

**PUBLIC HEARING MINUTES
MONDAY, September 27, 2021, 6:00 PM
VIA WEBEX SOFTWARE**

COUNCIL MEMBERS: Mayor Rennie Brantz, Mayor Pro-tem Connie Ulmer, Sam Furguele, Dalton George, Nancy Laplaca, and Virginia Roseman

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

PLANNING STAFF PRESENT: Jane Shook, Director of Planning and Inspections; Brian Johnson, Urban Design Specialist; Mike James and Christy Turner, Senior Planners; and Marlene Crosby, Board Secretary

OTHER TOWN STAFF AND REPRESENTATIVES PRESENT: John Ward-Town Manager and Allison Meade-Town Attorney

OTHER ATTENDEES/PARTICIPANTS VIA WEBEX: Brian Williams

Call to Order

Mayor Brantz called the Town Council to order at 6:02 pm, and Chair Shay called the Planning Commission to order at 6:03 pm for the Public Hearing/Planning Commission meeting held via WebEx.

Approval of Meeting Minutes

Vice-Chair Plaag had a couple of minor corrections to the minutes.

1. Packet page nine, page number six of the minutes, third paragraph, second to the last line. Remove the word "music".
2. Packet page 10, page number seven of the minutes, change "vent the roof" to "vent the HVAC."

Council Member LaPlaca made a motion to approve the July 26, 2021, Public Hearing minutes as amended. Council Member Furguele seconded the motion.

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

Commission Vice-Chair Plaag made a motion seconded by Member Veno to approve the July 26, 2021, Public Hearing minutes as amended.

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

Ms. Shook went over some general guidelines for the three cases on the agenda for the night.

Case PL05007-081221 140/141 Marich Lane – General Use Rezoning

SLD II, LLC has requested a General Use Zoning Map Amendment to rezone the R1 Single-Family Residential portion of 140 and 141 Marich Lane (Watauga County PIN: 2911-60-4136-000) to R3 Multiple-Family Residential. Please note, this property is currently split zoned with a portion of the property zoned R1 Single-Family, and a portion zoned R3 Multiple-Family.

Mr. James, Senior Planner, briefly reviewed the Staff Report for the case.

Mr. Randy Dixon, the property owner, explained that his group already owns all the R3 Multi-family residential property surrounding the R1, Single-family residential single-family portion of 140 and 141 Marich Lane property. He said that he is requesting a general use rezoning for it. He explained that they are requesting the R1, Single-family residential portion of the subject property be rezoned to R3, Multi-family residential. He said he is requesting that the R1 portion of the property to be consistent with the surrounding R3 zoning so all of his group's properties would have the same R3 zoning designation.

Mayor Brantz asked if this property has always been zoned R1. Mr. Dixon responded that the same family had owned the property and that a portion had been zoned R1 and the other portion had been zoned R3.

Mr. Dixon asked Ms. Meade, Town Attorney what she thought about the request to rezone from R1 to R3.

Ms. Meade said though she usually doesn't give opinions on rezoning cases, she noted the request would be defensible to rezone given that it has B3, General Business on one side. She said it is surrounded on every other side by R3, so that it would be reasonable should Council wish to rezone the property.

Council Member Furguele asked Mr. Dixon if the homes remaining on the property were occupied. Mr. Dixon responded that one of the homes is still occupied, and they are in contact with the residents, and they have until the end of the year to vacate the property.

Council Member Furguele asked Mr. James about the development planned for the location and whether it would be in a transitional zone.

Council Member Furguele asked Staff if this property would trigger transitional zones.

After some discussion, Staff confirmed that specific multi-family uses would trigger transitional zones if combined with adjoining properties.

Council Member Roseman asked Mr. Dixon about the Skyline Terrace case going in front of the Board of Adjustment when Skyline Terrace was first proposed, and she added that she knew it was going to be built in phases. She asked if this request was part of the original Skyline Terrace Development.

Mr. Dixon answered yes and no. Mr. Dixon reviewed the history of the Skyline Development, noting the original development was on property subdivided from the parcel under consideration and that the remaining properties in the area were obtained to add another phase to the existing Skyline Terrace Development. Mr. Dixon noted that the new phase would share the clubhouse and several recreational areas and be constructed as one development.

