

**TOWN COUNCIL AND PLANNING COMMISSION
PUBLIC HEARING MINUTES
MONDAY, JULY 24, 2023, 6:00 PM
1500 BLOWING ROCK ROAD & VIA WEBEX SOFTWARE**

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

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

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Jessica Mitchell-Long-Range/Special Projects Planner, and Brenda Henson-Board Secretary

OTHER TOWN STAFF PRESENT: Amy Davis-Town Manager

Call to Order

Mayor Futrelle called the Town Council to order at 6:03 p.m. Chair Shay called the Planning Commission to order at 6:03 p.m.

Moment of Silence

A moment of silence was observed.

Approval of Meeting Minutes

Council Member Roseman made a motion to approve the May 22, 2023, Public Hearing minutes as written. The motion was seconded by Mayor Pro Tem Tugman.

Vote: Aye – 4
Nay – None
Absent – 1 (Carter)

The motion passed.

Commission Member Behrend made a motion to approve the May 22, 2023, Public Hearing minutes as written. The motion was seconded by Commission Member Tippet.

Vote: Aye – 3
Nay – None
Abstain – 1 (Plaag)

The motion passed.

PUBLIC HEARING

Case PL06422-012523 Kelpat Terrace – General Use Zoning Map Amendment

The Town of Boone has submitted a General Use Zoning Map Amendment application requesting to rezone 145 Moretz Drive from B1 Central Business to R3 Multiple-Family. This rezoning is necessary because, as of October 2021, the B1 Central Business zoning district no longer exists as it was replaced with two new zoning districts, the B1 Downtown Core and the B1 Downtown Interface.

Ms. Jane Shook, Director of Planning & Inspections, presented the request as it was outlined in the meeting packet. She stated that property owners were notified of this change in May and again in July. Ms. Shook noted that she had spoken with Stephen Phillips, owner of several of the Kelpat Terrace condo

units, and he indicated an understanding and acceptance of the zoning change. Ms. Shook explained that changing this property's zoning from B1 to R3 would change their interior setback requirement for the neighboring property zoned B1 Downtown Interface to 13 feet.

There was no public comment and no further questions.

Mayor Futrelle closed the public hearing for this case at 6:12 p.m.

Case PL05640-040822 Lighting Design Standards – UDO Text Amendment

The Town of Boone has submitted a request to modify UDO Article 25 Community Appearance Standards to reflect lighting industry changes and lighting design best practices. In conjunction with the Community Appearance Commission evaluating current Community Appearance Standards, Planning Staff has evaluated the current lighting standards by meeting with lighting design professionals, dark sky advocates, and local energy providers to discuss current lighting practices and areas of improvement.

Ms. Jessica Mitchell, Long-Range/Special Projects Planner, stated that the presentation in the meeting packet was unchanged from the May presentation. She provided a brief overview of the content.

Mayor Pro Tem Tugman asked whether or not lighting could be repaired or replaced if it was taken out in a storm, or if new lighting would have to be installed to meet the new ordinance requirements. Ms. Shook referenced UDO Section 7.05.02(B) that read:

All new structures or portions of structures must comply with all Ordinance requirements. However, when a nonconforming structure is destroyed or damaged by fire, flood, wind, other act of God, the structure may be repaired or restored to its original dimensions and conditions as long as the structure is not located in a Floodway or Special Flood Hazard Area, a building permit for the repair or restoration is issued within one (1) year and the structure is occupied within two (2) years of the date the building permit is issued.

1. A nonconforming structure damaged by other cause to such extent that repair, reconstruction or restoration is expected to cost more than fifty percent (50%) of the total value of the structure, must be removed.

Ms. Shook suggested that this section should be reviewed in relation to lighting and signs.

Council Member George asked about sunsetting. Ms. Shook asked Council Member George if there were certain elements or portions of the ordinance that he would want to sunset versus waiting for those items to come into compliance naturally. She noted for example, that it would be difficult to gather the data needed to begin tracking elements such as pole heights in order to notify owners that they need to come into compliance because the standard affects all commercial properties.

Vice Chair Plaag stated that parking lot and stadium lighting were probably some of the oldest and least energy-efficient lighting in town. He noted that implementing a sunset date could help the Town move more quickly toward a carbon-neutral position and preserve the night sky. Vice Chair Plaag added that one of the most egregious offenders of lighting was the stadium at ASU. He then referred to the following proposed text:

27.02.01 Exemptions: Unless otherwise prohibited, the following types of lighting are exempt from the requirements of this Article:

A. Any lighting required by state and federal agencies.

B. Any lighting installed by the Town of Boone or the State for the benefit of public health, safety, and welfare.

Vice Chair Plaag expressed concern that these exemptions would include the stadium at ASU. Ms. Mitchell replied that stadium lighting was addressed under Section 27.04 Sports Field Lighting. She stated that 27.02.01 was not drafted to allow an exemption for the stadium. Vice Chair Plaag noted that a skilled lawyer could make an argument that stadium lighting was necessary for public safety and welfare during a football game, which would make their lighting exempt from the requirements. He suggested rewording 27.02.01(A) and (B) to avoid unintended consequences.

