or RA, he felt the property should be zoned R1.

First Motion and Vote:

Commission Member Veno made a motion, seconded by Commission Member Hedrick, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable and should be zoned R1 because the proposed amendment is in alignment with:

Comprehensive Plan Policy 1.1 Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning

Comprehensive Plan Policy 2.3.2 Community Character:

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

Commission Member Hedrick wished to amend the motion to include Comprehensive Plan Policy 2.1.1 Economic Development:

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

Commission Member Venno accepted the amendment.

Vote: Aye – 3 (Venno, Hedrick, Kavanaugh)
Nay – 2 (Shay, Sanchez)

The motion passed.

Chairperson Shay stated it made sense to her to zone the property RA because the neighboring property was zoned RA.

Commission Member Sanchez agreed with Chairperson Shay and also cited Comprehensive Plan Policy 1.1 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, or ridgetops, and on steep slopes.

Second Motion and Vote:

Commission Member Venno made a motion, seconded by Commission Member Kavanaugh, that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest for the property to be zoned R1 with a designated Viewshed because of the Comprehensive Plan Policies listed in the first motion and vote and also cited Comprehensive Plan Policy 2.1.1 Economic Development:

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

Vote: Aye – 4 (Shay, Venno, Hedrick, Kavanaugh)
Nay – 1 (Sanchez)

The motion passed.

CASE PL02177-010319 PLAAG/TAIT – GENERAL USE ZONING MAP AMENDMENT

Commission Member Venno stated it was more important to him to have this property zoned R1 because of the Eastview neighborhood.

Ms. Shook stated she had some additional information but would need to have the public hearing reopened.

Commission Member Venno made a motion to reopen the public hearing. The motion was seconded by Commission Member Sanchez.

Vote: Aye – All
Nay – None

The motion passed.

Ms. Shook stated that she had failed to mention at the public hearing that there is a small portion of the property owned by Plaag Properties LLC that is zoned R1A which is to be rezoned whatever zoning classification was decided by Town Council. She noted the Staff Report does reflect this issue.

Mr. Plaag noted he wanted to clarify that in the area already within the corporate limits there was a 30' easement between his property and the Whittington's property that no one owned. Ms. Shook felt that all easements were ultimately owned by someone but noted that the intent was to only zone the portion of properties owned by Plaag Properties and not property owned by any other person outside of the request.

Commission Member Hedrick felt it was important to protect historic Junaluska.

With nothing further, Chairperson Shay closed the public hearing at 10:09 p.m.

First Motion and Vote:

Commission Member Hedrick made a motion, seconded by Commission Member Kavanaugh, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because the proposed amendment is in alignment with:

Comprehensive Plan Policy 1.1 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.

Comprehensive Plan Policy 1.1 Trees: Conserve existing trees and plant new trees, especially hardwoods.

Comprehensive Plan Policy 2.1.1 Economic Development:

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

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
- H. The overall housing unity density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

It is recommended that property owned by Plaag Properties, LLC be zoned R1 with a Viewshed designation.

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote:

Commission Member Hedrick made a motion, seconded by Commission Member Kavanaugh, that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest because of the Comprehensive Plan Policies listed in the first motion and vote and because of the protection of R1 neighborhoods and the desire of the Commission to protect the community and the limitation of uses provided in R1.

Vote: Aye – All
Nay – None

The motion passed.

Commission Member Hedrick made a motion to reinstate Vice Chairman Plaag. The motion was seconded by Commission Member Venio.

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

CASE PL01817-082318 UDO SECTION 15.11 – UDO TEXT AMENDMENT

Due to the time, Vice Chairman Plaag made a motion to table discussion of UDO Section 15.11 until the next regularly scheduled meeting. The motion was seconded by Commission Member Kavanaugh.

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

OTHER MATTERS

Ms. Shook stated that the regular May meeting fell on a holiday so the meeting date was rescheduled to May 20, 2019.

ADJOURNMENT OF PLANNING COMMISSION

Vice Chairman Plaag made a motion, seconded by Commission Member Sanchez to adjourn the meeting at 10:15 p.m.

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

Elizabeth Shay, Planning Commission Chairperson

Brenda Henson, Board Secretary

Zoning/Planning Permit Application

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961
www.townofboone.net

PERMIT IS FOR (CHOOSE ONE):

- ☐ Single Family or Duplex (Residential)
☒ Commercial
☐ Board of Adjustment Hearing (other than Appeals)
☐ Planning/Other

A. CONTACT INFORMATION

Applicant: Paul Forte Company: Appalachian State University
Address: 438 Academy Street-BB Dougherty Building-Boone, NC 28608
Phone Number: 828-262-2030 Email Address: scantlinwb@appstate.edu
Property Owner: Board of Trustees of the Endowment Fund of ASU Company: _____
Address: 438 Academy Street-BB Dougherty Building-Boone, NC 28608
Phone Number: 828-262-2030 Email Address: fortepd@appstate.edu

B. PROPERTY INFORMATION

Watauga County Parcel Identification Number(s): 2910-02-7414-000
Address/Location: High School Drive - Boone, NC 28607
Project Name: Track, Tennis, Softball Relocation

C. PERMIT SUBCATEGORIES

Additional Forms Needed

Zoning Permits

- | | |
|---|---|
| ☐ Accessory Building | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Addition/Expansion including decks and patios | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Change of Use | *Commercial Project Data Form |
| ☐ Land Disturbance (not associated with the construction of a bldg.) | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Manufactured Home Set-up in Park | *Manufactured Home in Park Form |
| ☐ New Building Construction | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Renovation/Remodel | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Accessory Use (as listed in UDO Subsection 15.07.01) | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Temporary Use (as listed in UDO Subsection 15.07.02) | *Zoning Project Data Form (Residential or Commercial) |
| ☐ Sign | *Sign Project Data Form (Zoning) |
| ☐ Pavement Sealant | *Pavement Sealant Project Data Form |
| ☐ Major Subdivision Zoning Permit | *Commercial Project Data Form |

Board of Adjustment Hearings

- | | |
|--|---|
| ☐ Special Use Permit/Modification | *Special Use Permit Form |
| ☐ Variance | *Variance Form |
| ☐ Major Subdivision Preliminary Plat Approval | *Major Subdivision Preliminary Plat Approval Form |

Planning/Other

- | | |
|---|--|
| ☐ Exempt Division of Land | *Subdivision Exemption Project Data Form |
| ☐ Minor Subdivision (Preliminary and Final Plat) | *Minor Subdivision Project Data Form |
| ☐ Major Subdivision (Final Plat) | *Major Subdivision Final Plat Project Data Form |
| ☐ UDO Text Amendment | *Text Amendment Project Data Form |
| ☒ General Use Zoning Map Amendment | *General Use Map Zoning Map Amendment Project Data Form |
| ☐ Conditional District Zoning Map Amendment | *Conditional District Zoning Map Amendment Project Data Form |
| ☐ Voluntary Annexation | *Annexation Petition (Satellite or Contiguous) |
| ☐ UDO Text Interpretation | *UDO Interpretation Data Form |

D. DETAILED DESCRIPTION OF PROJECT

Relocate track, tennis and softball facilities from main campus. Including team spaces, public facilities, and maintenance buildings.
The project will utilize the existing infrastructure to move the new facilities in the same location as current sports exist.

E. PROJECT MANAGER DESIGNATION

A project manager is responsible for the activities listed in UDO Section 4.19. 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.

Name: W. Brett Scantlin, PE Company: Appalachian State University
Address: 438 Academy St.- Boone, NC 28608 License #: _____
Phone Number: 828-773-5575 Email Address: scantlinwb@appstate.edu

F. DESIGN PROFESSIONAL INFORMATION**Engineer:**

Name: _____ Company: _____
Address: _____ License #: _____
Phone Number: _____ Email Address: _____

Architect:

Name: Andrew Elmer Company: HOK
Address: 300 W 22nd St.-Kansas City, MO 64108 License #: _____
Phone Number: 816-472-3360 Email Address: andrew.elmer@hok.com

G. BROWNFIELDS AGREEMENT NOTIFICATION

- Does the applicant have or is the applicant planning to enter into a Brownfields Agreement with the NC Brownfields Program? ☐ Yes ☒ No (If yes, please answer question #2 below.)
- Anticipated date for the first year of partial exclusion of property taxes: _____

H. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Paul Forte

Applicant¹ (Print)

Board of Trustees of the Endowment Fund of
ASU by Sheri Everts and Paul Forte

Property Owner (Print)

Applicant Signature

2/13/19
Date

Property Owner Signature

2/13/19
Date

Official Use Only

Project File Name:

ASU - Track, Tennis, Softball Relocation - General Use Zoning Map Amendment

Permit Number:

PL 02285-021419

Date: 02-14-2019	Fee: \$ 300.00	Receipt Number: 220157	Method of Payment: ✓ #150233359	Paid By: Appalachian State University
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S:\FORMS\Current Forms\Zoning\ZoningPlanningPermitApplication_07062018.doc

¹ Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent of such a person must be submitted along with this application. Execution by property owner of this application signifies that the applicant is authorized to proceed.

**General Use Zoning Map Amendment
Project Data Form**

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961
www.townofboone.net

Official Use Only
Project Name/Number:
Permit Name/Number: <u>PL02285-021419</u>

It is recommended that applicants schedule a meeting with Planning & Inspections Staff prior to application submittal.

A. ADDITIONAL APPLICATION INFORMATION

Hearing Date Requested¹: Public Hearing - 3/25/19 Town Council Meeting - 4/16/19

B. DEVELOPMENT INFORMATION

Existing Zoning District(s): B3 Proposed Zoning District(s): E1
Existing Land Use(s): Vacant
Adjacent Land Use(s): N: B3 E: B3,R3
W: B3, R3 S: Out of Town Jurisdiction

Are there are any existing variances granted to the property? ☐ Yes ☐ No ☐ Unknown

If yes, describe: _____

Total Land Area: 34 Ac.

C. DOCUMENTS REQUIRED FOR SUBMITTAL

- ☒ Application Fee
- ☒ Deed(s) of all property included in the request
- ☒ A written metes & bounds legal description with accompanying survey map is required for a request that would rezone only a portion of a tax parcel or requests for multiple zoning districts

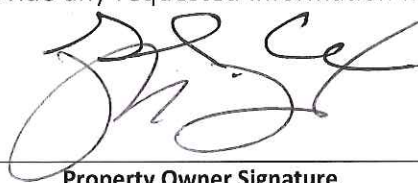
D. PROPERTY OWNER SIGNATURE:

By signing this form you are certifying that this application and any attached information are accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Sheri Everts

Paul Forte

Property Owner (Print)



Property Owner Signature

2-13-19

Date

¹ Each applicant must provide the meeting date for which they wish their request to appear. Each completed application must have met published meeting deadlines.

Official Use Only

Public Hearing Meeting Date: 03-25-2019

PC Meeting Date: 03-25-2019

TC Meeting Date: 04-14-2019 or 04-16-2019

Date of APO Mailed Notification: _____

Date of Posted Notification: _____

Project Approved: ☐ Yes ☐ No

Date Order Recorded: _____

Order Recordation Information: Book: _____ Page: _____

S:\FORMS\Forms_2015\GeneralUseZoningMapAmendmentProjectDataForm_062015.doc

Communication: Case PL02285-021419 ASU General Use Zoning Map Amendment - Application Information (Case PL02285-021419 ASU

FILED Amy J. Shook
Register of Deeds, Watauga Co, NC
Fee Amt: \$26.00

Bk 1940 Pg 400 (7)
Recorded: 09/29/2017 at 03:03:01 PM
Doc No: 662453 Kind: DEED

✓
RETURN TO ALLEN C MOSELEY



Excise Tax: \$

Recording Time, Book & Page
File Number: 2160351.13 (hmv)

State of North Carolina

WARRANTY DEED

County of Watauga

This Deed, made this 28th day of September, 2017, by and between

**WATAUGA COUNTY, a corporate body politic organized and existing under the laws of
the State of North Carolina
814 West King Street
Boone, NC 28607
(hereinafter called "Grantor")**

and

**BOARD OF TRUSTEES OF THE ENDOWMENT FUND OF APPALACHIAN STATE
UNIVERSITY, an instrumentality of the State of North Carolina
c/o Vice Chancellor for Business Affairs
PO Box 32003
BB Dougherty Administration Building, Third Floor, Suite 305
438 Academy Street
Boone, NC 28608
(hereinafter called "Grantee")**

Return to Grantee

Prepared by: di Santi Watson Capua Wilson & Garrett, PLLC
P O Box 193, 642 West King Street
Boone, North Carolina 28607

WITNESSETH

Grantor for and in consideration of the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATIONS to it paid by the said Grantee, the receipt of all of which is hereby acknowledged, has, subject to any exceptions, conditions, provisions, restrictions or reservations herein contained, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said Grantee, its successors and assigns, all that certain tract(s) or parcel(s) of land lying and being in **New River** Township, **Watauga** County, North Carolina, more particularly described as follows:

A 74.634 acre tract as more particularly described on a plat showing proposed recombination and partial topographic survey for Appalachian State University, being the property of Watauga County showing the "Old High School Property", New River Township, Town of Boone, Watauga County, North Carolina prepared by Mattern & Craig Engineers/Surveyors of 12 Broad Street, Asheville, North Carolina 28801 dated September 14, and as more particularly described on Exhibit A attached hereto and incorporated herein by reference.

Pursuant to NCGS 105-317.2, Grantor represents that the property conveyed herein is not its primary residence.

PREPARED WITHOUT BENEFIT OF TITLE EXAMINATION.

The property hereinabove described was acquired by Grantor by instrument recorded in Book of Records 1084 at Page 728 and Book of Records 1353 at Page 115, Watauga County Public Registry. Watauga County Tax Parcels: 2910-02-7724-000; 2910-13-4202-000; 2910-01-5763-000; 2910-11-0378-000.

To have and to hold the said premises above described, with every privilege and appurtenance thereunto belonging to the said Grantee, its successors and assigns, to its only use and behoof forever, subject always to any exceptions, conditions, provisions, restrictions or reservations herein contained.

The Grantor covenants with the Grantee, its successors and assigns: that it is the owner of and is seized of the premises in fee simple; that it has a good right to convey the same in fee simple;

Prepared by: di Santi Watson Capua Wilson & Garrett, PLLC
P O Box 193, 642 West King Street
Boone, North Carolina 28607

that title is marketable and free and clear of all liens and encumbrances, except as herein set forth; and, that it will forever warrant and defend the title thereto against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the said Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Watauga County,
a North Carolina corporate body politic

By: Billy Kennedy
Billy Kennedy, Vice-Chair of the Watauga County
Board of County Commissioners

Attest:

Anita Fogle
Anita Fogle, Clerk to the
Board of County Commissioners

(CORPORATE SEAL)



Prepared by: di Santi Watson Capua Wilson & Garrett, PLLC
P O Box 193, 642 West King Street
Boone, North Carolina 28607

STATE OF NORTH CAROLINA, COUNTY OF WATUAGA

I, a Notary Public of the County and State aforesaid, certify that Anita Fogle, personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners for the County of Watauga, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Vice-Chair of the Board of County Commissioners and attested by her as Clerk to the Board of Commissioners.

The signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the 28 day of September, 2017.



Monica K. Harrison
Notary Public
Print: Name: Monica K. Harrison
My Commission Expires: 12/02/2020

W:\ASD\Clients\Watauga County\Sale Of Old Watauga High School\Appalachian State University\Selldocs.Doc

Prepared by: di Santi Watson Capua Wilson & Garrett, PLLC
P O Box 193, 642 West King Street
Boone, North Carolina 28607

EXHIBIT A

Being the outside boundary line of a proposed recombination survey of the tracts of land conveyed to Watauga County by Deeds recorded in Book of Records 1084, Page 728; Book of Records 1084, page 732; and Book of Records 1353, Page 115:

BEGINNING at an iron rod found (NCGS Grid Coordinates, N=902,981.142, E=1,209,463.751) located on the South right-of-way line of N.C. Highway No. 105, the said iron rod being a corner to Goodwill Industries (Book of Records 1785, Page 684), said iron rod being S 34° 40' 19" W 3,349.69' (Grid) feet from NCGS Grid Station "Hampton"; Thence, N 88° 31' 52" E 105.64 feet to an iron rod found; thence, S 00° 05' 14" E 97.59 feet to an iron rod found; thence, S 55° 17' 40" E 117.96 feet to a ½" pipe found; thence, S 79° 07' 11" E 174.98 feet to a tall 1 ½" pipe found; thence, N 48° 30' 28" E passing an iron rod at 44.68 feet in all 532.45 feet to ¾" pipe found; thence, N 25° 18' 52" W 30.00 feet to a point; thence, N 30° 24' 28" E 64.51 feet to a point; thence, N 00° 42' 28" E 76.55 feet to a point in the south edge of N. C. Highway 105; thence running with the south edge of N.C. Highway 105, N 70° 53' 58" E for a distance of 59.16 feet to a point in the south edge of N.C. Highway 105; thence leaving the south edge of N.C. Highway 105, S 09° 23' 38" E 133.83 feet to a ¾" pipe found in base of tree; thence, N 78° 44' 43" E 99.86 feet to an iron rod found; thence, N 78° 24' 46" E 109.85 feet to an iron rod found; thence, N 89° 30' 36" E 99.90 feet to an iron rod found; thence, S 81° 35' 23" E 100.40 feet to a ½" pipe found; thence, N 07° 24' 48" W passing an iron rod at 196.54 feet in all 232.22 feet to point in N.C. Highway 105; thence running with N.C. Highway 105 the following three (3) course; a curve to the right having a delta angle of 05° 37' 44", a radius of 3,500.00 feet, an arc length of 343.85 feet, a chord bearing of N 81° 12' 28" E 343.71 feet to a point; thence, N 82° 00' 27" E 258.06 feet to a point; thence a curve to left having a delta angle of 11° 01' 46", a radius of 1,225.00 feet, an arc length of 235.81 feet, a chord bearing of N 76° 28' 17" E 235.45 feet to a point of intersection with N.C. Highway 105 and Wilson Drive; thence leaving N.C. Highway 105 and with Wilson Drive the following two (2) courses, S 30° 15' 33" E for a distance of 512.63 feet to a point; thence a curve to the left having a delta angle of 01° 53' 18", a radius of 240.00 feet, an arc length of 7.91, a chord bearing of S 31° 12' 13" E 7.91 feet to a point; thence leaving Wilson Drive, S 31° 10' 30" W 161.62 feet to a tall 1 ½" pipe found; thence, S 31° 10' 30" W 216.20 feet to a t-iron found; thence, S 31° 22' 11" W passing an iron rod online at 53.82' feet in all 99.20 feet to a 3/8" iron rod found; thence, S 35° 49' 08" W 108.84 feet to an iron rod found; thence, S 38° 39' 57" E for a distance of 262.25 feet to a point in Winklers Creek; thence with the Winklers Creek the following ten (10) courses, S 53° 08' 24" W 117.36 feet to a point; thence, S 35° 03' 23" W 120.19 feet to a point; thence, S 26° 51' 25" W 131.94 feet to a point; thence, S 27° 02' 56" W 93.00 feet to a point; thence, S 26° 31' 54" W 144.17 feet to a point; thence, S 29° 53' 46" W 145.69 feet to a point; thence, S 42° 27' 45" W 62.71 feet to a point; thence, S 14° 56' 49" W 19.17 feet to a point; thence, S 09° 48' 51" E 26.56 feet to a point; thence, S 49° 44' 56" E 23.03 feet to a spike in the center of Winklers Creek Road; thence with the center of Winklers Creek Road, the following thirteen (13) courses; S 49° 41' 13" W 19.59 feet to a point; thence a curve to the left having a delta angle of 52° 20' 53", a radius of 50.00 feet, an arc length of 45.68', a chord bearing of S 23° 29' 14" W 44.11 feet to a point; thence a curve to the left having a delta angle of 37° 38' 37", a radius of 80.00 feet, an arc length of 52.56 feet, a chord bearing of S 21° 30' 16" E 51.62 feet to a point; thence a curve to the left having a delta angle of 37° 42' 33", a radius of 150.00 feet, an