Ms. Shook reminded everyone that the request was for general use rezoning, so anything the applicant says regarding the potential projects is not to be considered. She said all uses in the district have to be considered for the rezoning.

Vice-Chair Plaag stated he remembered the rezoning case from last year to rezone half of the circle from R1 to R3. Vice-Chair Plaag noted that at the time, he expressed concern that the split-zoning would leave some widowed R1 parcels. He said this would eventually lead to the elimination of any single-family in what was once a single-family neighborhood on the outskirts of Boone. He noted that though it may be appropriate to rezone this one remaining R1 parcel, he also believes it is essential to reflect on the actions taken years earlier. He said these said

actions would cause a cascading effect on adjoining properties down the road. He said these actions essentially eliminated the vestige of single-family housing on the outskirts of Boone.

Downtown Planning Projects

1. **Case PL05025-082321: B1 Downtown Boone Expansion General Use Zoning Map Amendment.**
2. **Case PL03370-112019: B1 Downtown Boone Expansion UDO Text Amendment**
3. **Case PL05043-083121: Downtown Boone Local Historic District General Use Zoning Map Amendment**
4. **Case PL05063-090921: Downtown Boone Local Historic District UDO Text Amendment**

Ms. Shook performed a quick introduction of Council, Planning Commission, and Staff. She started the presentation of the text and map amendments associated with the Downtown Planning Projects. She introduced the four cases by reviewing the preface, which was completed to understand each of the cases.

Ms. Shook briefly reviewed the history of the project and noted that in 2010, the Community Appearance Commission (CAC) was tasked with reviewing appearance standards. Then in 2016, Council authorized the CAC to create two new zoning districts to replace and expand the existing B1 Central Business zoning district. These two new general use zoning districts are the B1 Downtown Core and the B1 Downtown Interface. She then noted that in 2015 Town Council tasked the Historic Preservation Commission with undertaking a comprehensive architectural survey of the Downtown Boone area, the first step when considering the historic district designation. She noted the end result of both Commission's work is two separate downtown planning projects. She said while interrelated, these two projects are separate, and each can be adopted separately. The two proposed projects are what is called the B1 Downtown Expansion, which is the creation of the two new zoning districts to replace and expand the existing B1 Central Business District and the Downtown Boone Local Historic District, which is the creation of a local historic zoning district overlay in the heart of the downtown area.

Ms. Shook continued to review the preface, which contains a summary of the public input gathered for these projects in May 2021, the Downtown Planning Projects website, created specifically for these two Downtown related planning projects. Ms. Shook also introduced the maps created for the project, including the StoryMaps, which is a parcel by parcel approach to reviewing the properties involved in the projects. Ms. Shook then reviewed the Staff Report for the B1 Downtown Expansion UDO text and zoning map amendments. Ms. Shook noted that for this project, the Town is considering a rezoning that impacts nearly 380 property owners, which includes every condo within the area. She continued noting that the proposed rezoning will change to either B1 Downtown Core or B1 Downtown Interface. Additionally, and where appropriate, as part of this area-wide rezoning, there are 13 other parcels identified to be rezoned as either R1A Single Family with Accessory Dwelling or U1 University.

She noted that the Council and the Planning Commission might want to discuss the Straight Street area because properties currently zoned B1 Central Business are proposed to be rezoned to R1A. She pointed that some property owners are upset about the potential rezoning of the properties in the Straight Street area.

Ms. Shook then reviewed the text amendment associated with the B1 Downtown Expansion case and noted an error in the Table of Principal Uses within the Staff Report. She pointed out that the columns were not labeled, and the column to the right was B1 Downtown Core, and the column to the left was B1 Downtown Interface.

Ms. Shook noted the B1 Downtown Core and the B1 Downtown Interface are similar but not quite the same. She said the B1 Downtown Core is a little bit more restrictive and one thing that did not change from the existing text is the height requirements. She noted that Staff had highlighted items for discussion at a future date.