Vice Chair Plaag referenced the following proposed text:

27.02.01 Exemptions

C. Lighting of United States of America or North Carolina state flags specifically if the flag and flagpole do not exceed the maximum permitted building height for the zoning district.

He asked why flagpole lighting was exempt and noted that flagpole lighting should fall under the same regulations as other architectural features and be limited to 800 lumens. Ms. Shook replied that flagpole lighting was a common exemption across the state. She noted that flagpoles were often lit with solar lights that did not require a permit to install. Vice Chair Plaag stated that allowing an exemption for flagpole lighting could allow someone to illuminate their flag with a blindingly bright light.

Vice Chair Plaag referenced the following proposed text:

27.02.01 Exemptions

D. Individual residential lighting for Single-Family Dwellings (Use 1.01), Manufactured Homes (Use 1.02-1.04), other uses lawfully operated out of a single-family dwelling or Use 1.06 Duplex (one duplex building per lot), that are not part of subdivision plan for street or other common or public area outdoor lighting.

He asked why residential lighting would be exempt when security flood lighting on homes was sometimes blinding. Ms. Mitchell replied that residential lighting was another item that was commonly exempt from other research jurisdictions. Ms. Shook added that the lighting standards currently did not apply to single-family and two-family development, and to do so would require a total revamp of the review and enforcement process.

Vice Chair Plaag asked if the word “event” was defined as it related to sports field lighting. He noted that there were times when there was football practice at 5:00 a.m. with all of the stadium lights on and canned crowd noise blasting. Ms. Shook noted that ASU might have some type of lighting that could be turned to a lower intensity level. She noted that there had been a general concern about the impacts of the University's stadium lighting, not only on adjacent neighborhoods, but also on neighborhoods across the valley when no events were actually taking place.

Chair Shay asked how the ordinance would cross-reference signs and lighting and how staff would know when lighting became a sign, or a sign became lighting. Ms. Shook responded this would be accomplished through training and possibly some minor text amendments.

Mayor Pro Tem Tugman noted that some language about residential security lighting should be considered in the future. She also noted that open and closed signs should be limited in size so that they do not stretch across the entire front of a business. Ms. Shook added that there would be some minor text amendments to the sign ordinance to address this issue.

There was no public comment on this case.

Vice Chair Plaag asked what the compliance date was for window signs. Ms. Shook replied that the compliance date was January 1, 2024.

Ms. Shook asked Council and Planning Commission members for their thoughts regarding sunsetting and, if interested, what elements should be included in the sunset. Council Member George stated he would be interested in sunsetting things outside of the structural components, such as light poles and floodlights. He agreed with Vice Chair Plaag that this would help the Town achieve some form of carbon output efficiency.

Ms. Shook noted that imposing a sunset date would require staff to change schedules to allow enforcement actions to take place in the evenings when lights would be operational. She stated that sunsetting needed to be clear with an easy way to enforce the regulations.

Council Member Roseman stated she would like to make sure that, if they did do any sunsetting, it was on things that would be very egregious and cause light pollution to the community. She recognized that requiring people to make some of the suggested changes would be a true hardship.

With nothing further, Mayor Futrelle closed the public hearing for this case at 7:02 p.m.

Adjournment of Town Council

Council Member Roseman made a motion to adjourn the Town Council at 7:04 p.m. The motion was seconded by Mayor Pro Tem Tugman.

Vote: Aye – All
Nay – None

The motion passed.

Tim Futrelle, Mayor

Brenda Henson, Board Secretary

Elizabeth Shay, Planning Commission Chair

Continuation of Planning Commission Meeting

Public Comment

There was no additional public comment.

Approval of Planning Commission Meeting Minutes

Commission Member Behrend made a motion to approve the May 22, 2023, Planning Commission meeting minutes as written. Chair Shay seconded the motion.

Vote: Aye – 3
Nay – None
Abstain – 1 (Plaag)

The motion passed.

Case PL06422-012523 Kelpat Terrace – General Use Zoning Map Amendment

The Town of Boone has submitted a General Use Zoning Map Amendment application requesting to rezone 145 Moretz Drive from B1 Central Business to R3 Multiple-Family. This rezoning is necessary because, as of October 2021, the B1 Central Business zoning district no longer exists as it was replaced with two new zoning districts, the B1 Downtown Core, and the B1 Downtown Interface.