arc length of 98.72 feet, a chord bearing of S 59° 10' 56" E 96.95 feet to a point; thence, S 78° 02' 21" E 187.53 feet to a point; thence a curve to the right having a delta angle of 09° 36' 51", a radius of 300.00 feet, an arc length of 50.34 feet, a chord bearing of 73° 13' 56" E 50.28 feet to a point; thence a curve to the right having a delta angle of 104° 42' 29", a radius of 50.00 feet, an arc length of 91.38, a chord bearing of S 15° 04' 31" E 79.18 feet to a point; thence a curve to the right having a delta angle of 18° 21' 39", a radius of 350.00 feet, an arc length of 112.16 feet, a chord bearing of S 45° 27' 19" W 111.68 feet to a point; thence a curve to the left having a delta angle of 17° 23' 48", a radius of 650.00 feet, an arc length of 197.36 feet, a chord bearing of S 45° 53' 34" W 196.60 feet to a point; thence a curve to the right having a delta angle of 22° 35' 50", a radius of 320.00 feet, an arc length of 126.21 feet, a chord bearing of S 48° 26' 59" W 125.39 feet to a point; thence a curve to the right having a delta angle of 70° 39' 04", a radius of 90.00 feet, an arc length of 110.98 feet, a chord bearing of N 84° 55' 36" W 104.08 feet to a point; thence a curve to the left having a delta angle of 24° 05' 41", a radius of 520.00 feet, an arc length of 218.68 feet, a chord bearing of N 59° 40' 56" W 217.07 feet to a point; thence a curve to the right having a delta angle of 07° 52' 23", a radius of 215.00 feet, an arc length of 29.54 feet, a chord bearing of N 73° 42' 01" W 29.52 feet to a Spike found; thence leaving Winklers Creek Road, N 01° 34' 33" E 456.49 feet to a ½" pipe found; thence, S 44° 53' 07" W 20.29 feet to an iron rod found; thence, S 32° 53' 51" W 89.81 feet to a ½" pipe found on top of mountain; thence with the top of the mountain the following eight (8) courses, N 81° 46' 30" W 91.85 feet to an iron rod found; thence, S 85° 35' 57" W 76.59 feet to an iron rod found; thence, S 76° 24' 56" W 97.35 feet to an iron rod found; thence, S 82° 17' 01" W 76.52 feet to a ¾" pipe found; thence, N 83° 37' 52" W 39.20 feet to a ¾" pipe found; thence, N 83° 49' 41" W 95.94 feet to an iron rod found; thence, S 73° 06' 39" W 315.96 feet to a ½" pipe found; thence, S 88° 13' 05" W 230.21 feet to a ½" pipe found; thence leaving the top of the mountain, N 01° 13' 20" W for a distance of 590.04 feet to a stone found; thence, N 59° 07' 16" W 201.99 feet to a point; thence, N 50° 22' 13" W passing an iron rod online at 20.54 feet in all 72.76 feet to an iron rod found; thence, N 20° 50' 25" E 50.94 feet to an iron rod found; thence, N 42° 33' 16" E 47.48 feet to an iron rod found; thence, N 61° 31' 09" E 67.66 feet to an iron rod found; thence, N 77° 51' 26" E 53.84 feet to an iron rod found in south right-of-way line of Temple Drive; thence with the south right-of-way line of Temple Drive the following two (2) courses, N 52° 36' 44" W 148.27 feet to an iron rod found; thence, N 63° 18' 54" W 41.81 feet to an iron rod found; thence, N 00° 45' 14" W 219.78 feet to a point; thence, N 64° 25' 49" W 114.94 feet to an iron rod found; thence, N 43° 29' 49" W 69.66 feet to a point; thence N 00° 52' 25" W passing an iron rod at 31.60 feet and 123.36 feet in all 175.89 feet to the POINT OF BEGINNING and containing 74.634 Acres, more or less.

There is also conveyed herewith, and this conveyance is made subject to, all appurtenant easements associated with the above-described 74.634 acre parcel, including but not limited to the following:

1. A non-exclusive 40 foot right-of-way and easement set forth in that certain Agreement recorded in Book of Records 420, Page 275, Watauga County Registry;
2. A 45 foot right-of-way for purposes of ingress, egress and regress leading from Winklers Creek Road and continuing over and across a parcel of land owned by the Town of Boone, which easement is more fully described in the instruments recorded in

Book of Records 294, Page 120 and Book of Records 294, Page 124, Watauga County Public Registry;

3. An appurtenant easement for water of sewer purposes as set forth and described in Book of Records 136, Page 325, Watauga County Public Registry;
4. Right-of-way and easement agreement by and between Watauga County Board of Education as Grantor and James H. Lester, Trustee and Phyllis C. Lester, Trustee, as Grantee recorded in Book of Records 420, Page 275, Watauga County Public Registry;
5. A 45 foot wide right-of-way and easement as more fully described in the instrument recorded in Book of Records 103, Page 76, Watauga County Public Registry; and
6. Sewer line and utility easement from Community Apartments Corporation of America recorded in Book of Records 415, Page 186, Watauga County Public Registry.

TRACT 1

BEGINNING at an iron rod found (NCGS Grid Coordinates, N=902,981.142, E=1,209,463.751) located on the South right-of-way line of N.C. Highway No. 105, the said iron rod being a corner to Goodwill Industries (Book of Records 1785, Page 684), said iron rod being S 34° 40' 19" W 3,349.69' (Grid) feet from NCGS Grid Station "Hampton"; Thence, N 88° 31' 52" E 105.65 feet to an iron rod found; thence, S 00° 05' 14" E 97.59 feet to an iron rod found; thence, S 55° 17' 40" E 117.96 feet to a ½" pipe found; thence, S 79° 07' 11" E 174.98 feet to a tall 1 ½" pipe found; thence, N 48° 30' 28" E passing an iron rod at 44.68 feet in all 532.45 feet to ¾" pipe found; thence, N 25° 18' 52" W 30.00 feet to a point; thence, N 30° 24' 28" E 64.51 feet to a point; thence, N 00° 42' 28" E 76.55 feet to a point in the south edge of N. C. Highway 105; thence running with the south edge of N.C. Highway 105, N 70° 53' 58" E for a distance of 59.16 feet to a point in the south edge of N.C. Highway 105; thence leaving the south edge of N.C. Highway 105, S 09° 23' 38" E 133.83 feet to a ¾" pipe found in base of tree; thence, N 78° 44' 43" E 99.86 feet to an iron rod found; thence, N 78° 24' 46" E 109.85 feet to an iron rod found; thence, N 89° 30' 36" E 99.90 feet to an iron rod found; thence, S 81° 35' 23" E 100.40 feet to a ½" pipe found; thence, N 07° 24' 48" W passing an iron rod at 196.54 feet in all 232.22 feet to point in N.C. Highway 105; thence running with N.C. Highway 105 the following three (3) course; a curve to the right having a delta angle of 05° 37' 44", a radius of 3,500.00 feet, an arc length of 343.85 feet, a chord bearing of N 81° 12' 28" E 343.71 feet to a point; thence, N 82° 00' 27" E 258.06 feet to a point; thence a curve to left having a delta angle of 11° 01' 46", a radius of 1,225.00 feet, an arc length of 235.81 feet, a chord bearing of N 76° 28' 17" E 235.45 feet to a point of intersection with N.C. Highway 105 and Wilson Drive; thence leaving N.C. Highway 105 and with Wilson Drive the following two (2) courses, S 30° 15' 33" E for a distance of 512.63 feet to a point; thence a curve to the left having a delta angle of 01° 53' 18", a radius of 240.00 feet, an arc length of 7.91, a chord bearing of S 31° 12' 13" E 7.91 feet to a point; thence leaving Wilson Drive, S 31° 10' 30" W passing an iron rod set at 333.39 feet in all 161.62 feet to a tall 1 ½" pipe found; thence, S 31° 10' 30" W 216.20 feet to a t-iron found; thence, S 31° 22' 11" W passing an iron rod online at 53.82' feet in all 99.20 feet to a 3/8" iron rod found; thence, S 35° 49' 08" W 108.84 feet to an iron rod found; thence with a new boundary line through the property of Board of Trustees of the Endowment Fund of Appalachian State University the following nine (9) courses: S 73° 59' 29" W 229.21 feet to an iron rod set; thence S 84° 37' 53" W 141.77 feet to an iron rod set; thence S 83° 39' 20" W 432.04 feet to a nail set; thence S 89° 18' 47" W 115.10 feet to a nail set; thence S 87° 12' 02" W 322.73 feet to a nail set; thence S 72° 47' 28" W 135.75 feet to a nail set in the intersection of High School Drive and Temple Drive; thence leaving High School Drive and with Temple Drive S 04° 09' 44" E 22.24 feet to a nail set; thence with a curve to the right having a delta angle of 56° 28' 13", a radius of 103.77 feet, an arc length of 102.28 feet, a chord bearing of S 24° 04' 23" W 98.19 feet to a nail set; thence leaving Temple Drive N 49° 51' 49" W 472.09 feet to an iron rod set; thence N 64° 25' 49" W 122.74 feet to an iron rod set, the said iron rod

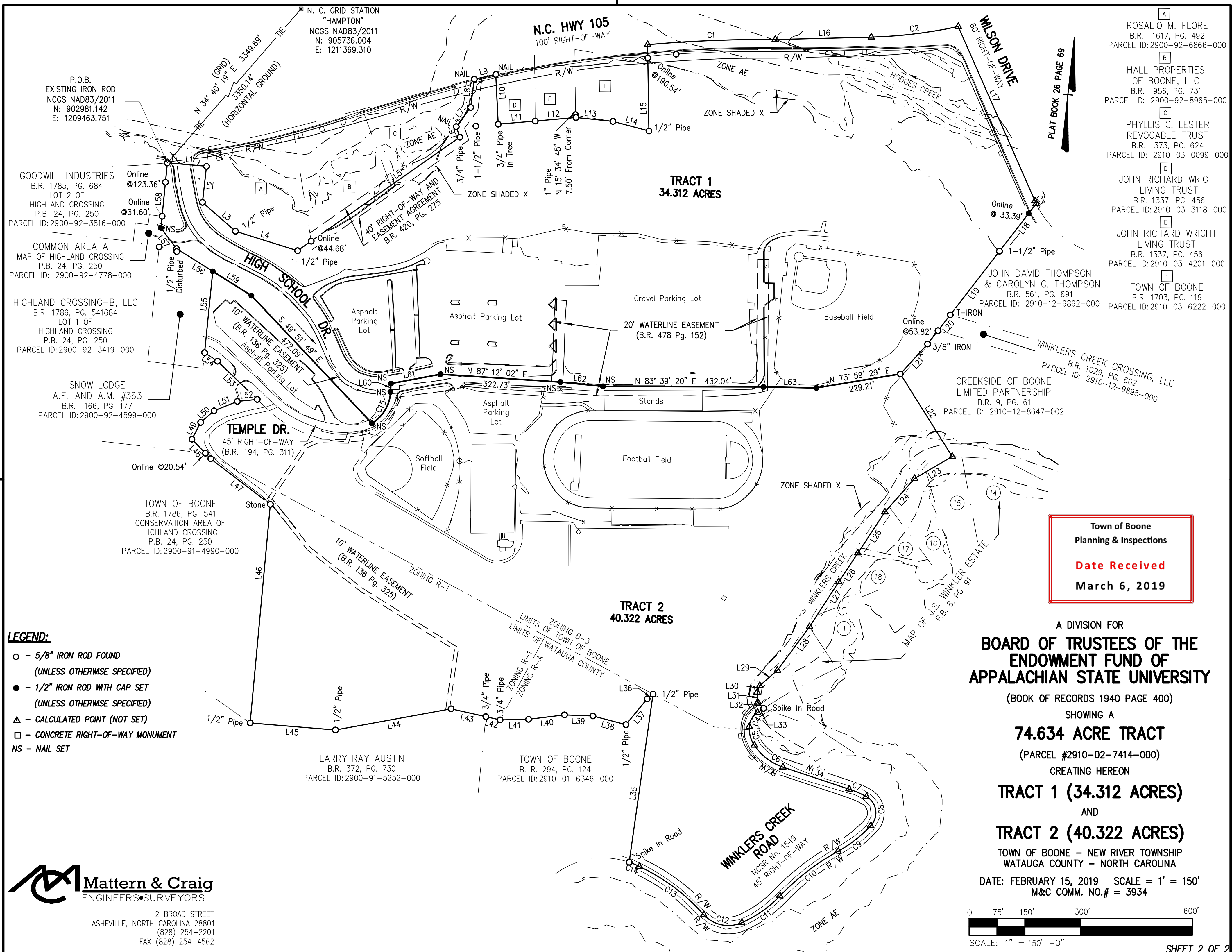
being a corner to Snow Lodge A. F. and A.M. #363 (Book of Records 166, Page 177); thence, N 64° 25' 49" W 114.94 feet to an iron rod found; thence, N 43° 29' 49" W 69.66 feet to a point; thence N 00° 52' 25" W passing an iron rod at 31.60 feet and 123.36 feet in all 175.90 feet to the POINT OF BEGINNING and containing 34.312 Acres, more or less.

TRACT 2

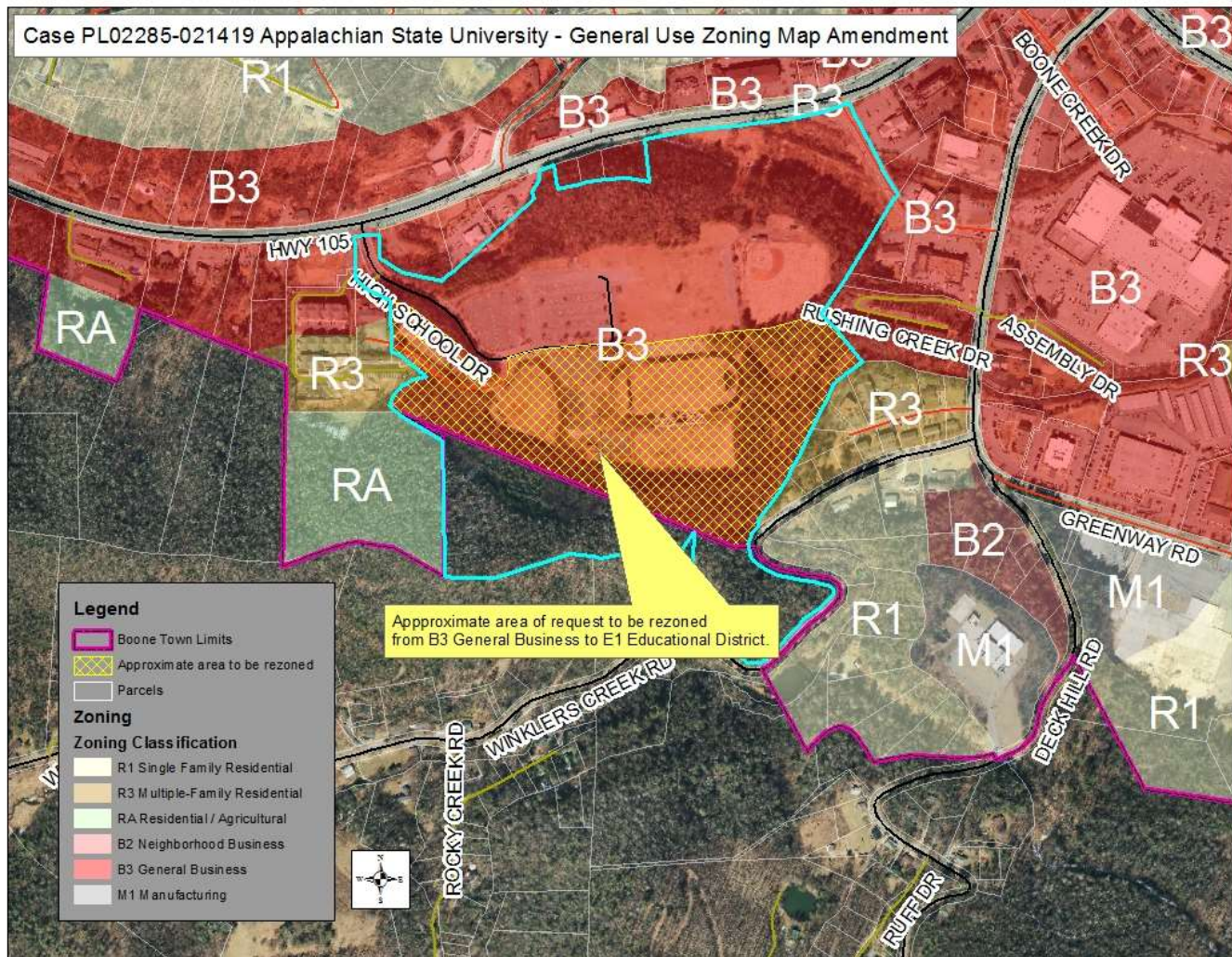
BEGINNING at a nail set in the intersection of High School Drive and Temple Drive; thence with a new boundary lines through the property of Board of Trustees of the Endowment Fund of Appalachian State University the following six (6) courses: N 72° 47' 28" E 135.75 feet to a nail set; thence N 87° 12' 02" E 322.73 feet to a nail set; thence N 89° 18' 47" E 115.10 feet to a nail set; thence N 83° 39' 20" E 432.04 feet to a nail set; thence N 84° 37' 53" E 141.77 feet to an iron rod set; thence N 73° 59' 29" E 229.21 feet to iron rod found; thence, S 38° 39' 57" E for a distance of 262.25 feet to a point in Winklers Creek; thence with the Winklers Creek the following ten (10) courses, S 53° 08' 24" W 117.36 feet to a point; thence, S 35° 03' 23" W 120.19 feet to a point; thence, S 26° 51' 25" W 131.94 feet to a point; thence, S 27° 02' 56" W 93.00 feet to a point; thence, S 26° 31' 54" W 144.17 feet to a point; thence, S 29° 53' 46" W 145.69 feet to a point; thence, S 42° 27' 45" W 62.71 feet to a point; thence, S 14° 56' 49" W 19.17 feet to a point; thence, S 09° 48' 51" E 26.56 feet to a point; thence, S 49° 44' 56" E 23.03 feet to a spike in the center of Winklers Creek Road; thence with the center of Winklers Creek Road, the following thirteen (13) courses; S 49° 41' 13" W 19.59 feet to a point; thence a curve to the left having a delta angle of 52° 20' 53", a radius of 50.00 feet, an arc length of 45.68', a chord bearing of S 23° 29' 14" W 44.11 feet to a point; thence a curve to the left having a delta angle of 37° 38' 37", a radius of 80.00 feet, an arc length of 52.56 feet, a chord bearing of S 21° 30' 16" E 51.62 feet to a point; thence a curve to the left having a delta angle of 37° 42' 33", a radius of 150.00 feet, an arc length of 98.72 feet, a chord bearing of S 59° 10' 56" E 96.95 feet to a point; thence, S 78° 02' 21" E 187.53 feet to a point; thence a curve to the right having a delta angle of 09° 36' 51", a radius of 300.00 feet, an arc length of 50.34 feet, a chord bearing of 73° 13' 56" E 50.28 feet to a point; thence a curve to the right having a delta angle of 104° 42' 29", a radius of 50.00 feet, an arc length of 91.38, a chord bearing of S 15° 04' 31" E 79.18 feet to a point; thence a curve to the right having a delta angle of 18° 21' 39", a radius of 350.00 feet, an arc length of 112.16 feet, a chord bearing of S 45° 27' 19" W 111.68 feet to a point; thence a curve to the left having a delta angle of 17° 23' 48", a radius of 650.00 feet, an arc length of 197.36 feet, a chord bearing of S 45° 53' 34" W 196.60 feet to a point; thence a curve to the right having a delta angle of 22° 35' 50", a radius of 320.00 feet, an arc length of 126.21 feet, a chord bearing of S 48° 26' 59" W 125.39 feet to a point; thence a curve to the right having a delta angle of 70° 39' 04", a radius of 90.00 feet, an arc length of 110.98 feet, a chord bearing of N 84° 55' 36" W 104.08 feet to a point; thence a curve to the left having a delta angle of 24° 05' 41", a radius of 520.00 feet, an arc length of 218.68 feet, a chord bearing of N 59° 40' 56" W 217.07 feet to a point; thence a curve to the right having a delta angle of 07° 52' 23", a radius of 215.00 feet, an arc length of 29.54 feet, a chord bearing of N 73° 42' 01" W 29.52 feet to a Spike found; thence leaving Winklers Creek Road, N 01° 34' 33" E 456.49 feet to a ½" pipe found; thence, S 44° 53' 07" W 20.29 feet to an iron rod found; thence, S 32° 53' 51" W 89.81 feet to a ½" pipe found on top of mountain; thence with the top of the mountain the following eight (8) courses, N 81° 46' 30" W 91.85 feet to an iron rod found; thence, S 85°