Ms. Shook continued that Council had previously adopted appearance standards that were specific for the B1, which are different than the current community appearance standards. She noted these standards were being modified. She said one of the concerns with the appearance standards in the downtown area was that by using the criteria in the Town's current community appearance standards, the Town was not getting the development that was sympathetic or compatible with the existing development in the downtown area. The proposed standards are based upon the Secretary of Interiors Standards for Rehabilitation and are detailed to guide users. Ms. Shook concluded her review on the B1 Downtown Expansion project by noting that "limited structures to enable recreational use of open rooftops" is a new accessory use that is called out to be permitted with a 300' transitional zone.

Ms. Shook next reviewed the staff report on the text and zoning map amendments associated with the proposed Downtown Boone Local Historic District. She said this was a separate project from the Downtown B1 Expansion that was previously presented. The proposed Local Historic District is an overlay district that overlaps one or more general use districts and contains standards in addition to the underlying general use standards. She noted that where requirements in the overlay conflict with the general use district, the overlay standards supersede.

Ms. Shook reviewed the process used to identify the area included in the proposed local historic district, including the Comprehensive Architectural Survey of the area, the State Historic Preservation Office response to the Architectural Survey, and the recommendation to designate a Local Historic District from the Historic Preservation Commission. Ms. Shook noted a text and zoning map amendment was necessary to create the Downtown Local Historic District. Ms. Shook then reviewed the draft UDO text amendment associated with the Downtown Boone Local Historic District. The first modification to the UDO is Subsection 8.04.02, in which the change is to an item that qualifies as work for a Statement of Conformity. Ms. Shook then reviewed the standards as listed in the Staff Report for Minor or Major Work. She noted that when an applicant comes in to modify existing development or new construction within the Historic District, the work will be evaluated to see whether it falls under minor or major work. She said that Minor work requires an administrative review, in addition to all your other zoning and building permits.

Ms. Shook then reviewed Major Work which requires a Certificate of Appropriateness (COA) through a quasi-judicial process with the Historic Preservation Commission. She noted that this would be a quasi-judicial board hearing similar to the Board of Adjustment. She said that the review of the COA can be conducted concurrently with other permits, with the exception that no other permits should be issued until the Certificate of Appropriateness has been issued.

Ms. Shook reported that the new UDO Appendix C, contained the draft Downtown Boone Local Historic District Standards.

Ms. Shook pointed out that in the Staff Report, it is noted there are exemptions to the overlay with the state of North Carolina public buildings. She said no land owned by the state of North Carolina might be included within an overlay district or conditional zoning district without approval of the Council of State or its delegate.

Ms. Shook noted that for the downtown expansion project, if there is a property within this project area that has either a conditional district zoning or a conditional use rezoning, that the rezoning would not change the zoning of those properties; but it does allow the Town to note that these properties would be located in that particular district if redevelopment should occur.

Ms. Shook concluded with a review of concerns that Staff and the Boards had heard so far with the two projects. She noted areas of concern include the boundaries of the B1 Downtown Interface, especially in the western part of the project area; boundaries of the R1A, especially on Queen Street, Straight Street, and Bent Street. She also noted that occupancy was an issue discussed. She said there are many properties in this proposed project area that are currently zoned R3 that now have three to four bedrooms, and they have three to four tenants in those. The B1 Downtown Interface and B1 Downtown Core only allow up to two unrelated tenants or occupants, which concerns property owners who will be made non-conforming, once the proposed rezoning is potentially adopted. She noted another concern was the height in the B1 Downtown Interface, Subsection 14.19.03(F)(5), where height is measured from the average elevation of the building along the sidewalk. She noted that there were some properties to the west of Town that were significantly below grade. She noted another standard to review was the minimum building footprint requirements of 50% in the B1 districts. She said that the concern was in the B1 Downtown Interface, where there are in excess of 2-3 acres, and for those properties, 50% of the building footprint for the lot size would be quite significant. Ms. Shook noted that she thought the Town might want to consider a separate standard for the Downtown Interface than the Downtown Core. She noted a final concern was for those properties whose uses are made non-conforming, specifically the requirement in UDO Subsection 7.03.05, which is the discontinuation of non-conforming uses because of an act of God. She noted that the Town recently changed the time frame for obtaining permits and the occupancy for non-conforming situations. She noted that instead of six months to obtain a permit and 12 months to occupy, the text was changed to 12 months to get a permit and 24 months to occupy. She noted that those property owners who have non-conforming uses are concerned because, under Subsection 7.03.05, property owners would only have six months to obtain a permit, if their building were to sustain substantial damage due to a fire or some other act of God. They're worried that they would not be able to rebuild within the timeframes of the ordinance for those non-conforming uses. Ms. Shook concluded her presentation and noted she and Staff were available to take questions from the Planning Commission and Town Council.