Chair Shay asked for further clarification on the setback of 13 feet that would be required under the R3 zoning. Ms. Shook explained that the B1 Downtown Interface zoning district had a zero-foot interior setback if it was adjacent to another property zoned B1 Downtown Interface. However, if a B1 Downtown Interface property were adjacent to a property that was zoned differently, that zoning district's interior setback would apply to the property B1 Downtown Interface property as well.

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

Comprehensive Plan Policy 2.3 The Community

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

Comprehensive Plan Policy 2.3.3 Housing & Neighborhoods

A. The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

E. Factors in determining preferred locations for high density residential development shall include: close proximity to the university, employment or shopping centers; access to major thoroughfares and the transit system; the availability of public services and facilities; and compatibility with adjacent land uses.

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

The motion was seconded by Commission Member Tippet.

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote: Vice Chair Plaag made a motion that the Planning Commission recommends approval of Ordinance PL06422-012523 and believes approval is reasonable and in the public interest because the proposed zoning classification change brings the current parcel in alignment with its current use and helps to create a buffer to the R1 neighborhood that is located to the south. The motion was seconded by Commission Member Behrend.

Vote: Aye – All
Nay – None

The motion passed.

Case PL05640-040822 Lighting Design Standards – UDO Text Amendment

The Town of Boone has submitted a request to modify UDO Article 25 Community Appearance Standards to reflect lighting industry changes and lighting design best practices. In conjunction with the Community Appearance Commission evaluating current Community Appearance Standards, Planning Staff has evaluated the current lighting standards by meeting with lighting design professionals, dark sky advocates, and local energy providers to discuss current lighting practices and areas of improvement.

Ms. Shook reviewed some of the items that were discussed during the public hearing including a review of non-conforming situations and what that covered, reviewing the nonconforming language to ensure that lighting and signs were covered, review 27.02.01(A) and (B) to ensure that ASU's stadium lighting could not be considered exempt, and reviewing 27.02.01(C) on flagpole lighting.

Commission Member Behrend suggested removing 27.02.01(C) regarding the exemption of flagpole lighting.

Vice Chair Plaag suggested the following be added to Section 27.03.07(D) Glare Control: Uplighting may only be used to illuminate a landscaping element, a US or North Carolina flag, or an architectural feature provided the lighting design has a maximum light output of 800 lumens. He also suggested that language might need to be added regarding pole heights.

Discussion ensued regarding stadium lighting. Ms. Shook wondered if part of the problem with stadium lighting was the hours of operation. She stated that this topic could possibly be addressed through Town/Gown relations. Ms. Shook noted that sports field lighting applied not only to ASU but to Watauga County High School, Hardin Park Elementary School, and Watauga County recreation facilities. She stated that she was hesitant to try to define the word "event" because sometimes defining a word provided no flexibility.

Vice Chair Plaag stated he was really more concerned with ASU's stadium lights during practice sessions when all of the lights were on early in the morning or left on after everyone was gone in the evening. Ms. Shook suggested the addition of language that would limit stadium lights to be on no more than 1-2 hours after an event or usage and be limited to a certain output. Vice Chair Plaag stated he was unsure if the stadium had downlighting. If they did not and Town Council imposed a sunset date, they would have to come into compliance. Vice Chair Plaag stated that penalties should be assessed if ASU did not bring their lighting into compliance with the local ordinance.

Vice Chair Plaag stated that residential lighting could be considered at a later date. He suggested that when it was considered, compliance could be complaint-driven. Ms. Shook stated she would put residential lighting on the list of items to revisit.

Chair Shay asked Ms. Shook to give them a list of the suggested changes so far. Ms. Shook stated that staff would review the nonconforming situation to see how lighting and signs would be impacted by that text and revise it, if necessary; review 27.02.01(A) and (B); eliminate 27.02.01(C) regarding the exemption of flags; review 27.03.07(D) architectural features and add language from 27.01.01(C) regarding flag poles; research hours of operation restrictions for lighting; have a conversation with the Town Manager and the Town Attorney regarding general compliance by those who have sports fields; and research a possible definition of the word "event".

Vice Chair Plaag noted there were three categories of changes that a property owner might have to make if there was a sunset date. One would be to keep the light pole and retrofit the instrument so that it met the standard. Another would be to completely replace the light pole and instrument to come into compliance. Lastly, different building lighting features, that lit a sign or accent strips around the top of a hotel would need to be replaced or removed to come into compliance.

Ms. Shook noted that pole height was difficult to accurately measure and a sunset date on pole heights would mean a site visit to every commercial property in the Town of Boone to try to take measurements. She stated that when properties had to come into compliance with the sign ordinance and the gas station canopy requirements, these items were more easily identifiable and manageable.