35' 57" W 76.59 feet to an iron rod found; thence, S 76° 24' 56" W 97.35 feet to an iron rod found; thence, S 82° 17' 01" W 76.52 feet to a ¾" pipe found; thence, N 83° 37' 52" W 39.20 feet to a ¾" pipe found; thence, N 83° 49' 41" W 95.94 feet to an iron rod found; thence, S 73° 06' 39" W 315.96 feet to a ½" pipe found; thence, S 88° 13' 05" W 230.21 feet to a ½" pipe found; thence leaving the top of the mountain, N 01° 13' 20" W for a distance of 590.04 feet to a stone found; thence, N 59° 07' 16" W 201.99 feet to a point; thence, N 50° 22' 13" W passing an iron rod online at 20.54 feet in all 72.76 feet to an iron rod found; thence, N 20° 50' 25" E 50.94 feet to an iron rod found; thence, N 42° 33' 16" E 47.48 feet to an iron rod found; thence, N 61° 31' 09" E 67.66 feet to an iron rod found; thence, N 77° 51' 26" E 53.84 feet to an iron rod found in south right-of-way line of Temple Drive; thence with the south right-of-way line of Temple Drive the following two (2) courses, N 52° 36' 44" W 148.27 feet to an iron rod found; thence, N 63° 18' 54" W 41.81 feet to an iron rod found; thence, N 00° 45' 14" W 219.78 feet to a point; thence with a new boundary lines through the property of Board of Trustees of the Endowment Fund of Appalachian State University the following four (4) courses: S 64° 25' 49" E 122.74 feet to an iron rod set; thence S 49° 51' 49" E 472.09 feet to a nail in Temple Drive; thence with Temple Drive a curve to the left having a delta angle of 56° 28' 13", a radius of 103.77 feet, an arc length of 102.28 feet, a chord bearing of N 24° 04' 23" E 98.19 feet to a nail set; thence S 04° 09' 44" E 22.24 feet to the POINT OF BEGINNING and containing 40.322 Acres more or less.

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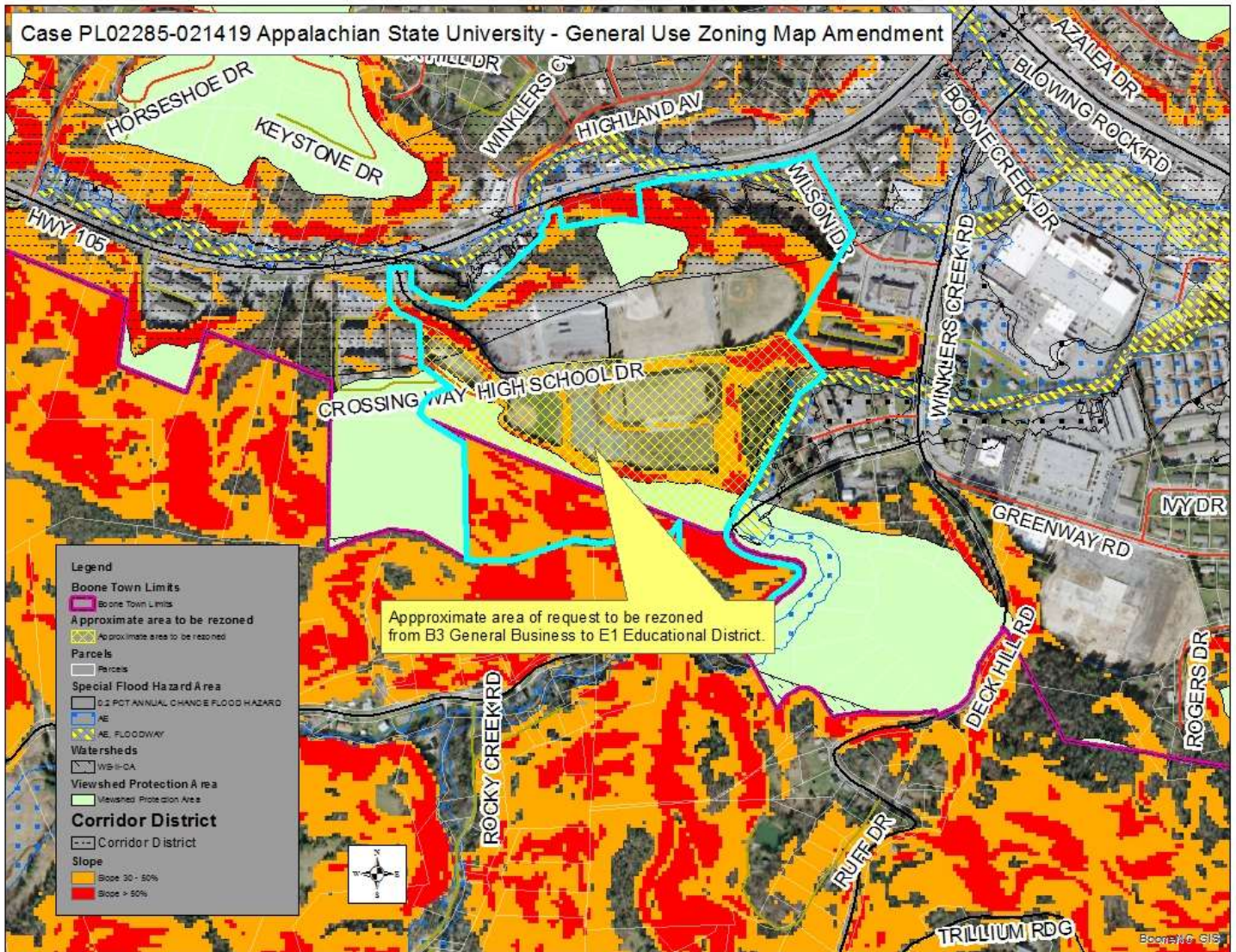


STAFF REPORT
PUBLIC HEARING
MARCH 25, 2019
CASE PL02285-021419 ASU – 105/HIGH SCHOOL DRIVE PROPERTY
GENERAL USE ZONING MAP AMENDMENT



Request

Paul Forte on behalf of Appalachian State University has submitted a Planning Permit Application to request that a 34 acre portion of their 74.63 acre property located off of Highway 105 and High School Drive (Watauga County Parcel ID: 2910027414000) be rezoned from B3 General Business to E1 Educational District.



Parcel Information

Address: None, vacant parcel,

Watauga County PINs: 2910-02-7414-000

Property Owner: Board of Trustees of the Endowment Fund of Appalachian State University

Total Lot size: 74.63 acres (area to be rezoned is 34 acres)

Jurisdiction: Majority of the tract is within the Town of Boone corporate limits; there is a portion of the property as noted on the map above located within Watauga County's jurisdiction.

Access: High School Drive off of NC Hwy 105

SFHA: Yes; A portion of the property to the north along Hwy 105 and a portion of the property to the southeast in the Winkler's Creek area are located within the Special Flood Hazard Area.

Watershed District: No

Corridor District: Yes

NCD: No

Viewshed: Yes; Portions of the lot contain viewshed protection.

Utilities: Town water and sewer available

Current Zoning: B3 General Business; Portion within Watauga County's jurisdiction is not zoned but may contain watershed restrictions.

Proposed Zoning: E1 Education District

Current Uses: Parking/Vacant

Zoning District Descriptions (excerpts from UDO Article 14 Zoning Districts and Zoning Map):

14.02 Commercial Districts Established

...

14.02.01 The following commercial districts are hereby established: B1, B2, B3, and OI. These districts are created to accomplish the purposes and serve the objectives set forth in the remainder of this Section.

14.03 Educational Districts Established

14.03.01 The educational districts are established to provide areas which promote the enhancement of compatible educational institutions and opportunities within the town's planning area while preserving the overall small-town character of Boone.

...

14.03.03 The E-1 Educational District is established to provide for appropriate uses by colleges or universities outside of the ASU main campus. Such uses shall not include residential uses. The owner of a property zoned E-1 must be a college or university. In the event that a property or portion of property zoned E-1 is sold to a third party that is not a college or university, the property must be rezoned. The third-party property owner shall submit a petition to rezone the property within 6 months of closing on its purchase of the property.

Zoning & Use of Adjacent Properties		
Zoning		Land Use (according to tax records)
North	B3 General Business	Vacant, Commercial
East	B3 General Business, R3 Multiple Family, R1 Single Family	Commercial, Multi-Family, Single & Two Family Dwellings
South	Not zoned (Watauga County Jurisdiction)	Vacant
West	Conditional District B3, R3 and RA	Site specific approval of the Mountaineer Crossing development

Permissible Uses

UDO Article 15, Section 15.07 contains the Table of Principal Uses which should be read in conjunction with the definition of terms set forth in UDO Article 34.

15.07 Table of Principal Uses

Use #	Specific Use	B3	E1	Reference
1.0 Household Living				
1.01	Single-Family Dwelling			
1.02	Manufactured Home "Class A"			15.08
1.03	Manufactured Home "Class B"			15.08
1.04	Manufactured Home "Class C"			
1.05	Manufactured Home Park			15.09
1.06	Duplex (one duplex building per lot)			
1.07	Duplex (more than one duplex building per lot)			15.10
1.08	Townhouse (up to 30 bedrooms)			15.10
1.09	Townhouse (31-100 bedrooms)			15.10
1.10	Townhouse (> 100 bedrooms)			15.10
1.11	Multi-Family Dwelling (up to 30 bedrooms)			15.10
1.12	Multi-Family Dwelling (31-100 bedrooms)			15.10
1.13	Multi-Family Dwelling (> 100 bedrooms)			15.10
1.14	Multi-Family Dwelling in Mixed Use (up to 30 bedrooms)	L		15.11
1.15	Multi-Family Dwelling in Mixed Use (31-100 bedrooms)	L ^{T125}		15.11
1.16	Multi-Family Dwelling in Mixed Use (> 100 bedrooms)	L ^{T200}		15.11
2.0 Group Living				
2.01	Family Care Home			15.13
2.02	Family Care Institutions			15.14
2.03	Halfway House, Category 1			15.14
2.04	Halfway House, Category 2			15.14
2.05	Nursing Care Home	L		15.14
2.06	Nursing Care Institution	L ^{T125}		15.14
2.07	Skilled Nursing Facility	L ^{T300}		15.14
2.08	Retirement Community, Category 1			15.15
2.09	Retirement Community, Category 2			15.15
2.13	Fraternity or Sorority Dwelling			15.16
2.14	Boarding House	L		15.17
3.0 Transient Living				
3.01	Home for Survivors of Domestic Violence			15.18
3.02	Shelter for Homeless, Category 1	L ^{T50}		15.19
3.03	Shelter for Homeless, Category 2	L ^{T300}		15.19
3.04	Bed and Breakfast, Category 1			15.20
3.05	Bed and Breakfast, Category 2	L ^{T125}		15.20
3.06	Vacation Rental	L ^{T75}		15.21

Use #	Specific Use	B3	E1	Reference
3.07	Motel	pT300		
3.08	Hotel	pT200		
4.0 Institutional				
4.01	Airport/Landing Strip			15.22
4.02	Heliport			15.22
4.03	Funeral Home Establishment	P		
4.04	Cemetery	P		
4.05	Post Office	P		
4.06	Post Office, Distribution			
4.07	Animal Sanctuary			
5.0 Government Uses				
5.01	Government Cultural Facility	P		
5.02	Government Neighborhood Cultural Facility, Indoor Activity Only	P		
5.03	Government Neighborhood Cultural Facility, Includes Outdoor Activity	P		
5.04	Recreation Facility, Category 1	P		
5.05	Recreation Facility, Category 2	P		
5.06	Recreation Facility, Category 3	pT50		
5.07	Event Venue, Category 1	P		
5.08	Event Venue, Category 2	P		
5.09	Event Venue, Category 3	pT50		
5.10	Landfill			
5.11	Solid Waste Processing			
5.12	Police Substation	P		
5.13	Utility Facility, Town	L		15.23
5.14	Utility Facility, Government, Neighborhood	L		15.23
5.15	Utility Facility, Government, Regional	L ^{T300}		15.23
5.16	Government Facility	P		
6.0 Non-Government Utility Facility				
6.01	Utility Facility, Neighborhood	L		15.23
6.02	Utility Facility, Regional	L ^{T300}		15.23
7.0 Telecommunications				
7.01	Antenna Collocation on Existing Wireless Support Structure not requiring additional accessory equipment	P		
7.02	Antenna Collocation on Existing Wireless Support Structure requiring additional accessory equipment	L		15.24
7.03	Building Mounted Antenna not requiring additional accessory equipment	L		15.24
7.04	Building Mounted Antenna requiring additional accessory equipment	L		15.24
7.05	Antenna Collocation on Electrical Transmission Towers			15.24
7.06	Other Antenna	L		15.24
7.07	Wireless Support Structure which meets district height requirements	L		15.24
7.08	Stealth Wireless Facility which exceeds district height requirements	L		15.24

Use #	Specific Use	B3	E1	Reference
7.09	Wireless Support Structure which does not meet district height requirements up to and including 120'			15.24
7.10	Other Tower that exceeds 120' in height			15.24
7.11	Emergency Response Communication Antenna	P		
8.0 Assembly				
8.01	Religious Assembly, Category 1	P		
8.02	Religious Assembly, Category 2	P		
8.03	Religious Assembly, Category 3	pT200		
8.04	Club/Lodge, Category 1	pT75		
8.05	Club/Lodge Which Does Not Serve Alcohol	P		
9.0 Education				
9.01	Public colleges and universities		pT200	
9.02	Private colleges and universities		pT200	
9.03	Trade school			
9.04	High school			
9.05	Elementary school			
9.06	Boarding school			
9.07	College- or university-operated community enterprise			15.70
10.0 Daycare				
10.01	Child Daycare, Large	L		15.25
10.02	Child Daycare Center	L		15.25
10.03	Adult Daycare, Large	L		15.25
10.04	Adult Daycare Center	L		15.25
10.05	All Other Daycare			
11.0 General Sales and Service				
11.01	Kennel	L T125		15.26
11.02	Veterinary Office/Hospital with Outdoor Kennels	L T125		15.26
11.03	Veterinary Office/Hospital without Outdoor Kennels	P		
11.04	Financial Institution ≤ 5,000 ft²	P		
11.05	Financial Institution > 5,000 ft²	P		
11.06	Restaurant ≤ 2,500 ft² open to the public during 10 pm – 6 am	p T75		
11.07	Other Restaurants ≤ 2,500 ft²	P		
11.08	Restaurant > 2,500 ft² open to the public during 10 pm – 6 am	pT200		
11.09	Other Restaurants > 2,500 ft²	pT125		
11.10	Restaurant ≤ 3,500 ft² open to the public during 10 pm-6 am			
11.11	Other Restaurants ≤ 3,500 ft²			
11.12	Bar			
11.13	ABC Store	P		
11.14	Personal Service Establishment open to the public during 10 pm – 6 am	pT75		
11.15	Other Personal Service Establishments	P		
11.16	Retail Store up to 5,000 ft²	P		
11.17	Retail Store more than 5,000 but less than 25,000 ft²	pT200		