Council Member George asked Ms. Shook if she had any idea of the number of people affected by the occupancy changes that are either renting or living in that District or proposed District? Ms. Shook told him that she didn't know. Ms. Meade answered that the underlying question is whether the current use is legal, and if it's rezoned, then the use becomes, generally speaking, a legal nonconformity. Then the use could continue if it's a legal nonconformity.

Council Member Roseman asked Ms. Shook if there was a stipulation in the B1 where no drive-through businesses would be allowed. Ms. Shook answered that a drive-through is not currently an allowable accessory use in the B1 or in the new districts. Discussion ensued regarding a Starbucks with a drive-through currently proposed on a parcel with the project boundary that is currently zoned B3 General Business. Ms. Meade noted that drive-throughs are currently allowed within the B3 and that the B1 Downtown Expansion project will not impact the Starbucks application because the applicant is proceeding under the current zoning classification of B3.

Council Member Furgiuele asked Ms. Shook about Subsection 14.19.03 on page 61 of the packet, highlighted in yellow, regarding the demolition of a building. He wondered why that standard needed to be revised. Ms. Shook noted, this particular subsection was added a while back. She said in the discussion at that time of adoption it was agreed upon that the Town would reconsider this particular standard. She noted at the time the Town was looking at the overall downtown picture, there were just draft standards for the proposed B1 districts. She further explained that the highlight was just a note to remember that the standard would be reconsidered upon adoption of the new districts. Ms. Meade asked to follow up on the question and asked Ms. Shook, are you saying that now under these new standards, there are specific height limitations that will be in place in the B1 and under the Historic District. Ms. Shook noted the height regulations were not changing but that the new standards had regulation impact appearance, mass, scale, intensity and location of buildings. She said the discussion at the time was that we would reconsider this, or we would look at this again when the standards were finalized. Chair Shay noted that this includes the standards for the Historic District, which also has additional review over the condemnation and the demolition of buildings in the Downtown Core, which does not have the same standards regarding demolition, but does have different appearance standards regarding the construction, the height and the appearance of the properties. Council Member Furgiuele recalled that when the planning department did the story map, they were debating what the height limits should be in the current District and the downtown area. He said that he found that so many buildings were much shorter than what the limits are now. He said there was a concern about a lot of the buildings which people consider historical, such as the recently demolished Wade Brown building or the recently demolished John Turner law office. He said that there would be people who would be happy to come and tear down the buildings that the Town considers historic to build something more significant to take advantage of mixed-use opportunities and have commercial on the bottom and apartments upstairs, for example. He said the Town wanted an opportunity for a public hearing and consideration of what was being proposed before somebody went forward and demolished one of the buildings in our Downtown.

Vice-Chair Plaag had a question about nonconformities. He asked about the act of God nonconformities and making apartment buildings illegal after a certain period of time. Ms. Shook answered that in Subsection 7.03.05 that a non-conforming use that ceases operation for any reason for a period of 180 days within a 12-month time period may not be reestablished. She said the subsequent use of such land must be a permitted use; however, when a use is involuntarily discontinued because an essential structure is destroyed or damaged by fire, flood, wind, or other act of God, the use shall not be considered discontinued so long as a building permit for the repair or restoration is issued within six months and the use is resumed within 12 months of the date of the development permit being issued.