Vice Chair Plaag suggested a sunset date of five years, or 10 years if someone had recently upgraded their lighting. Ms. Shook noted it would be difficult to keep track of who had made recent upgrades as well as offering two different compliance dates.

Ms. Shook asked Commission members if there was something specific and most egregious, other than sports field lighting, that they would like to see come into compliance.

Commission Member Tippettt stated he liked the idea of sunseting. He also stated that he was aware there could be costs to business owners who did not own the property, and tracking would be difficult for staff. Commission Member Tippettt noted that properties would eventually come into compliance as renovations took place.

Ms. Shook explained that the lighting text amendment was not suggested because complaints had been received but because of changes in technology and industry standards necessitated a review of the standards so that the language reflected not only the new technology but what Staff thought would be best practices.

Vice Chair Plaag stated that the most important things to him were the downcasting and shielding of lights, the Kelvins, and color temperature.

Chair Shay agreed with Vice Chair Plaag, noting light pollution, emissions, and energy consumption as important issues. She expressed concern with creating ordinances that lock things in and then technology and development conditions changed, and then you are stuck with these old, very specific ordinances that get very fussy about height and design features.

Vice Chair Plaag noted that the egregious examples would stand out to the inspectors by the end of the sunset date, either through a complaint-driven process or just by driving around town.

When asked by the Commission, Ms. Shook reminded Commission members that they were not required to give a recommendation this evening unless they wanted to. However, if 30 days passed without a recommendation, Town Council could go ahead and take action on the request. Ms. Shook stated that Planning Commission could meet again in August to discuss this amendment or staff could try to craft revisions based on tonight's conversation to present to Town Council at their next meeting.

Commission Member Behrend liked the idea that staff put the Commission's suggestions together and propose them to the Town Council instead of having the Planning Commission meet about this topic again. She also stated she would be in favor of not implementing a sunset date.

Commission Member Tippettt agreed with Commission Member Behrend about moving the text forward, but supported a sunset of 5-7 years for the items that Vice Chair Plaag outlined as egregious.

First Motion and Vote: Vice Chair Plaag made a motion that the amendment to the town's zoning ordinance, inclusive of the following modifications; staff would review the nonconforming situation to see how lighting would be impacted by that text and revise it, if necessary; review 27.02.01(A) and (B) for lighting and signs; eliminate 27.02.01(C) regarding the exemption of flags; review 27.03.07(D) architectural features and add language from 27.01.01(C) regarding flag poles; research hours of operation restrictions for lighting; have a conversation with the Town Manager and the Town Attorney regarding general compliance by those who have sports fields; and research a possible definition of the word event, after further consideration by planning staff for clarity and to the inclusion of a sunseting provision to address the most egregious areas of concern, perhaps to include such issues as downcasting, shielding, and light temperature, with a sunseting period of between five and seven years to address those areas of concern, is consistent with the Town's comprehensive plan and any other adopted plans of the Town that are applicable because the amendment is consistent with:

Comprehensive Plan Policy 2.1.1 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.

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.

Commission Member Behrend seconded the motion and wished to amend the motion to include:

Comprehensive Plan Policy 2.3.2 Community Character

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 Chair Plaag accepted the amendment.

Vote: Aye – All
Nay – None

The motion passed.

Second Motion and Vote: Vice Chair Plaag made a motion that the Planning Commission recommends approval of Ordinance PL05640-040822 as amended and believes approval is reasonable and in the public interest because the proposed changes to the lighting ordinance, broadly speaking, will address a number of long-standing concerns within the community about light pollution and likely will have the additional benefit of improving energy efficiency and helping the Town meet its carbon neutral goals. The motion was seconded by Commission Member Tippet. Chair Shay wished to amend the motion to include the phrase “without unduly burdening businesses and economic development”. Vice Chair Plaag and Commission Member Tippet accepted the amendment.

Vote: Aye – All
Nay – None

The motion passed.

Other Matters

Ms. Shook noted that there would be text amendments in the near future regarding traffic impact analyses and historic district revisions in Appendix D. She also noted that the Town hoped to have a consultant by the end of September to begin work on the Comprehensive Plan update with a goal for completion of August 2024.

Vice Chair Plaag announced that he was running for a position on Town Council and, if elected, he would no longer be eligible to be a member of the Planning Commission or the Historic Preservation Commission.

Adjournment of Planning Commission

Commission Member Behrend made a motion to adjourn the meeting at 8:29 p.m. Commission Member Tippet seconded the motion.

Vote: Aye – All

Nay – None

The motion passed.

Elizabeth Shay, Planning Commission Chair

Brenda Henson, Board Secretary