Use #	Specific Use	B3	E1	Reference
11.18	Retail Store 25,000 ft ² and greater	L ^{T300}		15.27
11.19	Reserved			
11.20	Business or Professional Office open to the public during 10 pm–6 am	p ^{T75}		
11.21	Other Business or Professional Office	P		
11.22	Medical Office, Category 1	p ^{T300}		
11.23	Medical Office, Category 2	p ^{T125}		
11.24	Medical Office, Category 3	p ^{T125}		
11.25	Medical Office, Category 4	P		
11.26	Hospital			
11.27	Medical Emergency Response	p ^{T300}		
11.28	Open Air Market, Recurring	L ^{T75}		15.29
11.29	Vehicle Sales and Service	L ^{T75}		15.30
11.30	Equipment Sales and Service	L ^{T125}		15.31
11.31	Moped Sales and Service	P		
11.32	Boat or Marine Craft Sales and Service	L ^{T75}		15.32
11.33	Impound Lot/Towing Service	L ^{T125}		15.33
11.34	Gas Station	p ^{T125}		
11.35	Car Wash	p ^{T125}		
11.36	Seasonal Retail Activities and Amusements	P		
12.0 Recreation and Entertainment Uses				
12.01	Indoor Shooting Range	L ^{T75}		15.34
12.02	Outdoor Shooting Range			
12.03	Indoor Theater	P		
12.04	Outdoor Theater	p ^{T125}		
12.05	Event Venue, Category 1	P		
12.06	Event Venue, Category 2	p ^{T125}		
12.07	Event Venue, Category 3	p ^{T200}		
12.08	Campground and Recreational Vehicle Park	L ^{T200}		15.35
12.09	Coliseum	S ^{T300}		
12.10	Recreation Facility, Category 1	P		
12.11	Recreation Facility, Category 2	p ^{T50}		
12.12	Recreation Facility, Category 3	p ^{T200}		
12.13	Racetrack			
13.0 Agriculture				
13.01	Garden, Community	L		15.36
13.02	Garden, Residential	L		15.37
13.03	Agricultural Operation Excluding Livestock			
13.04	Agricultural Operation Including Livestock			
13.05	Swine Farm			
13.06	Confined Animal Feeding Operation (CAFO)			
13.07	Custom Slaughterhouse			

Use #	Specific Use	B3	E1	Reference
13.08	Other Slaughterhouse			
13.09	Forestry	L		15.38
14.0 Manufacturing				
14.01	Microbrewery	L ^{T125}		15.39
14.02	Brewpub	L ^{T125}		15.39
14.03	Brewery/Distillery	L ^{T125}		15.40
14.04	Brewery/Distillery, Other			15.41
14.05	Winery Associated with a Vineyard			15.42
14.06	Winery	L ^{T125}		15.42
14.07	Winery, Other			
14.08	Extraction of Earth Materials			
14.09	Machine/Welding Shop	L ^{T200}		15.44
14.10	Manufacturing, Other			15.45
15.0 Parking				
15.01	Parking Lot	L		15.46
15.02	Parking Structure	L		15.47
15.03	Park and Ride Lots	L		15.46
16.0 Storage				
16.01	Self-Storage Facilities	L ^{T75}		15.48
16.02	Outdoor Storage			15.49
16.03	Warehouse			
16.04	Fuel Storage Facility	p ^{T300}		
16.05	Chemical Storage Facility			
17.0 Transportation				
17.01	Passenger Terminals	p ^{T200}		
17.02	Trucking or freight terminal ≤ 10,000 ft ²	p ^{T125}		
17.03	Trucking or freight terminal > 10,000 ft ²			
18.0 Waste Related Uses				
18.01	Recycling Drop-off Station			15.49
18.02	Recycling and Salvage			15.49
18.03	Junkyard			
18.04	Private Landfill			
19.0 Particular Activities Which Pose Particular Concerns About Public Health				
19.01	Electronic and Internet Gaming	S		15.50
19.02	Adult Establishments	S		15.51

Intensity/Density Regulations:

Excerpt from UDO Article 16, Subsection 16.01.02 Intensity Table.

Zoning District	Minimum Gross Land Area	Minimum Lot Width	Minimum Street Frontage	Minimum Livability Space Ratio* (LSR)	Minimum Setbacks	
					Street	Interior
B3	5,000 sq. ft.	50 ft.	40 ft.	.27	20 ft.	17 ft.
E1	5,000 sq. ft.	50 ft.	40 ft.	.27	20 ft.	17 ft.

Building Height

Excerpt from UDO Article 16, Subsection 16.08.02

Zone	Height Limitation (Feet)
B3, E1, E2, E3	3stories/45' (primary) – 5 stories/67' (secondary)

...

- 16.08.03** In the R3, B2, B3, E1, E2 and E3 districts the height limitation may range between the primary height limitation in the table to the secondary height (which is the maximum for the district), subject to the provision that for each foot the height of the structure exceeds the primary height limitation, the boundary lot setback applicable to the entire structure shall increase by one (1) foot. In no case shall the height of a structure exceed the secondary height limitation established in the table.

General Use Zoning Map Amendment Guidance

Pursuant to UDO Subsection 9.07.01, in deciding whether to adopt a proposed amendment to the UDO, 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, 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. The Council shall only consider the impact of the proposed change on the public at large.

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.

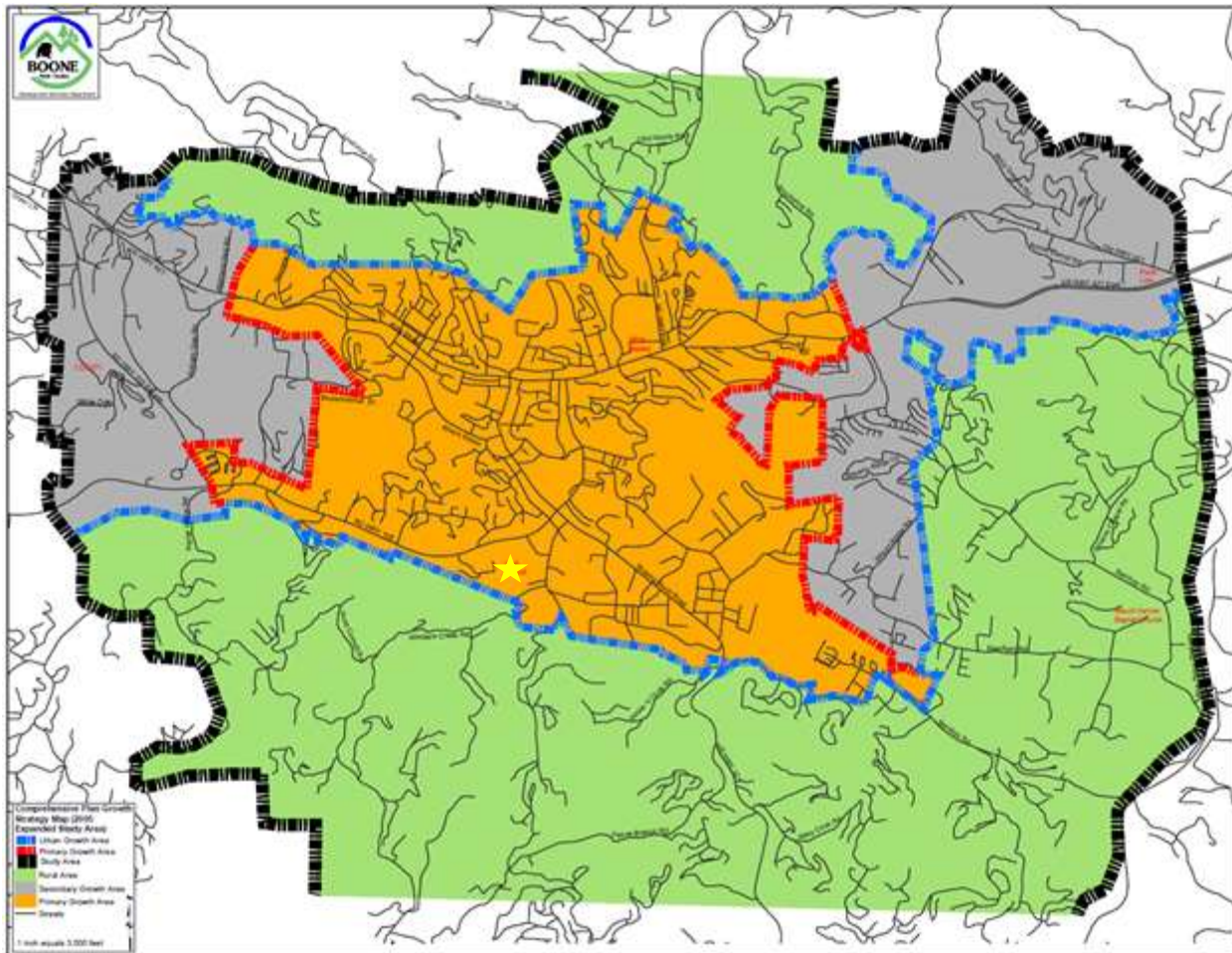
Downtown: Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation.

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.

1.2 Growth Strategy Map (p. 17): The property is located within the **Rural Area**. The Rural Area is that portion of the planning study area that is influenced by urban area growth forces, but within which urban level development should be strongly discouraged. Urban level services and associated development densities should not be planned to this area, except in case by case evaluations of major economic development projects. See Growth Strategy Map below (approximate property location marked with yellow star):



Probably 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.

2.1 Economy

2.1.1 Economic Development

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

- A.1 Continue to evaluate and amend development regulations to help insure aesthetic quality in the area and preserve the natural beauty of the area.
- A.2 Adopt analytically sound, technically based hillside development regulations to preserve natural beauty.
- A.3 Support the Arts Council, Jones House, ASU and others in attracting quality cultural events to Boone.
- A.4 Balance the benefits of economic development projects with special concern for environmental quality issues.
- B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.
- C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.
- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
- 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.
- F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.
- G. The Town shall support the development of new business parks.
- H. The Town shall promote coordination of economic development resources with the appropriate institutions and agencies. Regional coordination and interaction among areas with a shared economic interest shall be encouraged.
- I. Small business start-ups, expansions and spin-offs shall be encouraged. The presence of ASU and Caldwell Community College and Technical Institute shall be recognized as a necessary and important resource for area businesses.
- J. Appropriate educational and training programs shall be encouraged to help local residents, especially those unemployed and underemployed, take advantage of business expansion and to develop new skills.
- K. Boone shall identify and provide services consistent with the needs of the area's growing retiree population.

...

2.2 Infrastructure

2.2.2 Utilities (page 45)

- A. Extensions of water and/or sewer services that could result in scattered, non-directed development and costly provision of other urban services shall be prohibited. *****
- 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.
- D. Water and sewer services shall not be extended to properties in the Rural Area (outside the Urban Growth Area). Exceptions to this policy may include the provision of services to other local governments, cooperative agreements on major economic development initiatives, and extensions needed to address imminent public health problems or related environmental hazards.
- E. The Town shall employ incentives to encourage a concentration of intense urban type development within the Urban Growth Area.
- F. Area-wide cooperation and support shall be sought in bringing in alternative utility services to the Boone Area.
- G. Long range planning for a possible stormwater collection and treatment system shall be supported, including the development of financial and regulatory strategies.

...

2.3 Community

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

2.3.2 Community Character

- A. The identification, restoration and active use of structures, buildings, monuments, and neighborhoods of historic or architectural significance shall be encouraged as a means of enhancing their economic and cultural value to the planning area.
- B. Multiple and appropriate adaptive reuse of historic resources shall be encouraged.
- C. Wise development of the tourism potential of the area's architectural, historic, scenic and natural resources shall be encouraged.
- D. The destruction of significant architectural, historic, scenic, natural and archaeological resources in the planning area shall be discouraged.
- E. New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town.

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.

- B. Street system designs which discourage through traffic on purely local streets while allowing for free circulation within the neighborhood shall be encouraged.
- C. Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.
- 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.
- 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.
- G. Compact, full service neighborhoods, offering opportunities for living, working, shopping, and gathering places, shall be encouraged in newly planned developments, as well as for redeveloping areas.
- H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

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.
- 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.
- 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.

Certificate of Mailing

I, Brenda Henson, certify that individual notices meeting the requirements of Article 9 of the Town of Boone UDO were placed in the mail (first class) on March 8, 2019.

/s/ Brenda Henson

Brenda Henson, Administrative Support Specialist

Certification of Posting

I, Stacey Miller, certify that the subject property was posted as required in Article 9, Subsection 9.03.03(B)(2) of the Town of Boone UDO on March 8, 2019.

/s/ Stacey Miller

Stacey Miller, Building Inspector Supervisor

PLANNING BOARD REPORT

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 map ☐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 map 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]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

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 map ☐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 map 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]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Comprehensive Plan (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL02333-030719
Case Name:
Initiation of Amendments

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 9 Amendments

Section(s): 9.02

Brief Description of Amendment (Attach Proposed Text):

Revise UDO Article 9 Amendments to clarify the process for the initiation of zoning map and text amendments.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

March 7, 2019
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: March 25, 2019
PC Meeting
Date: _____
TC Meeting
Date: _____
Text Approved: ☐ Yes ☐ No
Notes:

S:\FORMS\Current Forms\Planning\UDOTextAmendment_PlanningApplication_09252017.doc

Communication: Case PL02333-030719 Initiation of Amendments - Application Information (Case PL02333-030719 Initiation of Amendments -



**STAFF REPORT
PUBLIC HEARING
MARCH 25, 2019**

CASE PL02333-030719 INITIATION OF AMENDMENTS - UDO TEXT AMENDMENT

Request

In November 2018, Town Council requested the text in the Town of Boone Unified Development Ordinance (UDO) Article 9 Amendments be revised to allow applications for map amendments submitted by citizen/property owners to be sent directly to the next regularly scheduled public hearing upon submittal of a complete application.

Current code in UDO Subsection 9.02.01 requires Staff to first forward the application to Council who then decides on whether the map amendment request should be sent to hearing. Consensus of Council was that there wasn't a circumstance where a map amendment request had not or would not be sent to a public hearing.

The revised text now sets out separate procedures for map and text amendments submitted by a citizen/property owner. Text amendments from a citizen/property owner will still be sent for Council consideration on whether the request should be sent to public hearing and map amendments from a citizen/property owner will now be sent directly to the requested public hearing.

Proposed Ordinance Amendment

ORDINANCE # _____

**AN ORDINANCE TO AMEND ARTICLE 9 OF THE TOWN OF BOONE
UNIFIED DEVELOPMENT ORDINANCE RELATING TO THE INITIATION OF AMENDMENTS**

WHEREAS, the Boone Town Council is authorized to amend ordinances regulating land use within their jurisdiction in accordance with NCGS Section 160A-364 and Article 9 of the Unified Development Ordinance; and

WHEREAS, it is the objective of the Boone Town Council to have the UDO promote regulatory efficiency and consistency; 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 25, 2019; 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. Subsection 9.02.01 of the Boone UDO is hereby amended to make the following changes set forth in the deletions (~~red strikethroughs~~) and additions (blue underlining) below:

9.02 Initiation of Amendments

9.02.01 Text and Map Amendment

- ~~A. Any person may request the Council to set a public hearing to consider a text amendment, general map amendment, or a Conditional District map amendment (the latter two being collectively referred to as “map amendments” or “rezonings”). Such petition shall be heard by Council at the next available regularly-scheduled Council meeting.~~
- ~~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, and~~
 - ~~2. In the case of a proposed text amendment, a summary of the specific objective of any proposed change in the text of this Ordinance.~~
 - ~~3. In the case of a proposed general use map amendment:~~
 - ~~a. A description of the land affected by the proposed amendment, and~~
 - ~~b. A description of the proposed map change.~~
 - ~~4. In the case of a Conditional District map amendment, those items described at Subsection 9.02.02 below.~~
 - ~~5. The Administrator may in his or her discretion, prepare a written analysis of the proposed 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.~~
- ~~C. The drafting of proposed text amendments and map amendments and consideration of any such amendment at a public hearing may proceed only:~~
- ~~1. Upon direction given by Council to staff at Council’s own initiative or upon its consideration of a petition submitted pursuant to section (B) above; or~~
 - ~~2. Upon the initiative of the Administrator or the Town Attorney~~

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 heard by Council 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.** 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 petition 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
- ~~1.~~2. Upon the initiative of the Administrator or the Town Attorney.

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.

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]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

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.

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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]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL02335-030719
Case Name:
Burden of Proof/Transitional Zone

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 6 Board of Adjustment Hearings, 9 Amendments

Section(s): 6.01, 6.02, 6.03, 9.09

Brief Description of Amendment (Attach Proposed Text):

Revision to clarify an applicant must produce substantial competent evidence when addressing transitional zone requirements that a planned development will effectively and to the greatest degree reasonably possible mitigate the impacts of the proposed development upon the protected district. This text amendment also further modifies UDO Article 9 Amendments to clarify that any Conditional District application that triggers a transitional zone must meet the transitional zone requirements of UDO Subsection 6.02.02.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

March 7, 2019
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: March 25, 2019

PC Meeting
Date: _____

TC Meeting
Date: _____

Text Approved: ☐ Yes ☐ No

Notes:

S:\FORMS\Current Forms\Planning\UDOTextAmendment_PlanningApplication_09252017.doc



**STAFF REPORT
PUBLIC HEARING
MARCH 25, 2019**

**CASE PL02333-030719 BURDEN OF PROOF/TRANSITIONAL ZONE CLARIFICATION –
UDO TEXT AMENDMENT**

Request

In August 2018, Town Council requested the text in Town of Boone Unified Development Ordinance (UDO) Article 6 Board of Adjustment Hearings be revised to provide greater clarity regarding an applicant's responsibility to produce competent evidence when requesting approval from the Board of Adjustment for a Special Use Permit or variance. The proposed revised text also clarifies that an applicant must produce substantial competent evidence when addressing transitional zone requirements that a planned development will effectively and to the greatest degree reasonably possible mitigate the impacts of the proposed development upon the protected district.

This text amendment also further modifies UDO Article 9 Amendments to clarify that any Conditional District application that triggers a transitional zone must meet the transitional zone requirements of UDO Subsection 6.02.02.

Proposed Ordinance Amendment

ORDINANCE # _____

**AN ORDINANCE TO AMEND ARTICLE 9 OF THE TOWN OF BOONE
UNIFIED DEVELOPMENT ORDINANCE RELATING TO THE INITIATION OF AMENDMENTS**

WHEREAS, the Boone Town Council is authorized to amend ordinances regulating land use within their jurisdiction in accordance with NCGS Section 160A-364 and Article 9 of the Unified Development Ordinance ("UDO"); and

WHEREAS, the Boone Town Council finds it to be in the public interest to clarify an applicant's burden of proof under the UDO in meeting the requirements for approval of a special use permit or variance by the Board of Adjustment, and to confirm and clarify the applicability of transitional zone protections in the case of Conditional District zoning applications;; 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 25, 2019; 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. Article 6 of the Boone UDO is hereby amended to make the following changes set forth in the deletions (~~red-strikethroughs~~) and additions (blue underlining) below:

6.01 PROVISIONS APPLICABLE TO ALL HEARINGS.

...

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, the term “competent evidence” shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
 - 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 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.
- F.** Any conditions attached to an approval shall be entered on the face of any necessary zoning permit.

1. The Clerk of the Board shall certify that proper notice shall be made.

6.02 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 ~~demonstrate all of the following~~ produce substantial competent 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, Boone 2030 Land Use 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 50 feet;
 2. T75: transitional zone equal to 75 feet;
 3. T125: transitional zone equal to 125 feet;
 4. T200: transitional zone equal to 200 feet; and
 5. T300: transitional zone equal to 300 feet.
- 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 ~~also show~~produce substantial competent 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 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 ~~complies 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 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, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town.

6.03 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 ~~to grant a variance~~ for a variance to be granted, the applicant must produce substantial competent evidence to show, and the Board must conclude, the following ~~based upon competent evidence~~:
- 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.

SECTION 2. Article 9 of the Boone UDO is hereby amended to make the following changes set forth in the deletions (~~red strikethroughs~~) and additions (blue underlining) below:

Article 9 Amendments

...