She said noted the concern she had heard was if something did happen to those multi-family uses that would be made nonconforming, the property owners thought it would be almost impossible to work through the insurance issues and the permitting issues to get a permit within six months and have it occupied within 12 months, especially in light of the current supply chain issues.

Vice-Chair Plaag asked if we had a single parcel with four detached apartment buildings on it and if one of those burned down, and the other three continued their non-conforming use would that essentially continue the grandfathering for that particular parcel. He said even if it might take two years to rebuild the fourth building that has burned down. He asked if this was correct? Ms. Meade said yes, that is correct, and they would be able to rebuild that structure. She added that it would be considered a single development with three different structures on it.

Ms. Shook added that per the UDO occupancy does not constitute a use and cannot create a legal nonconformity.

Council Member Furgiuele asked Ms. Meade about these particular districts and if there could be a different rule than what is currently adopted relative to the continuation of non-conforming occupancy levels? Ms. Meade said she thought there could be. She said she hasn't specifically heard of an example where the grandfathered use would not cover the occupancy issue. She said it could be that there are examples where there is just an occupancy nonconformity. She said, for example, some places are currently R3, they are legally occupied, and there are B1 and R3 uses that continue as a legal nonconformity. She said there is no occupancy issue.

Ms. Shook responded that the examples from the property owners that we spoke with included the example of the multi-family where there are multi-family units with three or four bedrooms. She said they are student-oriented development, so they have three to four unrelated persons.

Ms. Shook said the concern she had heard was that although the multi-family may be a legal nonconforming use, the property owners were concerned because technically the ordinance states only two unrelated are allowed and that eventually Staff could place them in violation. She also noted a concern because there are single-family dwellings within this area as well that are renting to more than two unrelated.

Ms. Meade responded that, in the first case, her view would be that the use itself makes the current occupancy lawful, and it would continue to be a lawful nonconformity with respect to what is now multi-family. She said the single-family may raise a problem.

Public Comment

Mr. Gryder the first person to speak under public comment. Mr. Gryder expressed his concerns noting the historic district would limit renovations in the uptown area. He said that there are several buildings uptown that do need attention, but the current requirements have proven to be too strenuous, and buildings are not looking as good as they can. He noted he had recently tried to put a restaurant in his building, and in the end, he gave up and abandoned the project just because things like the proposed windows were too big or there were too many. He noted that the buildings are not very attractive now and that he doesn't think the Town is helping themselves by being so restrictive in the historic area.

Vice-Chair Plaag asked Mr. Gryder to identify the property he was referring to, and Mr. Gryder responded that the property address was 737 West King Street. Vice-Chair Plaag responded that the standards described under the proposed Historic District and the standards currently in place, while they're similar, the Historic District has not yet been approved. He said that any feedback he had received from the Planning Department was as a result of existing downtown appearance standards, not standards that are under the proposed Historic District. Mr. Gryder responded that he was sure that the Town was not going to be relaxing any of those standards for that sort of thing, and what is typically the case is that they get tightened. Mr. Gryder concluded that it was his general observation that the Town is making it harder and harder to actually fix properties in Town that need attention.

Mr. Dustin Stacey was recognized as the next person to give public comment. Mr. Stacey noted he owns two properties that are being affected by the zoning amendments. One is his law office on Queen Street, which is being changed from B1 to B1 Downtown Interface. The other is a rental house right next door to his office that he purchased several years ago that is being changed from B1 to R1A. Mr. Stacey noted he wanted to speak against the zoning amendment, just as it pertains to his rental property being changed to R1A. He said the block of

downtown Boone from King Street to Queen Street, and Water Street to Straight Street has been zoned B1, as long as he could remember, at least 30 years or maybe even longer. He noted that he had purchased the property next door to his office, not just because it was next door to his office, but because it was B1, and there would be potential redevelopment opportunities in the future. He noted that he believed the rezoning was going to significantly affect the value of that property. He said that a piece of property located in a prime downtown location that is zoned commercial would be significantly more valuable than the same property zoned residential, regardless of its current use. He noted that he had relied on the zoning map that had zoned this house B1 for decades when he had bought the property and noted he felt like making such a drastic change in zoning right now is unfair. Mr. Stacey noted that his rental house is set apart from the other homes on Straight Street and Bent Street that are being rezoned R1A. He noted that it is the only house being rezoned that's accessed by Queen Street; all the other houses are accessed by Straight Street and Bent Street. He also noted that the elevation of his rental home is about the same elevation as his office and was above all the other houses on Straight Street and Bent Street.

Council Member Furgiuele asked Staff about the discussion that was the CAC had when making the recommendation for the area and noted that he thought the CAC had recommended the area to be rezoned. He noted that if combined with other B1 properties or if it was on the edge, that the property could request a rezoning when the property was redeveloped. Ms. Shook responded that she had conveyed that information to Mr. Stacy and that he feared a future Council would not let him rezone it back to business after it was zoned residential.

Ms. Chelsea Garrett was recognized as the next person to give public comment. Ms. Garrett noted she was representing Appalachian State University. She said that Mr. Nick Katers was also present to speak on behalf of the University. Ms. Garrett reviewed a list of properties owned by the University in the project area and asked the Town to consider zoning these to U1 instead of B1 Interface. Ms. Garrett mentioned how the rezoning might impact the parking deck on the Estes property that the University and the Town are working on together.

Vice-Chair Plaag asked Ms. Meade if the Estes house property were to be rezoned, would the University not at that point, essentially be able to build as an example, a new dormitory on that site, if they decided not to do the proposed project with the Town. Ms. Meade responded that they would be able to develop in any way that was consistent with U1, and that would include a dormitory.

Council Member Furgiuele asked Ms. Meade if it was correct that the University had consistently refused to submit to conditional district zoning and, under state law, it can continue to do so? Ms. Meade responded that the University had so far declined to proceed under a conditional district rezoning. She noted that under state law, the University could ask their Council of State to obtain a conditional district approval.

Mr. Nick Katers added that the University would like to see their properties that are contiguous to the University be zoned U1 instead of B1 Interface, especially for the Estes property where they plan to build a parking deck with the Town and daylight the creek.

Mr. Will Fox was the next person recognized to give Public Comment. Mr. Fox asked if a franchisee was leasing a building and they had a contract with a provision to build a drive-through in the future, how would the Town handle that? Ms. Shook responded that the B1 Core and B1 Interface are oriented towards pedestrian-friendly use, and a drive-thru would not be allowed. Further, the ordinance would supersede any contract requirements.

Mr. Jim Deal was recognized as the next person to give public comment. Mr. Deal noted his concern about the properties going up Green Street and those properties that are between Green and Queen and Straight Street, all of which are zoned and used as R3. He noted that he was speaking about parcels 12 through 20 of your lists of parcels, and particularly parcels number 15 and 16, which are owned by Vineyards LLC, which he is a part of. He noted those properties have been R3 for over 30 years, and some of those properties in that area have been R3 property for 40 years. He said they have apartments, some of which are four-bedroom, some are three-bedroom, and some are two-bedroom, and noted that if the Town makes them a part of the B1 Interface district, they would automatically be making those properties non-conforming. He noted it made no sense to change the zoning in the area because Green Street is not part of the downtown business district, and it had never been part of the downtown business district. He noted that if business traffic ran through Green Street, it would cause it to run into an R1 neighborhood. He noted he agrees that King Street is the business district, and considering continuing King Street made a lot of sense. He noted he was supportive of most of the work and complimented the work but noted that some areas in the B1 Downtown Interface simply do not belong. He noted that part of the plan talks about the economic value of the properties. He noted that if the Town makes the Green Street area part of the B1 Interface, the Town will decrease those properties' economic values. He further noted that it would harm the people who own those properties, who may have invested their savings in creating property values for themselves for now and in the future. He asked for consideration to eliminate those sections from the B1 Interface district and allow them to remain what they are, which is R3, so that the properties can remain in conformity with appropriate zoning instead of becoming non-conforming uses.

Mr. Deal further noted his concerns that include the renovations section on page 84, and he also has concerns on the ability of the current Council to bind a future Council or a future Board of Adjustment, saying, you know, if this rezoning happens, then you would need to consider requesting a rezoning at a future date. He noted that the Council is saying that they are going to make these properties non-conforming, and that they hope that maybe if one of these things happens that some future Council might look favorably upon you.