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.

9.09.034 Specific conditions applicable to a CD may be proposed by the petitioner or the town or its agencies, but only those conditions mutually agreed upon by the town and the petitioner 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.

B. 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 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 business days before the date scheduled for final Town Council action on the application.

- 9.09.045** 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 12 months of the date of the original approval of the CD or within 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.
- 9.09.056** If a petition for a CD is approved, a copy of the approval and all conditions relative to the approval, including 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.
- 9.09.067** 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.
- 9.09.078** Should a petition for a CD be denied, then no new petition for making similar use the same property shall be considered within 12 months of the date of the original denial.
- 9.09.089** 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 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.

SECTION 3: 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.

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COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

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- 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.

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.

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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]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL02336-030719
Case Name:
Wireless Communication Facilities

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 15 District Uses, 16 District Standards, 34 Definitions

Section(s): 15.07, 15.24-15.28, 16.05, 34.01

Brief Description of Amendment (Attach Proposed Text):

Revise UDO Articles 15 District Use Requirements and 34 Definitions to modify outdated regulatory standards related to wireless communication facilities and wireless support structures to modernize the regulations and bring them up-to-date with State and Federal regulations.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

March 7, 2019
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: March 25, 2019

PC Meeting
Date: _____

TC Meeting
Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

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Communication: Case PL02336-030719 Wireless Communication Facilities - Application Information (Case PL02336-030719 Wireless



STAFF REPORT
PUBLIC HEARING
MARCH 25, 2019

CASE PL02336-030719 WIRELESS COMMUNICATION FACILITIES- UDO TEXT AMENDMENT

Request

Revise UDO Articles 15 District Use Requirements and 34 Definitions to modify outdated regulatory standards related to wireless communication facilities and wireless support structures to modernize the regulations and bring them up-to-date with State and Federal regulations.

Proposed Ordinance Amendment

ORDINANCE # _____

AN ORDINANCE TO AMEND ARTICLES 15, 16, AND 34 OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE RELATING TO WIRELESS SUPPORT STRUCTURES AND WIRELESS COMMUNICATIONS FACILITIES

WHEREAS, the Town of Boone's current zoning regulations concerning wireless support structures, as set forth at Section 15.24 of the Town's Unified Development Ordinance ("UDO") are outdated and do not adequately address current technology;

WHEREAS, the North Carolina General Assembly has adopted Session Law 2017-159 imposing upon municipalities certain mandates with respect to permitting of small wireless facilities and the use of the public rights-of-way for the same, and Federal Communications Commission Order FCC 18-133 imposes certain time limitations upon municipalities with respect to the review and approval of applications for the installation of small wireless facilities;

WHEREAS, the Boone Town Council recognizes and finds that there is significant public interest in careful and responsible management of the placement of wireless support structures and wireless communications facilities on both private and public property;

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to, *inter alia*, its zoning authority under G.S. Chapter 160A, Part Session Law 2017-159; its authority over the public ways per G.S. § 160A-296; and its authority and responsibility to manage and protect its public enterprises per G.S. § 160A-311;

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 25, 2019; 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. Section 15.24 of the Boone UDO is hereby repealed (~~red-strikethrough~~); and in its place are enacted the following new sections 15.24 and 15.25 (blue underline); current sections 15.25 through 15.27 will be re-numbered as sections 15.26 through 15.28; and Article 34 is further amended to revise existing definitions and provide new definitions as necessary:

~~15.24~~ **Telecommunication**

~~15.24.01~~ Unless superseded by Session Law 2013-185, the Cell Tower Deployment Act, which shall control, the following provisions shall apply to the erection or replacement or modification of a wireless facility.

~~15.24.02~~ It shall be unlawful for any person, corporation, partnership or other entity to erect any wireless facility without first obtaining a zoning permit from the Administrator. A permit shall also be required for the erection of a replacement wireless support structure or the modification of an existing wireless support structure.

~~A. Existing wireless support structures owned by government agencies and designed for non-commercial emergency communications may be replaced with a wireless support structure equal in height to the existing wireless support structure, however all other Ordinance provisions are applicable.~~

~~B. The placement or collocation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities must obtain a zoning permit in compliance with requirements of this Ordinance.~~

~~15.24.03 A completed zoning permit application with all the supporting documentation identified in Appendix A shall be submitted to the Administrator.~~

~~15.24.04 The Administrator shall approve or disapprove the zoning permit based upon the receipt of a completed site plan as required above and the following provisions:~~

~~A. The wireless facility design plan prepared by a professional engineer registered in the state of North Carolina, including engineer's signature, seal and address.~~

~~B. The foundation and base of the wireless support structure, the foundation for all the guy line anchors and support structures, all proposed buildings, and any other proposed improvements including access roads and utility connections within and to the proposed site.~~

~~C. Location Requirements:~~

~~1. The applicant shall identify all possible alternatives considered within the service area for the proposed wireless facility location and explain why the proposed wireless facility is necessary and why existing wireless facility or other structures cannot accommodate the proposed antenna(s).~~

~~2. Locating a wireless facility on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.~~

~~D. Wireless Support Structure Height Limitations:~~

~~1. A wireless support structure shall not exceed an overall height (OAH) of 120 feet including the height of all antennae and lightning rods.~~

~~2. A wireless support structure located on any major mountain ridge shall be monopole and no taller than thirty feet (30') higher than the vegetative canopies immediately surrounding the base of the tower.~~

~~E. The proposed wireless support structure shall be designed and constructed for collocation of at least two other telecommunication antenna systems if location is not on a major mountain ridge. The wireless facility area shall be of sufficient size to accommodate the accessory equipment for at least three (3) telecommunication providers.~~

~~F. The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.~~

~~G. The applicant shall present to the Administrator proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the wireless facility site.~~

~~H. Signage shall be limited to a sign identifying the owner(s) and operator(s) of the tower, an emergency telephone number and any other signage as required by any government agency shall be placed in a clearly visible location on the premises of the tower.~~

~~I. Setback Requirements:~~

- ~~1. A wireless support structures shall be set back from any surrounding property lines by a distance equal to the height of the wireless support structure unless a professional engineer registered in the State of North Carolina certifies the fall zone of the wireless support structure will be within the setback area proposed.~~
 - ~~a. Regardless of the fall zone, a wireless facility shall be setback twice the minimum requirement in the underlying zoning district.~~
 - ~~b. Wireless facilities located within transmission line easements are not required to meet (a) above and are required to provide a minimum Type A landscape buffer and a minimum 10' street yard.~~
 - ~~2. There shall be no setback requirement from structures located on the same parcel as the proposed wireless facility as long as a professional engineer registered in the State of North Carolina certifies the fall zone of the wireless support structure is designed to avoid said structures.~~
 - ~~3. In addition, wireless support structures must be set back a minimum of 100 feet from any residentially zoned property.~~
 - ~~J. The wireless support structure shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum one half inch (½") of solid radial ice. In no case shall the design wind speed be less than specified in Section 1609 of the North Carolina Building Code.~~
 - ~~K. The wireless facility shall be surrounded by a commercial grade chain link secure fence at least eight feet (8') in height, which may include no more than two feet (2') of barbed or razor wire.~~
 - ~~L. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations.~~
 - ~~M. Wireless support structures shall be light gray except when specific colors and color patterns are required by federal or state regulations.~~
 - ~~N. All wireless facilities shall be landscaped in accordance with Article 31 Landscape Standards.~~
 - ~~O. If a proposed wireless facility is within one mile of the Blue Ridge Parkway centerline and in the parkway viewshed, the applicant shall inform the National Park Service of the proposed tower siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the Administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a tower. No response to the notification within the thirty day response period shall be considered that the Park Service has no objection to the proposed site.~~
 - ~~P. Stealth Wireless Facility~~
 - ~~1. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.~~
 - ~~2. The structure utilized to support the antennas must be allowed within the underlying zoning district. Structures may include, but are not limited to: flagpoles, bell towers, clock towers, crosses, monuments, parapets, and steeples.~~
 - ~~Q. Wireless facilities shall comply with all other applicable regulations of this Ordinance.~~
 - ~~R. The applicant shall provide the Administrator with proof of general liability insurance in the minimum amount of one million dollars (\$1,000,000.)~~
- 15.24.05** ~~The co-location of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.~~

~~15.24.06 — Any tower constructed under a permit pursuant to this Ordinance shall be removed within one hundred eighty (180) days of the date which it ceases to be in active use, or upon notice from the Ordinance Administrator, whichever is more favorable to the applicant.~~

CHAPTER 34: APPLICABLE DEFINITIONS

...

Accessory equipment

Equipment serving a wireless facility. This includes but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other similar structures.

Antenna

Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Base station

A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics. The term does not include a wireless support structure or any equipment associated with a tower.

Collocation

The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

Equipment compound

An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

Fall zone

The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Micro wireless facility

A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Monopole

A single, self-supporting, freestanding pole-type structure built for the sole purpose of supporting one or more antennae. A utility pole is not a monopole.

Overall height (wireless communications facility)

Height from grade, inclusive of all antennas, lightning rods and any other associated equipment, but exclusive of lights required by the FAA that do not provide support for any antennas or other equipment.

Shroud

A box or other container that contains, and is designed to camouflage or conceal the presence of, a wireless facility, antenna, or accessory equipment.

Small wireless facility

A wireless facility that meets both of the following qualifications:

- i. Each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.
- ii. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Stealth (concealed) wireless facility, wireless support structure, or antenna

Any wireless facility, wireless support structure or antenna that is integrated as an architectural feature of a structure or that is designed to camouflage or conceal the presence of the wireless facility, wireless support structure, or antenna so that the purpose of the wireless facility, wireless support structure, or antenna is not readily apparent to a casual observer.

Stealth (concealment) element

Any design feature, including but not limited to painting, shielding requirements, shrouds, and restrictions on location or height in relation to the surrounding area that are intended to make a wireless communications facility less visible to the casual observer. The design elements of a concealed (stealth) wireless communications facility are concealment elements.

Qualifying small wireless

A new small wireless facility that does not extend more than ten (10) feet above the utility pole, town utility pole, or wireless support structure on which it is collocated and is located either (i) in the Town right-of-way or (ii) outside of Town right-of-way on property that is neither used as single family residential property nor vacant but zoned for single family residential.

Qualifying town utility pole

A modified or replacement town utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such utility pole.

Qualifying utility pole

A new utility pole or a modified or replacement utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such utility pole.

Utility pole

A structure that is designed for and used to carry lines, cables, or wires for power, lighting, telephone, or cable television.

Wireless communications

Any personal wireless service, including but not limited to: cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing Part 15 devices (i.e. wireless internet services) and paging.

Wireless communications Facility

Any manned or unmanned location for the transmission and/or reception of wireless communications, usually consisting of one or more of the following components: a wireless facility, base station, equipment compound, and/or wireless support structure.

Wireless facility

Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include (i) the structure or improvements on, under, within, or adjacent to which the equipment is collocated; (ii) wireline backhaul facilities; or (iii) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider

Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider

A wireless infrastructure provider or a wireless services provider.

Wireless services provider

A person who provides wireless services.

Wireless support structure: A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

15.24 WIRELESS COMMUNICATION FACILITIES

15.24.01 This Section 15.24 applies to wireless communications facilities that are not “qualifying small wireless facilities” (which are governed by Section 15.25), that are not micro wireless facilities, and that are not exempted in Section 15.24.04. Any terms used herein that are not defined at Article 34 shall have the meaning set forth at Part 3E (“Wireless Telecommunications Facilities”) of Chapter 160A of the North

Carolina General Statutes.**15.24.02** The purpose of this section is to:

- A. Minimize the impacts of wireless communications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- B. Encourage the location and co-location of wireless communications facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- C. Encourage coordination between suppliers of wireless communications facilities services in the Town and its planning jurisdiction;
- D. Accommodate the growing demand for wireless services and the resulting need for wireless communications facilities;
- E. Regulate in accordance with all applicable federal and state laws;
- F. Establish review procedures to ensure that applications for wireless communications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- G. Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- H. Encourage the use of existing buildings and structures as locations for wireless communications facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.
- I. It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the Town must approve under state or federal law. The provisions of this Section are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

15.24.03 General Considerations and Limitations

- A. Wireless communications facilities are permitted in accordance with the Table of Uses, Section 15.07.
- B. New wireless support structures are prohibited in the public rights of way.
- C. The following are the Town's preferences for wireless communications facility locations, in descending order of preference:
 - Collocations on Existing Wireless Support Structures, Transmission Towers and Utility Poles
 - Stealth (Concealed) Wireless Facility Attached to Existing Building/Structure
 - New Stealth (Concealed) Wireless Support Structure
 - New Non-Stealth Wireless Support Structure - monopole
 - New Non-Stealth Wireless Support Structure - lattice-type
- D. The co-location of facilities and/or use of stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.

15.24.04 Compliance with Law; Exemptions.

A. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of wireless communications facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.

B. The following are exempt from the requirements in this Section 15.24:

1. Any wireless communications facilities below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
2. Satellite dishes.
3. Removal or replacement of an antenna or equipment on an existing wireless support structure or base station that does not change the physical dimensions of the wireless support structure or base station, or defeat any of the concealment elements of the wireless support structure or base station.
4. Routine maintenance of existing facilities, including activities associated with regular and general upkeep of transmission equipment, and the replacement of existing wireless communications facilities with facilities of the same size (so long as any of the concealment elements of the facilities are not defeated).
5. A temporary wireless communications facility, (1) upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency; or (2) if necessary to continue providing service while a wireless support structure or other structure upon which the existing wireless communications facility has been placed, such as a building or water tank, is undergoing maintenance, replacement, or reconstruction during which it will be impossible or unsafe to operate the existing wireless communications facility; except that (i) the temporary facility must be located on site and no taller than the existing wireless support structure or other structure; (ii) the temporary facility must meet the setback requirements of section 15.24.07(C); (iii) the temporary facility must comply with all federal and state requirements; and (iv) the temporary facility must be removed within sixty (60) days of the conclusion of the maintenance, replacement, or reconstruction, or within one (1) year, whichever is shorter, unless the time is extended by the Planning Director for good cause shown.
6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.

15.24.05 Eligible Facilities Requests and Collocations. Collocation and eligible facilities requests, as defined in G.S. 160A-400.51 or 47 U.S.C. 1455, shall be processed in accordance with G.S. 160A-400.52, 160A-400.53, and/or federal laws and regulations as appropriate. In approving any eligible facilities request, the Town solely intends to comply with a requirement of federal law or state law and not to grant any property rights or interests except as compelled by federal or state law. Without limitation, approval does not exempt applicant from, or prevent Town from, opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Policy Act. Collocations are only permitted as provided in Sections 15.24.06 and 15.24.07.

15.24.06 Collocations on Existing Wireless Support Structures and Electric Transmission Towers

A. The collocation of additional wireless facilities on existing, freestanding wireless support structures shall

be consistent with the existing concealment method, if applicable, of the freestanding wireless support structure.

- B. **Height.** The top of the additional wireless facility may not exceed the highest point of the existing wireless facilities on the freestanding wireless support structure.
- C. For purposes of wireless facility collocations governed by Section 15.24 or 15.25, an existing electric transmission tower shall be considered an existing wireless support structure.
- D. An existing electric transmission tower that is being replaced with a taller transmission tower for the primary purpose of hosting wireless facilities is subject to all applicable regulations of Section 15.24 and 15.25 related to wireless support structures.

15.24.07 Stealth (Concealed) Wireless Facilities Attached to Existing Building or Structure.

- A. Stealth wireless facilities, including any feed lines, antennas, and accessory equipment, must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- B. A structure utilized to support a wireless facility must be allowed within the underlying zoning district. Structures may include, but are not limited to: flagpoles, bell towers, clock towers, dormers, crosses, monuments, parapets, and steeples.
- C. Attached stealth wireless facilities shall be allowed as a permitted accessory use in all non-residential zoning districts, and on residentially-zoned land used for non-residential purposes. Unless otherwise allowed above, stealth wireless facilities shall be prohibited in all other residential zoning districts.
- D. If located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility pole which does not exceed a height of thirty-five (35) feet above the immediate surrounding ground. Stealth antennae located on an existing utility pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole.
- E. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.
- F. **Height.** The top of the stealth wireless facility may not be more than ten (10) feet above the top of the building or structure to which it is attached.

15.24.08 Non-Stealth Wireless Facilities

- A. Non-stealth wireless facilities are prohibited in the public right-of-way.
- B. Except as provided at subsection 15.24.06 for collocations on existing wireless support structures, non-concealed wireless facilities shall only be allowed on transmission towers. The top of a stealth wireless facility may not be more than ten (10) feet above the tower to which it is attached.

15.24.09 Concealed (Stealth) Wireless Support Structures

- A. **Design Considerations and Visibility.** Concealed (stealth) wireless support structures shall be designed to complement the physical landscape in which they are to be located. Examples of stealth wireless support structures that may be compatible include but are not limited to faux pine trees, unipoles/slick sticks, bell towers, etc. New stealth wireless support structures shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape, horizon, and adjacent properties. New freestanding stealth wireless support structures shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color, and texture.
- B. **Setbacks.** The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.
 1. Setbacks shall be measured from the base of the wireless support structure.

2. The minimum setback from each property line shall be 120% of the height of the tower, or 100 feet, whichever is greater.
3. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the height of the tower, or 85 feet, whichever is greater.
- C. **Height.** The maximum permitted overall height for stealth wireless support structures is ten (10) feet above the maximum height allowed in the zoning district.
- D. **Monopine/Faux Trees.** A monopine or faux tree wireless support structure shall be considered concealed if the following criteria are met. If the following criteria are not met, then the proposed structure will be considered non-concealed for regulatory purposes.
 1. The wireless support structure is incorporated within an existing cluster of trees that measures, after any necessary grading or clearing for the facility, at least 1,000 square feet with no individual dimension of less than 25 feet and the entire qualifying cluster located on the lot or parcel.
 2. The structure shall be designed to match a species located within the existing cluster of trees, with the support structure to be designed as a tree trunk and antenna arrays flush-mounted and completely concealed by limbs, branches, and leaves.
 3. Limbs, branches, and leaves shall cover at least the upper 50% of the support structure, and shall cover any of the support structure that extends above the average tree line of the cluster of trees.
 4. The overall height of the wireless support structure may not exceed the height of the tallest tree in the existing cluster.
 5. An easement or other binding legal agreement must be provided by the applicant that demonstrates to the Administrator's satisfaction that the cluster of trees surrounding the wireless structure will not be disturbed for so long as the wireless support structure should exist.
- E. A special use permit shall be required for any stealth wireless support structure that is greater than 50 feet in overall height and located within 400 feet of the property line of any property used or zoned for single family residential purposes.