Ms. Caroline Cato was the next person recognized to give public comment. Ms. Cato stated that she is a downtown resident and property owner. She owns the property at 277 Howard Street, which is the ECRS building. She also lives Downtown. She stated she wanted to come tonight to voice support for the downtown expansion, particularly the eastern section of the expansion plan. She said there are some projects underway currently are counter to what the area would like to see in Downtown Boone. She said she moved downtown because she really enjoyed the area's walkability; that was pretty much the core reason she lives Downtown. She would like to see the walkability be sustained Downtown and improved upon. She said the safety of pedestrians is really important to her. She thinks projects underway that will impact safety for pedestrians are just not something we want to see in Downtown Boone. She said she would like to see the Town develop projects there that are cohesive with the downtown landscape. She said she would also like to see that the identity of Downtown Boone be cohesive all the way through and not so piece-mealed.

Mr. Bill Aceto was the next person recognized to give public comment. Mr. Aceto said he is a property manager and he represents several properties; 1395 West King Street and 295 Old Bristol Road. He said both are zoned R3. He said both properties will be affected by the rezoning of the proposed B1 Downtown Interface District. He said both of these, in his opinion, are not located on the commercial corridors. He said they are located at the very end west of Town, where the proposal basically ends. He said that both of these multi-family developments have no

commercial component, and this raises a concern. He said his request would be to remove these properties from consideration and move the B1 zone closer to the health department or further down King Street/Highway 421. He respectfully asked that this decision be tabled and that the new Council take this up in the future. He stated since the local Council terms are expiring, he thinks the next Council should have the opportunity to have a say-so into this potential zoning change.

Mr. Steve Owen was the next person recognized to give public comment. Mr. Owen wanted to speak on a different aspect of the Town's proposed Historic Preservation District, which he's supportive of in concept. He said there are a few different angles as a property owner and a human being concerned about the climate emergency and one who has been involved in renewable energy for a long time. He said he pays property taxes but can't vote in municipal elections because he lives outside town. He said his first project was a solar project, and it is within the proposed Historic overlay. He explained that the project was the Town's first solar project. He said at that time, the Town didn't even know how to permit or inspect solar. He said that New River Light and Power did not actually have an interconnection rate. He said any regulation that makes an already high artificial burden on solar even more onerous is just not acceptable. He asked that sound criteria be provided for alterations allowing Boone's historic buildings to adapt and change with the times. He said historic preservation is a worthwhile intent, and he supports it. He said do not let it be a barrier to solar. He pointed out that the barriers are high enough right now. He said we can't afford it. He said as this project moves forward, he hopes to look a little more specifically at the importance of integrating renewable energy and energy efficiency.

Ms. Chelsea Garrett was the next person recognized to give public comment. Ms. Garrett spoke for Ms. Andrea Capua for Watauga County. Ms. Garrett stated that the County would like all government buildings, to have an exemption altogether or some type of conditional zoning district designation. She noted some flexibility is warranted for the town and county buildings. She stated that the county buildings serve a very important government function. She said that she knows that the Commission and the Council are familiar with the topic of the courthouse roof, and she understands that there are going to be ongoing renovation needs in these buildings that are fairly old. She said that she doesn't think the County has an issue with the standards in general but would just ask for some flexibility. She said that she knows that the elementary school in Valle Crucis encountered an issue with their Historic District. She stated that the only way they could move forward with the site identified and agreed upon as the best possible site was to amend the ordinance to address historic overlay districts. She noted that it would have cost close to a million dollars or more to build the school. She stated that there needs to be a process that allows some flexibility. She said the County has no issue with, for example, looking at using historical materials that have been identified by the Town in the ordinance as approved materials in the historic District for new construction. She pointed out for example, the pebble siding of the courthouse or other buildings that aren't necessarily in conformity with the rest of King Street and the historical character happens to be within the historic designation because of their age. She said that she thought it should be possible for the County and the Town to renovate its buildings with materials that are still historical, but without necessarily replacing the identical material on the existing buildings.