15.24.10 Freestanding Non-stealth Wireless Support Structures

- A. The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.
 1. Setbacks shall be measured from the base of the wireless support structure.
 2. The minimum setback from each property line and road right-of-way shall be 200 feet or two times the overall height of the structure, whichever is greater.
 3. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the overall height of the structure, or 85 feet, whichever is greater.
- B. **Height.** The maximum permitted overall height for non-stealth wireless support structures is twenty (20) feet higher than the maximum building height allowed in the district.
- C. A special use permit shall be required for any non-stealth wireless support structure that is (i) greater than 60 feet in overall height or (ii) within 400 feet of the property line of any property used or zoned for single family residential purposes.

15.24.11 Additional Requirements and Standards for All Wireless Support Structures

- A. **Existing Wireless Support Structures.** New antennae may be co-located upon wireless support

structures that exist on the effective date of this Ordinance. A request for an increase in height for an existing wireless support structure shall require issuance of a special use permit, if a special use permit would be required to erect a new wireless support structure at the requested height.

- B. Collocation Required.** All freestanding wireless support structures shall be engineered and constructed to accommodate no less than three (3) antenna arrays if the location is not a major mountain ridge.

C. General Development Standards

1. Design and Neighborhood Compatibility

- a. The exterior appearance of all associated support structures and buildings shall be compatible with the other buildings in the surrounding area. Wireless communications facilities shall be blended with the natural surroundings as much as possible. Except when otherwise required by applicable federal or state regulations, colors and materials shall be used that are compatible with the surrounding area and usually shall be light gray. Wireless communications facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
- b. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations and shall not exceed required minimums. The permit issuing authority may require the applicant to apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than a red and white marking pattern, when the permit issuing authority determines such a marking pattern would cause aesthetic blight due to the visibility of the wireless support structure.
- c. Support buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- d. No advertising sign or logo shall be permitted on any wireless communications facility.
- e. Equipment compounds shall not be used for as storage yards, including but not limited to for storage of any excess equipment or hazardous materials, nor be used as habitable space.

2. Buffering and Screening

- a. All fences and walls shall be screened in accordance with the requirements of Chapter 31 of this Ordinance.
- b. The base of the wireless support structure and each guy anchor shall be surrounded by an opaque fence or wall at least eight (8) feet in height.

- D. Neighborhood Meeting.** At the time of submitting an application for a proposed wireless support structure that requires approval as a special use, the applicant shall submit written documentation that they have conducted a neighborhood meeting, to which owners of property within four hundred (400) feet of the subject property have been invited, to explain the proposed facility and answer questions. Documentation should include the time, date, and location of the meeting; a list of meeting attendees; a brief summary of any presentations and/or information discussed; and questions/concerns expressed by neighboring property owners.

- E. Balloon Test.** A balloon test shall be required for all wireless support structures that require approval as a special use. The balloon test shall be required prior to the submittal of photo simulations in order to illustrate the proposed height of the wireless support structure. The applicant shall arrange to raise a colored balloon no less than three (3) feet in diameter at the maximum height of the proposed

wireless support structure, and within twenty-five (25) horizontal feet of the center of the proposed wireless support structure.

The applicant shall meet the following for the required balloon test:

1. Applicant must inform the Planning Department and abutting property owners within four hundred (400) feet of the subject property in writing of the date and times, including alternative date and times, of the test at least fourteen (14) days in advance.
2. The date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date.
3. The balloon shall be flown at the required height for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather conditions during the balloon test.

F. Availability of Existing Structures. No new freestanding wireless support structure shall be permitted unless the applicant demonstrates that no existing or previously approved wireless support structure can reasonably be used for the wireless communications facility placement instead of the construction of a new wireless support structure; that residential, historic, and designated scenic areas cannot be served from outside the area; or that the proposed height of a new wireless support structure or initial wireless communications facility placement or a proposed height increase of a substantially changed wireless support structure, or replacement wireless support structure, is necessary to provide the applicant's designed service. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the wireless support structure is unwilling to enter into a contract for such use at fair market value.

G. Blue Ridge Parkway view shed protection. If a new or taller wireless support structure is proposed within one mile of the Blue Ridge Parkway centerline and in the parkway viewshed, the applicant shall inform the National Park Service of the proposed structure siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the Administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a wireless support structure.

H. Setback Reductions

1. In considering an application for special use for wireless communications facilities, the Board of Adjustment may grant a reduction of the minimum required setbacks listed in this Section 15.24 upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site to obscure or reduce the visibility of the wireless support structure from adjacent properties; the concentration of existing and/or proposed wireless support structures in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed wireless support structure could be modified to have a less intrusive impact.
 2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable approval criteria of this Ordinance. The Board of Adjustment, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).
- I. Conditions.** Notwithstanding any of the standards of this Section, the Board of Adjustment may require any other reasonable conditions to mitigate the impact of the wireless support structure on adjacent properties and uses including, but not limited to, conditions or modifications related to the style, height,

and design of the facility.

J. Siting on Mountain Ridges

1. Locating a wireless facility on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.
 2. A wireless support structure located on any major mountain ridge shall be monopole and no taller than the vegetative canopies immediately surrounding the base of the tower.
- K. Wireless support structures shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum one half inch (½”) of solid radial ice. In no case shall the design wind speed be less than specified in Section 1609 of the North Carolina Building Code.**
- L. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations.**

15.24.12 Outside Experts and Disputes

- A. Review by an outside consultant shall be required for all facilities requiring approval of a special use permit. The fee for review by the outside consultant shall be collected together with the application fee for the special use permit. Additional reasonable and cost based fees may be imposed for costs incurred should the applicant amend its application. Selection of the outside consultant shall be at the sole discretion of the Town.**
- B. If an applicant for a wireless communications facility claims that one (1) or more standards of this Ordinance are inconsistent with federal law as applied to a particular property, or would prohibit the effective provision of wireless communications within the relevant market area, the decision-making body may require that the application be reviewed by a qualified engineer for a determination of the accuracy of such claims. Any costs shall be charged to the applicant.**

15.24.13 Standard Conditions and Requirements Applicable to All Wireless Communications Facilities

- A. Wireless communications facilities shall be permitted in accordance with the Table of Uses, Section 15.07.**
- B. Grading shall be limited to only the area necessary for the wireless communications facilities and equipment compound, and access to the facility.**
- C. Documentation, sealed by a registered professional engineer with wireless communications expertise, shall be provided indicating that the new facility, or the modification of an existing facility, complies with the following. Such compliance shall be maintained throughout the life of the facility.**
1. That the American National Standards Institute (ANSI) requirements for the proposed improvements are met; and
 2. All applicable building, structural, electrical, and safety codes and with all other laws codifying objective standards reasonably related to health and safety shall be met.
- D. Applicants must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under the UDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO, is not valid. No person may maintain a**

wireless communications facility in place unless required state or federal authorization remain in force.

- E. All wireless communications facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The wireless communications facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. All the wireless communications facility equipment must be removed upon the expiration/termination/revocation of the approval and/or when no longer in operation, whichever occurs first.

In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification. If a wireless communications facility or portions of a wireless communications facility are taken out of service, the components must be removed within thirty (30) business days of being taken out of service, and affected facilities restored to their prior condition.

- F. The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- G. Any approval issued by the Town for a new wireless support structure or a collocation that is a substantial change shall be conditioned on the construction of the approved facilities within twenty-four (24) months.
- H. The applicant or owner shall maintain onsite at the wireless communications facility contact information for all parties responsible for maintenance of the facility.
- I. The owner of a freestanding wireless support structure shall maintain general liability insurance for the structure in the amount of at least \$1,000,000; and shall, as part of the original site plan application, site plan amendments, and any subsequent modifications, provide documentation demonstrating compliance with this requirement.
- J. Wireless communications facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission, nor shall they interfere with public safety communications or normal radio and television reception.
- K. After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense and according to the then-existing standards for wireless communications facilities, of any wireless communications facility located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- L. Collocation or modification of wireless communications facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitutes an eligible facilities request.
- M. Wireless communications facilities placed in the public right of way must comply with all applicable provisions of the Town's Code of Ordinances relating to encroachments.
- N. No portion of a wireless communications facility may be placed in the public right-of-way in a manner that:
1. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference;

- 2. Results in ground-mounted, above-ground equipment cabinets in the public right-of-way associated with the support structure that are ten percent (10%) larger in height or overall volume than other equipment cabinets in the same area; or
- 3. Involves placement of pole-mounted equipment whose lowest point is lower than eight (8) feet above ground level.
- O. The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.
- P. The applicant shall present to the Administrator proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the wireless facility site.
- Q. Signage shall be limited to a sign identifying the owner(s) and operator(s) of the tower, an emergency telephone number and any other signage as required by any government agency shall be placed in a clearly visible location on the premises of the tower.
- R. Any wireless communications facility shall be removed within one hundred eighty (180) days of the date on which it ceases to be operable or in active use. The owner of the facility shall remove the facility within 90 days of receipt of a notice of abandonment from the Administrator. After such time has elapsed, if the facility has not been removed, enforcement action shall commence.

15.24.14 Applications requiring special use permit approval. The following shall be required, as applicable, in addition to the findings normally required for approval of special use permits, in order for the Board of Adjustment to approve the special use permit.

- A. Evidence that it is not reasonably feasible to collocate new antennas and equipment on an existing wireless support structure or structures or utility poles within the applicant's geographic search ring. Collocation on an existing support structures or utility poles is not reasonably feasible if collocation is technically or commercially impractical, or the owner of the existing support structures or utility poles is unwilling to enter into a contract at fair market value.
- B. That the use of existing facilities would prevent the provision of personal wireless services in the area to be served by the proposed facility.
- C. In determining whether a wireless communications facility is in harmony with the area, and the effects on and general compatibility of a facility with adjacent properties, the approving authority shall consider the aesthetic effects of the facility as well as factors that mitigate the aesthetic effects.
 - 1. Documentation of balloon tests and other methodologies used to simulate the height and appearance of the proposed wireless communications facility shall be provided by the applicant, along with descriptions of the locations, distances, and vantage points that formed the basis of the simulation(s).
 - 2. Factors that the approving authority may consider in determining the aesthetic effects of a proposed wireless communications facility include:
 - i. The protection of the view in sensitive or particularly scenic areas and areas specially designated in adopted plans such as unique natural features, scenic roadways, and historic sites;
 - ii. The concentration of wireless communication facilities in the proposed area; and,
 - iii. Whether the height, design, placement, or other characteristics of the proposed wireless communication facilities could be modified to have a less intrusive visual impact.
- D. The approving authority shall not make a determination on the electromagnetic field (EMF) effects of the wireless communications facility on the health of the public. Documentation that certifies that the

facility meets or exceeds applicable American National Standards Institute (ANSI) standards as adopted by the FCC in order to protect the public from unnecessary exposure to electromagnetic radiation shall be sufficient. This shall not preclude other issues regarding the health, safety, and welfare of the public from being considered in order to satisfy the finding.

15.24.15 Variances

Technical dimensional requirements shall not prohibit or have the effect of prohibiting the provision of personal wireless services contrary to the mandates of federal law. Per Article 6 of this UDO, Applicants may seek variances to technical dimensional requirements that an applicant claims have the effect of prohibiting the provision of personal wireless services.

15.24.16 Submittal Requirements

- A. In addition to the submittal requirements of Appendix A, as may be applicable, applications for proposed wireless communications facilities shall also include maps, reports, and documents as specified by the Planning Director. At a minimum, this information shall describe the facility with regard to its proposed location, design, and operation; and, if applicable, a clear statement that the request is being made as an eligible facilities request under state law and/or federal law.
- B. If, as part of review by an outside expert, additional submittal information is determined to be necessary in order to review the application for compliance with this Ordinance, such information shall be required regardless of the items initially submitted with the application.

15.24.17 Nonconforming Setbacks for Existing Wireless Support Structures. Wireless support structures that do not meet the minimum required setbacks from lots that were created after the construction of the wireless support structure shall be deemed conforming with regard to setbacks for the purposes of Section 15.24.

Note: Refer to Section 16.05 for requirements associated with creating lots from an existing lot or parcel that contains a wireless support structure (stealth or non-stealth).

15.25 QUALIFIED SMALL WIRELESS FACILITIES

15.25.01 The purpose of this section is to:

1. Minimize the impacts of small wireless facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
2. Encourage the location and collocation of small wireless facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
3. Encourage coordination between suppliers of small wireless facilities;
4. Accommodate the growing demand for wireless services and the resulting need for small wireless facilities;
5. Regulate in accordance with all applicable federal and state laws;
6. Establish review procedures to ensure that applications for small wireless facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
7. Protect the aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
8. Encourage the use of existing buildings and structures as locations for small wireless facilities infrastructure so as to minimize the aesthetic impacts of related infrastructure.
9. It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless

communications services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the small wireless facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the town must approve under state or federal law. The provisions of this Section are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

15.25.02 Siting. To protect the aesthetics of the Town, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the Town prefers that small wireless facilities be located outside the public right-of-way; collocated on existing utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.

15.25.03 Applicability; Compliance with Law; Exemptions; Application Process

- A. The standards established herein shall apply only to qualifying small wireless facilities, qualifying utility poles, and qualifying town utility poles, as defined herein. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of, any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of small wireless facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.
- B. The following categories of small wireless facilities are exempt from the requirements set forth in this Section 15.25:
 - 1. Any wireless communications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
 - 2. Satellite dishes.
 - 3. Eligible facilities requests that satisfy the requirements set forth in Section 15.24.05.
 - 4. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or town utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the Town rights-of- way and who is remitting taxes under G.S. 105-164.4(a)(4c) or (a)(6).
 - 5. A temporary small wireless facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.
 - 6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.
 - 7. A small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, provided that the small wireless facility complies with applicable codes.

C. Application process.

1. Applicants for any qualifying small wireless facilities, qualifying utility poles, and qualifying town utility poles subject to this Section 15.24 shall complete an application as specified in form and content by the Town.
2. An application shall be deemed complete unless the Administrator provides notice otherwise in writing to the applicant within 30 days of submission or within such other time frame as the applicant and Administrator may mutually agree. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
3. The application shall be deemed approved if not approved or denied within 45 days from the time the application is deemed complete or such other time frame as the applicant and Administrator may mutually agree.
4. An application may be denied only on the basis that it does not meet any one of the following: (i) the city's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) historic preservation requirements. The Administrator must document the basis for a denial, including the specific code provisions on which the denial was based and send the documentation to the applicant on or before the day the application is denied. The applicant may cure the deficiencies identified and resubmit the application within 30 days of the denial without paying an additional application fee. The Administrator shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

15.25.04 Collocation of Small Wireless Facilities. Collocation of small wireless facilities on land used as single-family residential property or vacant land that is zoned for single-family development, and any small wireless facility that extends more than ten (10) feet above the utility pole, town utility pole, or wireless support structure on which it is collocated, are subject to Section 15.24.

Notwithstanding the foregoing, replacement of an existing streetlight for which the Town is financially responsible with a streetlight capable of including a collocated, concealed small wireless facility is permitted on land used as single-family residential property or vacant land that is zoned for single-family development, pursuant to the requirements of Section 15.25.05.

Collocations of qualifying small wireless facilities are subject to the following requirements:

- A. **Height.** Each new small wireless facility shall not extend more than ten (10) feet above the utility pole, town utility pole, or support structure on which it is collocated.
- B. **Public Safety.** In order to protect public safety:
 1. Small wireless facilities shall cause no signal or frequency interference with public safety facilities or traffic control devices and shall not physically interfere with other attachments that may be located on the existing pole or structure.
 2. A structural engineering report prepared by an engineer licensed by the State of North Carolina, certifying that the host structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennae and other equipment, extensions, and appurtenances associated with the installation.
 3. A traffic and pedestrian management plan must be submitted for any installation that requires work in the public right-of-way.

4. No portion of a small wireless facility may be placed in the public right-of-way in a manner that:
 - a. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment lowest point is lower than eight (8) feet above ground level.
5. An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the town reasonable evidence that it is diligently working to place such wireless facility back in service

C. Objective Design Standards.

1. No advertising signs or logos are permitted on small wireless facilities.
 2. Small wireless facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Small wireless facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
- D. Stealth and Concealment.** All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed.
- E. Screening, Landscaping, and Spacing Requirements for Ground Equipment.** Ground equipment shall be screened, to the extent possible, with evergreen plantings or other acceptable alternatives approved by the Planning Director.
- F. Historic Preservation.** Small wireless facilities located in a designated historic district or on property designated as a landmark (pursuant to G.S. Chapter 160A, Article 19, Part 3C) shall be required to obtain a Certificate of Appropriateness.
- G. Applicable Codes.** Small wireless facilities must meet applicable codes.

15.25.05 Existing Utility Poles and Town Utility Poles Associated with Small Wireless Facilities. The maintenance, modification, operation, or replacement of existing qualifying utility poles and qualifying town utility poles associated with small wireless facilities are subject to the following requirements:

- A. Height.** Each modified or replacement utility pole or town utility pole shall not exceed (i) forty (40) feet above ground level on property zoned for or used as single- family residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground; or (ii) fifty (50) feet above ground level on all other property. Each new small wireless facility shall not extend more than ten (10) feet above the associated utility pole, town utility pole, or wireless support structure on which it is collocated.
- B. Small Wireless Facilities.** All requirements of Section 15.25.05 apply to small wireless facilities located on a utility pole, town utility pole, or wireless support structure.

C. Public Safety. In order to protect public safety:

1. No replacement utility poles or town utility poles associated with a small wireless facility are permitted in the clear zone as defined in the Town's Standard Specifications & Details Manual unless such replacement pole is breakaway rated.
2. No portion of a utility pole or town utility pole associated with a small wireless facility may be placed in the public right-of-way in a manner that:
 - a. Results in the obstruction of pedestrians or vehicular or bicycle access, or of sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment whose lowest point is lower than eight (8) feet above ground level.

D. Objective Design Standards. Utility poles or town utility poles associated with a small wireless facility shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Utility poles or town utility poles associated with a small wireless facility shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.**E. Stealth and Concealment.** All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed.**F. Historic Preservation.** Utility poles or town utility poles associated with a small wireless facility located in a designated historic district or on property designated as a landmark (pursuant to G.S. Chapter 160A, Article 19, Part 3C) shall be required to obtain a Certificate of Appropriateness.**G. Applicable Codes.** Utility poles and town utility poles associated with a small wireless facility must meet applicable codes.**15.25.06 New Utility Poles Associated with Small Wireless Facilities**

- A. New poles are prohibited consistent with the Town's undergrounding requirements as set forth at Section 22.09 of this Ordinance.
- B. In the event a new pole is proposed for an area where undergrounding requirements do not apply, the following provisions apply:
 1. Unless a new pole replaces an existing pole in substantially the same location, to the extent practicable, poles shall be installed at least 300 feet from any existing or proposed pole. Any wireless services providers desiring to install poles less than 300 feet apart or desiring to install a new pole within 300 feet of an existing pole shall demonstrate to the town's satisfaction why such placement is necessary.
 2. Poles shall be designed pursuant to town standards or the applicable utility's standard, and function as street light poles, utility poles, or traffic signal poles in consultation with the town or the applicable utility, and shall be incorporated into the applicable utility or signaling system.
 3. All requirements, standards and limitations of subsections 15.25.04 and 15.25.05 apply to new utility pole installations.

15.25.07 Standard Conditions

- A. Applicants must obtain all other required permits, authorizations, approvals, agreements, and

declarations that may be required for installation, modification, and/or operation of a proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under the UDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO is not valid. No person may maintain a small wireless facility in place unless required state or federal authorization remains in force.

- B. All small wireless facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The small wireless facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification.
- C. The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- D. The applicant or owner shall maintain onsite at the facility contact information for all parties responsible for maintenance of the facility.
- E. Small wireless facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.
- F. After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense, of any small wireless facility, and the associated utility pole, town utility pole, or wireless support structure on which it is collocated, located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- G. Collocation or modification of small wireless facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.

SECTION 2: Article 16 of the UDO is amended to include the following provision:

16.05 New Lots: Distance From Existing Wireless Support Structure. When creating lots from an existing lot or parcel that contains a wireless support structure (stealth or non-stealth), the new lot(s) shall be located no closer to the existing structure than the applicable setback requirement provided at Section 15.24.09 and 15.24.10.

SECTION 3: The Table of Uses 15.07 of the UDO is amended to include the following with respect to Use 7.0 Wireless communications:

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
7.0 Wireless communications																			
7.01	Small Wireless Collocation	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.25
7.02	Wireless Facility Collocation on Existing Wireless Support Structure or Utility Pole																		
		L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
7.03	Stealth Wireless Facility Attached to Existing Building or Structure																		
		L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
7.04	Non-stealth Wireless Facility Attached to Existing Building or Structure																		
																			15.24
7.05	Non-stealth Wireless Facility Collocation on Electrical Transmission Towers																		
		L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
7.07	Stealth Wireless Support Structure	S/L	S/L	S/L	S/L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
7.08	Non-stealth Wireless Support Structure								L	L			L	L	L				15.24
7.09	Reserved																		
7.10	Reserved																		
7.11	Emergency Response Communication Antenna	P	P	P	P	P	P	P	P	P	P	P	P	P					

SECTION 4: 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

COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

- A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.
- B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.
- C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.
- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
- 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.
- F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.
- G. The Town shall support the development of new business parks.
- H. The Town shall promote coordination of economic development resources with the appropriate institutions and agencies. Regional coordination and interaction among areas with a shared economic interest shall be encouraged.
- I. Small business start-ups, expansions and spin-offs shall be encouraged. The presence of ASU and Caldwell Community College and Technical Institute shall be recognized as a necessary and important resource for area businesses.
- J. Appropriate educational and training programs shall be encouraged to help local residents, especially those unemployed and underemployed, take advantage of business expansion and to develop new skills.

- K. Boone shall identify and provide services consistent with the needs of the area’s growing retiree population.

...

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

2.3.1 Community Appearance

- A. Measures to improve the effectiveness of grading, landscaping and buffering standards for new and existing developments shall be encouraged.
- B. The significance of street trees in providing visual relief, summer cooling, improved air quality and livability shall be recognized through public policies and actions to encourage their planting and maintenance.
- C. The significance of major roadway entrances into Boone as measures of community image and quality shall be recognized through building placement, landscape, signage and other visual improvements. The Town, along with private property owners and developers, shall work to jointly improve the appearance and design of major street corridors.
- D. Sign policies and standards shall be periodically updated to enhance community identity and create a high quality business image.
- E. The Town shall encourage public, private, and utility company efforts to place utility wires underground whenever feasible.

2.3.2 Community Character

- A. The identification, restoration and active use of structures, buildings, monuments, and neighborhoods of historic or architectural significance shall be encouraged as a means of enhancing their economic and cultural value to the planning area.
- B. Multiple and appropriate adaptive reuse of historic resources shall be encouraged.
- C. Wise development of the tourism potential of the area’s architectural, historic, scenic and natural resources shall be encouraged.
- D. The destruction of significant architectural, historic, scenic, natural and archaeological resources in the planning area shall be discouraged.
- E. New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone’s original community character as a High Country small town.

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.
- B. Street system designs which discourage through traffic on purely local streets while allowing for free circulation within the neighborhood shall be encouraged.
- C. Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.
- 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.
- 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.
- G. Compact, full service neighborhoods, offering opportunities for living, working, shopping, and gathering places, shall be encouraged in newly planned developments, as well as for redeveloping areas.
- H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

...

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.

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]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

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]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL02337-030719
Case Name:
Awnings/Canopies in B1

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 18 B1 Central Business Regulations

Section(s): 18.02

Brief Description of Amendment (Attach Proposed Text):

Revise UDO Articles 18 B1 Central Business District Standards to allow the installation of historically appropriate awnings and canopies on existing buildings in the B1 Central Business zoning district.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

March 7, 2019
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: March 25, 2019

PC Meeting
Date: _____

TC Meeting
Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

S:\FORMS\Current Forms\Planning\UDOTextAmendment_PlanningApplication_09252017.doc

Communication: Case PL02337-030719 Awnings/Canopies in the B1 - Application Information (Case PL02337-030719 Awnings in the B1 - UDO



**STAFF REPORT
PUBLIC HEARING
MARCH 25, 2019**

CASE PL02337-030719 AWNINGS/CANOPIES IN THE B1- UDO TEXT AMENDMENT

Request

Revise UDO Articles 18 B1 Central Business District Standards to allow the installation of historically appropriate awnings and canopies on existing buildings in the B1 Central Business zoning district.

History

The Community Appearance Commission (CAC) has been authorized by Council since July 2010 to work on Community Appearance Standards. In August 2010, the CAC recommended that the downtown area have separate design standards. The CAC met with Council in October 2016 and were granted permission to proceed with the idea of creating two areas, a “Historic Core” and an “Interface Area” which would contain differing design guidelines (appearance standards). The CAC anticipates completing their recommendations to Council this year (2019).

The Historic Preservation Commission (HPC) has also been authorized by Council since July 2015 to undertake a historic survey of the Municipal Service District (MSD), along with some additional properties outside of the MSD. At this time, the HPC is on track to recommend to Council the creation of a local Historic District within the downtown area. The HPC also anticipates completing their recommendations this year (2019).

In April 2018 Council adopted new appearance guidelines that would serve as a regulatory “stop-gap” for development in the B1 Central Business District. These guidelines were intended to help prevent development that would take away from the historic nature of the downtown area before final guidelines could be enacted, and they were enacted with the understanding that more detailed and protective regulatory language and processes were being discussed by the CAC and the HPC.

After adoption it was discovered that the language did not address the installation of awnings for existing buildings. As this was unintentional, Staff sought direction from the Community Appearance Commission and Town Council and was given direction to modify the text to allow historically appropriate awnings to be installed on existing buildings in the B1 Central Business zoning district.

Proposed Ordinance Amendment

ORDINANCE # _____

**AN ORDINANCE TO REVISE ARTICLE 4 OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE
RELATING TO THE INSTALLATION OF AWNINGS IN THE B1 CENTRAL BUSINESS DISTRICT**

WHEREAS, the Boone Town Council recognizes and finds that there are significant public interests involved in the preservation and protection of the downtown area as identified and discussed in the Town of Boone Comprehensive Plan 2.1.5 Downtown and as previously codified in UDO Article 18; and

WHEREAS, the omission of regulatory language regarding the installation of historically appropriate awnings on existing buildings was unintentional; and

WHEREAS, the Boone Town Council wishes to address this omission by amending the regulations in UDO Article 18; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning

authority under G.S. Chapter 160A, Article 19;

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 25, 2019; 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. Article 18 of the Boone UDO is hereby amended to make the following changes as set forth in the deletions (~~red strikethroughs~~) and additions (blue underlining) below:

18.02 Design Standards

...

18.02.02 Exterior Facades

...

B. Design Standards for Renovation of Existing Buildings

1. **General Considerations:** A building may need renovation for a number of reasons. A building may be in poor condition, or may have been insensitively remodeled in the past. Similarly, certain changes may be desired in order to add either modern conveniences to a building or to bring the building up to current building code standards. Renovations to existing historic buildings shall be consistent with the following guidelines:
 - a. Distinctive or historic materials, features, finishes, construction techniques or examples of building craftsmanship of a building shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property shall be avoided.
 - i. Applicants shall identify, retain and preserve masonry features that are important in defining the overall historic character of the building (such as walls, brackets, railings, cornices, window and door surrounds, steps and columns) and decorative ornament and other details, such as tooling and bonding patterns, coatings and color.
 - ii. Applicants shall identify, retain and preserve wood features that are important in defining the overall historic character of the building (such as siding, cornices, brackets, window and door surrounds, and steps) and their paints, finishes and colors.
 - iii. Applicants shall identify, retain and preserve storefronts and their functional and decorative features that are important in defining the overall historic character of the building. The storefront materials (including wood, masonry, metals, ceramic tile, clear glass, and pigmented structural glass) and the configuration of the storefront are significant, as are features, such as display windows, base panels, bulkheads, signs, doors, transoms, kick plates, corner posts, piers, and entablatures. The removal of inappropriate,

non-historic cladding, false mansard roofs, and other more recent, non-historic or insignificant alterations can help reveal the historic character of the storefront.

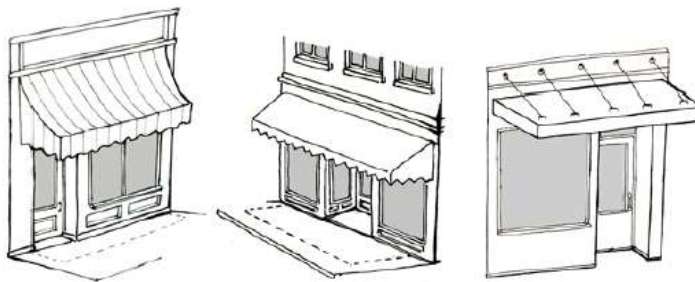
- b. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinct feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

2. Exterior Building Materials:

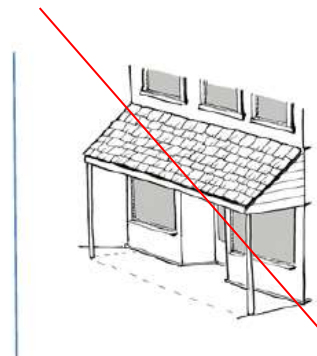
- a. Acceptable Building Materials: A historic material found on the existing building used for the same purpose or location will be found to be acceptable. Where necessary or desirable due to lack of historic materials, equivalency of alternative materials, or other reasons demonstrated to the satisfaction of the Administrator, applicants may use a compatible substitute material that reproduces the overall appearance and aesthetic of the historic material.

3. The installation of awnings or canopies shall be allowed if the installation does not compromise any historic feature of the building. For example, an awning or canopy would be required to be placed so as to not compromise any transom or clerestory window historic to a building. Awning and canopy criteria includes:

- a. Type (examples shown in graphic below):
 - i. Metal frame awnings covered with material appropriate to climate (i.e. UV protected canvas); or
 - ii. Cable-hung canopies;
- b. Acceptable colors for awnings and canopies are the same as those outlined for accent colors.
- c. Vertical supports that interrupt the sidewalk are prohibited, as detailed in the graphic below.



Metal Frame Awning & Cable-hung Canopy



Canopy with vertical supports

~~1.~~ 4. Non-historic buildings (building built less than fifty years ago) in the B1 shall be renovated in accordance with the standards set forth in Subsection 18.02.02(C).

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.

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COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

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- K. Boone shall identify and provide services consistent with the needs of the area’s growing retiree population.

...

2.1.5 Downton

- 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.
- B. The Town, in concert with the downtown property owners and merchants, shall encourage public and private efforts to develop and publicize adequate and appropriately designed off-street parking lots in the downtown area.
- C. A variety of mutually compatible and supportive mixed uses shall be encouraged in the downtown area.
- D. Public and private developments shall be encouraged to incorporate local artistry into public and semi-public spaces downtown.
- E. Public and private development decisions in the downtown area shall exhibit a special concern for maintaining the intensive, pedestrian oriented character of the district.
- F. The maintenance and revitalization of downtown Boone, as well as planning for its future development, will reflect the realities and qualities befitting its geographical setting and function as a center of (1) commercial and service activities, (2) educational and cultural activities, events and (3) public services.

...

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
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PLANNING BOARD REPORT/RECOMMENDATIONS

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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]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

TOWN COUNCIL ACTION

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Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL02338-030719
Case Name:
Permit Processing

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 4 Permits

Section(s): 4.05

Brief Description of Amendment (Attach Proposed Text):

Revise UDO Articles 18 B1 Central Business District Standards to allow the installation of historically appropriate awnings and canopies on existing buildings in the B1 Central Business zoning district.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

March 7, 2019
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: March 25, 2019

PC Meeting
Date: _____

TC Meeting
Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

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Communication: Case PL02338-030719 Permit Process - Application Information (Case PL02338-030719 Permit Process - UDO Text



**STAFF REPORT
PUBLIC HEARING
MARCH 25, 2019**

CASE PL02338-030719 PERMIT PROCESSING- UDO TEXT AMENDMENT

Request

Revise UDO Articles Permits to allow Town of Boone Staff flexibility in the processing of permit applications.

UDO Article 4 currently allows only 20 business days for Staff to review and comment on applications, regardless of the size or complexity of the application or other demands on Town staff. In some cases, Staff have had difficulty performing an adequate review in the time specified.

The revised text will allow Staff to provide careful and considerate reviews in an appropriate amount of time in light of the specific application and other demands on staff time. UDO Subsection 4.07.01, which is not being amended, will continue to provide guidance to Town Staff. That section recognizes that inordinate delays in acting upon applications may impose unnecessary costs on the applicant, and that 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.

The Planning Director expects to adopt a departmental policy setting forth review timeframes, but this policy will allow flexibility where required because of large or complex applications or other constraints on staff time.

Proposed Ordinance Amendment

ORDINANCE # _____

**AN ORDINANCE TO REVISE ARTICLE 4 OF THE TOWN OF BOONE
UNIFIED DEVELOPMENT ORDINANCE RELATING TO
THE PROCESSING OF ZONING PERMITS**

WHEREAS, the Boone Town Council recognizes and finds that there are significant public interests involved in the care and timeliness with which zoning permits are processed by the Town, in that there is a significant interest on the part of the Town and applicants in providing for timely processing of permit applications, and also a significant public interest in ensuring that applications are reviewed fully and carefully to ensure the public safety and welfare and compliance with applicable regulations;

WHEREAS, it is appropriate for Town staff to have flexibility in processing permit applications reflective of the complexity of the application at issue, the time and resource limits of Town staff, and other pertinent circumstances;

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

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 25, 2019; 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 4 of the Boone UDO are hereby repealed, and in their

place are enacted the following new subsections, with deletions and additions shown in red and blue respectively:

4.05 Applications

4.05.01 Application Submittals: An application is considered submitted when the:

- A. 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
- B. The application is signed by a person with lawful and established authority to submit the application, and
- C. All required fees are paid, and
- D. The application is delivered to the Administrator.

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.

- A. 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:
 1. ~~Within twenty (20) business days of~~ 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 ~~the a~~ reviewer in another ~~each other pertinent~~ Town department to evaluate the application for its compliance with the UDO and all other duly adopted requirements of the Town.
 - a. Said list shall be hand delivered to the applicant or, mailed by first class mail or electronic mail to ~~the name and address of~~ the applicant, ~~as they are stated on~~ per the contact information provided in the application.
 - b. Receipt by the applicant shall be ~~inferred- 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.
 2. 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.

- a. 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.
3. 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.
4. 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.
 - a. There may be no more than a total of three requests for information by the Administrator with respect to any one application; if the application is still incomplete after the third supplement response, it will be deemed withdrawn.
 - b. 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.
5. The burden of submitting all materials needed for a full evaluation of an application at all times nevertheless remains upon the applicant.
- B. 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.

Applications to be Processed Expeditiously

- 4.07.01** Recognizing that inordinate delays in acting upon applications may impose unnecessary costs on the applicant, 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.

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.

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]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

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]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL02408-040419
Case Name:
T-13 Use 9.01 College or University Use -
Modification

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 15
Section(s): 15.07, 15.69

Brief Description of Amendment (Attach Proposed Text):

The Town of Boone has initiated a text amendment to revise UDO Article 15 to allow use T-13 Temporary Use 9.01 Public Colleges and Universities within the B3 General Business Zoning District subject to certain restrictions.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

April 4, 2019
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: April 29, 2019
PC Meeting
Date: _____
TC Meeting
Date: _____
Text Approved: ☐ Yes ☐ No
Notes:

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Communication: Case PL02408-040419 Use T-13 Temporary Use 9.01 Public Colleges and Universities Modification - Application Information



**STAFF REPORT
PUBLIC HEARING
APRIL 29, 2019**

CASE PL02408-040419 Use T-13 Temporary Use 9.01 Public Colleges and Universities – Mod, UDO Text Amend

Request

Use T-13 Temporary Use 9.01 Public Colleges and Universities is currently allowed within the M1 Manufacturing and O/I Office Institutional zoning districts subject to the requirements in UDO Article 15, Subsection 15.69.14.

The Town of Boone has initiated a text amendment to revise the UDO to now allow use T-13 Temporary Use 9.01 Public Colleges and Universities within the B3 General Business zoning district (in addition to the M1 and OI zoning districts).

The proposed amendment modifies the existing standards set forth in UDO Subsection 15.69.14 by including an additional requirement in UDO Subsection 15.69.14(A)(8) which prohibits USE T-13 within 400 feet of the centerline of Highway 321/Hardin Street between King Street and Highway 105 (see Exhibit 1 for more detail).

Proposed Ordinance Amendment

ORDINANCE # _____

**AN ORDINANCE TO REVISE ARTICLE 15 OF THE TOWN OF BOONE
UNIFIED DEVELOPMENT ORDINANCE RELATING TO
TEMPORARY USE 9.01 -- PUBLIC COLLEGES AND UNIVERSITIES**

WHEREAS, the Town Council recognizes the importance of Appalachian State University (“the University”) to the culture and economy of the Town of Boone;

WHEREAS, the Town Council recognizes that the University is growing and in need of temporary administrative space as it expands its permanent administrative space on campus;

WHEREAS, the Town Council finds that there is significant public interest and benefit in encouraging the improvement and use of empty office spaces, and that the University’s temporary use and improvement of such spaces results in current economic gain for the community and expanded commercial space base for future private use;

WHEREAS, the Town Council also recognizes the importance of and wishes protect and preserve the Highway 321 corridor between Highway 105 and King Street as a commercial corridor for private enterprise;

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

WHEREAS, this proposed UDO text amendment was duly noticed for public hearing; a public hearing was held with respect to the proposed amendment on April 29, 2019; 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 15 of the Boone UDO are hereby repealed, and in their place are enacted the following new subsections, with deletions and additions shown in red and blue respectively:

15.69.14 Temporary Use 9.01 Public Colleges and Universities – Leased “Swing” space

- A.** Use 9.01 Public Colleges and Universities may be allowed within the B3, O/I and M1 zoning districts on a temporary basis subject to the following regulations:

1. The particular activity for which a temporary permit is sought must be compatible with other uses allowed within the base zoning district ~~(O/I, M1)~~ and must meet all requirements of the UDO; *provided* that in no event are residential uses allowed.
2. The applicant must demonstrate sufficient parking and/or transit to serve the planned use. Without limiting the generality of the foregoing, academic classes shall only be approved if the applicant can demonstrate that sufficient parking or transit is provided to the site to accommodate the number of students using the facility.
3. The temporary activity must be conducted pursuant to a lease between the applicant and a private property owner. The lease term may not exceed the duration of the temporary use permit.
4. Signage is allowed subject to the zoning district requirements of UDO Article 26.
5. The applicant must submit documentation clearly demonstrating that it has in place a plan to provide permanent space for the use within the time allotted for the temporary use permit. *Provided, however*, that this provision will not apply in the event that (i) the use at issue is of its nature time-limited (for example, in the case of a time-limited grant creating a temporary facility need) or (ii) the need for space for the use arises as the result of a force majeure event, such as a fire or flood.
6. The permit shall be valid for five (5) years from the date of issuance. Upon a showing of unanticipated and extraordinary circumstances delaying plans to permanently accommodate the temporary use, the permit may be extended one (1) time for an additional two (2) years provided the applicant requests the extension within 90 days prior to the expiration of the permit.
7. The applicant is permitted to lease the same property for a different temporary use subsequent to the termination of a temporary use permit for another use.
- ~~7.~~8. Temporary Use 9.01 is not permitted on any property any part of which is within 400 feet of the centerline of Highway 321/Hardin Street between King Street and Highway 105.

15.07.03 Table of Temporary Uses

Use #	Temporary Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
T-1	Temporary care provider dwelling	L			L	L	L	L	L	L	L	L	L						15.69
T-2	Temporary construction or repair dwelling	L	L	L	L	L	L	L	L	L	L	L	L	L					15.69
T-3	Temporary construction trailer	L	L	L	L	L	L	L	L	L	L	L	L	L					15.69
T-4	Temporary mobile medical unit										L		L						15.69
T-5	Temporary classroom									L			L						15.69
T-6	Temporary portable storage containers	L	L	L	L	L	L	L	L	L	L	L	L	L					15.69
T-7	Temporary staging									L			L	L					15.69
T-8	Temporary non-fixed site event venue	L								L			L						15.69
T-9	Carrier on wheels (cow)	L	L	L	L	L	L	L	L	L	L	L	L	L					15.69
T-10	Yard sales	L	L	L	L	L	L	L	L	L	L	L	L	L					15.69
T-11	Itinerant merchant/peddler	L	L	L	L	L	L	L	L	L	L	L	L	L					15.69
T-12	Open air market, temporary	L								L	L	L	L	L					15.69
T-13	Temporary Use 9.01 Public Colleges and Universities									L			<u>L</u>	L					15.69

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

Adopted this ____th day of _____, _____.

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

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

- A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.
- B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.
- C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.
- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
- 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.
- F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.
- G. The Town shall support the development of new business parks.
- H. The Town shall promote coordination of economic development resources with the appropriate institutions and agencies. Regional coordination and interaction among areas with a shared economic interest shall be encouraged.
- I. Small business start-ups, expansions and spin-offs shall be encouraged. The presence of ASU and Caldwell Community College and Technical Institute shall be recognized as a necessary and important

resource for area businesses.

- J. Appropriate educational and training programs shall be encouraged to help local residents, especially those unemployed and underemployed, take advantage of business expansion and to develop new skills.
- K. Boone shall identify and provide services consistent with the needs of the area’s growing retiree population.

2.1.2 Commercial Development

- A. Uncontrolled strip development along the area’s through streets shall be prohibited. The undesirable effects of existing strip development shall be reduced and/or reconfigured when redevelopment opportunities permit. New strip development on isolated single lots along through streets shall be discouraged.
- B. Commercial and Office Development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development.
- C. Community/Commercial Centers shall be located adjacent to a major street and contain or be adjacent to other appropriate community facilities.
- D. Automobile Orientated Neighborhood and Convenience Commercial Centers shall be encouraged to locate on a collector street or secondary street at its intersection with a major street.
- E. Residentially scaled and designed neighborhood businesses may be a planned element of newly developed or redeveloped neighborhoods. They should be near other compatible facilities such as elementary schools and neighborhood parks.
- F. Commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property, only when such consolidation and expansion does not encroach upon a viable residential area.
- G. Effective buffering and/or landscaping shall be provided where a large scale or automobile-orientated commercial or office use adjoins an existing or planned residential use.
- H. Encroachment of incompatibly scaled and designed commercial or office uses into viable existing or planned residential areas shall be prohibited.
- I. Office and institutional development may be encouraged as a transitional land use between residential areas and higher intensity commercial activities.
- J. Highway Oriented Commercial uses shall be clustered along segments of major streets and contain land uses which are mutually compatible and reinforcing in use and design. Businesses shall be encouraged to coordinate their site designs with other nearby businesses. Design factors shall include, at a minimum, shared parking and street access, convenient pedestrian and vehicular movement, and consistent sign standards.

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.

- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

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]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

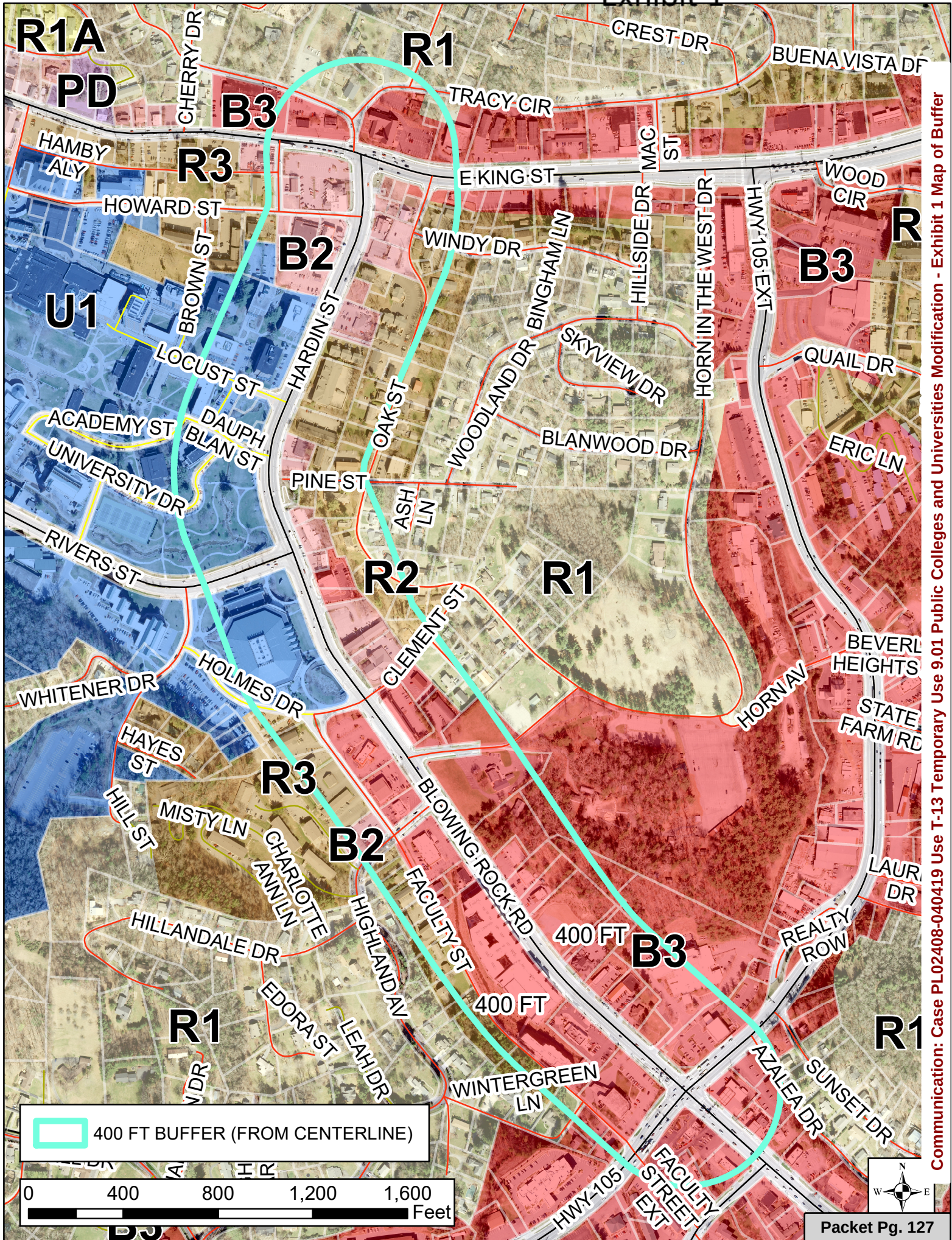
TOWN COUNCIL ACTION

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]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:



**PLANNING COMMISSION MEETING MINUTES
MONDAY, FEBRUARY 25, 2018 AT 6:00 P.M.
IN TOWN COUNCIL CHAMBERS**

PLANNING COMMISSION MEMBERS PRESENT: Elizabeth Shay-Chairperson, Chris Behrend, James Hedrick, Kennedy Kavanaugh, Michael Sanchez, and Frank Veno

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections

CALL TO ORDER

Chairperson Shay called the meeting to order at 6:00 p.m.

APPROVAL OF PLANNING COMMISSION MEETING MINUTES

Commission Member Hedrick made a motion, seconded by Commission Member Veno to approve the January 28, 2019 Planning Commission meeting minutes as written.

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

CASE PL01817-082318

In August 2018, Town Council directed Staff to draft text to amend UDO Section 15.11 to require multi-family in mixed use developments to follow the same bedroom/unit requirements as set forth in UDO Section 15.10 and to make revisions as to when parking can be counted as part of the required commercial area.

Ms. Shook noted the case had been heard at the January 28, 2019 Public Hearing and reviewed the revised text for the Planning Commission.

Commission Member Hedrick asked if the revised text on parking meant that the bottom floor of the development could not contain parking. Ms. Shook noted that the bottom floor could contain parking but the street level would have to contain the required commercial use and the parking area could not contain residential below or above the parking area.

Commission Chair Shay asked if the text addressed a situation when a development that had a residential component where they didn't need to park cars. Ms. Shook noted that the ordinance does not address it directly and that it had never happened and the likelihood of that happening is very slim. Ms. Shook noted that the ordinance requires each development to provide sufficient parking and that it would be up to the applicant to demonstrate to the permit issuing authority that no parking was needed.

Commission Chair Shay asked how the mixture of residential parking and commercial parking worked. Ms. Shook noted that the applicant had demonstrate a set number of spaces for each according to the ordinance, noting that shared parking spaces would not work for between residential and commercial tenants in the same development.

Discussion ensued on the formatting of the text. Commission Chair Shay asked if the Planning Commission would be able to comment on any of the existing text that was consolidated to the front of Section 15.11. Ms. Shook noted that the Planning Commission could make comments on any of the text but noted that no changes had been proposed to these sections, they had just been consolidated to clean up the text in Section 15.11.

Ms. Shook went over the text to note UDO Sections 15.11.01(D) and (E) was existing text that had been

and that UDO Sections 15.11.01(E), (F), (G) and (H) contained new text brought over from Section 15.10.

Commission Chair Shay asked Ms. Shook to explain the merits of the window and awning requirements. Ms. Shook noted that the mixed-use development are intended to go into commercial districts and noted that it is important for the street level to be pedestrian oriented and noted the fenestration requirements are already part of the community appearance standards for the Town. She also noted the awning requirement was soft language encouraging awnings and noted applicants would always be required to obtain proper encroachment agreements even if the language wasn't in the text.

Discussion ensued regarding the unit and bedroom requirements. Ms. Shook noted that the intent is to create a variety of housing options for a variety of people. She noted that in developments in the past, that have been student oriented, that developers have used a four bedroom, four bathroom or three bedroom, three bathroom unit type where the bathrooms are accessed through a bedroom with little common area such as a living room. She noted that the arrangement may work well for students but is not conducive for families.

Commission Chair Shay asked for the Planning Commission Members opinions on the proposed text. Commission Member Behrend noted that she liked that the text is being consistent across the board for all types of housing and that she supported the text change. Commission Member Kennedy expressed concerns with UDO Section 15.11.01(H) which required a designated master bedroom 25% larger in units with two or more bedrooms. She noted she understood the intent but noted her concern was that developer would then charge more if they could say the unit had a master bedroom which she felt would limit affordability for any type of renter. Ms. Shook noted to the Commission that the ordinance does not regulate, nor could it regulate, who the tenant was.

Discussion ensued regarding the differences between student oriented and market rate residential developments. Commission Member Hedrick noted that while a four bedroom four bathroom was conducive to students it wasn't conducive to a family but in reverse an apartment with a master bedroom and two smaller bedrooms would be attractive to all.

Discussion ensued regarding what could be discussed at the Public Hearing. Ms. Shook noted that the Commission was free to deliberate amongst themselves but she would caution them from asking for additional testimony that was not heard at the public hearing. She noted that Council had expressed concerns about the Commission reopening the public hearing to hear additional testimony that they did not have the benefit of hearing or questioning. Ms. Shook noted that she would have to seek more guidance as to the limits Staff has when providing additional answers to questions not discussed at the original hearing.

Commission Chair Shay noted that she had concerns with the text regulating something that the market should be able to handle. She noted a concern that it may make units with a master bedroom larger at a time when people are trying to live smaller. She noted that she had concerns that the text could contribute to higher costs and less efficiency and the market should be able to handle these issues. Commission Chair Shay noted that part of the problem is that aren't enough dorms on campus.

Commission Member Behrend noted that she didn't think the market was handling it because all of the new development was student oriented and not for the community as a whole.

Commission Chair Shay referenced the 2013 housing study, which she has heard differing opinions on, as noting that students would be moving into the newer building with newer amenities and noted the older housing was not easily converted based upon the way it was constructed and fragmented ownership. She noted she understood the strategy proposed in the text but felt that it was overly involved. She noted that she had a hard time finding housing that fit their needs because everything seemed over built for their tastes and that she is concerned about putting in specifications that then get codified in a UDO and

then when tastes change in 10-15 years the community is sort of stuck with it.

Discussion ensued on the construction of new buildings but what appears to be lack of renovation in older developments.

Commission Member Kavanaugh noted that her concern still was focused on the master bedroom, noting that she's noticed that apartments with a master bedroom are more expensive and wondered if families choosing to live in apartments cared whether there was a master bedroom or not due to the costs which in turn may make the housing inaccessible to a larger amount of people. She noted that she was comfortable with rest of the text as presented.

Discussion ensued on UDO Subsection 15.11.01(F). Ms. Shook noted that it would require a developer to provide a mixture of unit types based upon bedroom, for example it would prohibit a development from having a development made up of all one bedroom apartments. Ms. Shook noted that of the most recent developments, some had a mixture of unit types and some did not.

Discussion ensued on UDO Subsection 15.11.01(G). Commission Member Hedrick noted that he thought the regulations for the bedroom and bathroom mix would help resolve the four bedroom four bathroom issue discussed, though the master bedroom requirement in (H) might be resolved through the market as it could discourage lower income families as the top item on their list may not be having a master bedroom. He noted that a compromise for (H) might be that not all units with two or more bedroom have to have a master bedroom but perhaps it should be a percentage of those units. He noted (H) was a good idea but is concerned that every unit that has two or more bedroom is required to have a master bedroom. Commission Member Behrend noted she liked the idea of only a percentage of the units would be required to have a master bedroom.

Commission Chair Shay noted she had concern with UDO Subsection 15.11.01(G) because the text seems to be trying to open up the housing market with design specifications when the forces at play seem to be supply and demand. She noted that until demand for student housing is satisfied and the demand for faculty, staff and Town housing is dealt with it, the text gets tangled up with market forces, when students are going to live where students are going to live because they are coming here to go to school and the need places to live. Commission Member Behrend asked Commission Chair Shay if she wanted to see an excess of building of student oriented developments. Commission Member Shay indicated that she did not. Commission Member Behrend noted the proposed text would help limit that. Commission Chair Shay replied that she understood it was the intent but didn't know if it will because supply and demand controls. Commission Chair Shay noted that she felt this was a deeper issue with University and Town relations and whether the University will ever get to the point of supplying more on campus housing, of which she understands also has to be addressed at the state level.

Commission Chair Shay noted she understood what the text was designed to do and noted the goal has merit but she wasn't comfortable with some of the provisions of the text. She suggested that maybe there were other ways to help solve the issue such as incentives the Town could provide to the older developments for redevelopment rather than just try and control the new construction. She noted that these were just her thoughts and she knew it was a much bigger issue.

Commission Members Behrend and Veno noted they found the proposed text acceptable.

Commission Member Kennedy asked about the definition of mixed-use. Ms. Shook reviewed the standards set forth in the Staff Report under UDO Section 15.11 with a brief description of how the text was broken up into different standards for the B1, B2 and B3 zoning districts.

There being no other discussion, Commission Chair asked if anyone was ready to make a motion.

First Motion and Vote: Commission Member Behrend made a motion, seconded by Commission Member Kavanaugh, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because the proposed text is consistent with the overall objectives of the Comprehensive Plan listed in section 1.1 in addition to Comprehensive Plan Policy 2.1.1(A) which states the Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy as the proposed text helps keep the regulations consistent.

Vote: Aye – 4 (Behrend, Hedrick, Kavanaugh, and Veno)

Nay – 1 (Shay)

The motion passed.

Second Motion and Vote: Commission Member Kavanaugh made a motion, seconded by Commission Member Behrend, that the Planning Commission recommends approval of the proposed amendment to the Town's zoning ordinance and believes approval is reasonable and in the public interest because the Planning Commission these regulations help build community character, they provide a diversity of housing within town limits and they encourage new and different residential developments.

Vote: Aye – 4 (Behrend, Hedrick, Kavanaugh, and Veno)

Nay – 1 (Shay)

The motion passed.

Commission Chair Shay noted that she was tempted to vote to move forward for the sake of consistency and then come up with some other recommendation for the Town to revisit the text at a later date but realized that would be too complicated. She noted that she was still uncomfortable with some of the language and realized the vote of others would move the text forward to clean up the text but for herself she wasn't sure on how she wanted to proceed.

OTHER MATTERS

Ms. Shook encouraged the Planning Commission to feel comfortable to ask questions about cases at the Public Hearing because that is the intent of the Public Hearing. She noted that the Planning Commission should not make it a habit to reopen a public hearing after it is closed because the purpose of the hearing is so that the Planning Commission and Town Council hear the same information and can discuss the information together. Ms. Shook noted that the Town Council valued the Planning Commission's participation and so she encouraged them to ask any questions that may come up.

ADJOURNMENT

Commission Member Behrend made a motion, seconded by Commission Member Kavanaugh to adjourn the meeting at 6:52 p.m.

Vote: Aye – All

Nay – None

The motion passed.

Elizabeth Shay, Planning Commission Chair

Jane Shook, Acting Board Secretary