Council Member Furgiuele stated that he thought the County would want to be exempted from the historic district since the County has torn down recently one of the buildings with historical significance. He said he would strongly oppose exempting the County or the Town from this ordinance, if it passes. He said the governmental buildings are some of the worst looking buildings in Town and the ones that need the most attention.

Vice-Chair Plaag said that he agreed with Council Member Furguele and wished to compliment Town Manager Ward for his sentiments that the Town was willing to observe the same standards for its properties as the taxpayers. Vice-Chair Plaag stated he was adamantly opposed to a carve-out for either the Town or the County and agreed that it was particularly rich coming from the County given what happened with the Oscar and Suma Hardin house.

Mr. Jordan Sellers was the next person recognized to give public comment. Mr. Sellers showed concern for his property located at 145 Bent Street. He said he specifically sought out commercial zoning because he wanted to find a property that he thought would behoove him to invest in and that he might be able to use in multiple ways. He said he believed that the value of his property comes from commercial zoning. He said that he felt that the Town was taking that away from him.

Council Member Roseman was the next person recognized to give public comment. Council Member Roseman indicated she was reading a message from Ms. Rebecca Haney who had to leave the hearing. Council Member Roseman said that Ms. Haney wanted to know when the rezoning would take effect and that she had questions regarding the new proposed Starbucks on King Street. Council Member Roseman said that Ms. Haney asked if the rezoning would halt the Starbucks proposal? Council Member Roseman said that Ms. Haney said that she would like to bring attention to the stop light and the daily backup of traffic at Council Street and King Street, where the Starbucks is proposed to go. Council Member Roseman said that Ms. Haney asked how would the traffic affect Council Street and how would that affect traffic on a daily basis?

Ms. Meade responded and said the developers have submitted an application for the proposed Starbucks, and they have the right to proceed under state law and the current Unified Development Ordinance. Ms. Meade said if the proposed ordinance had been in effect and if this parcel had been rezoned to B1 and had not been B3, as already discussed, a drive-through would not have been permitted. Ms. Meade thinks the broader question about the traffic in that area being allowed to stack out into the streets raises other questions. Ms. Meade presented to Council last month and sought direction as to whether the Town would like to pursue a possible general ordinance to address that issue. Ms. Meade said that Council directed her to address the issue. Ms. Meade said she would come back at some point on this topic. Ms. Meade noted, generally, with respect to Starbucks, if anybody else is listening or watching, this public hearing is not about the proposed Starbucks project and will not affect the proposed Starbucks project. Ms. Meade said that any person with concerns on the Starbucks project could come and voice their opinions at the public comment portions of Council's October 2021 regular meetings.

Vice-Chair Plaag asked what was the town trying to accomplish by including the Green Street, Straight Street, Bent Street and Queen Street properties in the B1 Interface. He asked Ms. Shook to explain the benefit of removing especially, Bent Street and Straight Street from the B1 Interface. He also asked Ms. Shook to explain the long-term planning goal of making those proposed changes to said properties

Ms. Shook stated that as far as the Bent Street, Straight Street scenario, those properties are existing B1 Central Business. She said the whole goal of the project is to replace the B1 Central Business district with either a B1 Downtown Core or B1 Downtown Interface. She said those properties had to be considered because they were within the project area and zoned B1 Central Business which she noted was going to be eliminated. She said, as we mentioned before, these are residential properties. She said the Town did discuss Bent Street at our June meeting, as part of the public comment. She said that one of the concerns for especially those properties that have access to Bent Street was the narrowness of Bent Street. She said that Bent Street is a substandard street for those

properties considering converting to residential from commercial. She said there was discussion regarding this particular property that Mr. Sellers owned and how it would lend itself to being perhaps merged with another property off of King Street. She further explained that it has access off of Bent Street. She explained that the consideration for those was twofold. She said they are residential properties, and we wouldn't want to lose that residential stock close to the downtown area. She said the properties would become conforming within the District that is being created, which is the R1A.

Community Appearance Commission Chair Brian Williams added that he didn't have a map in front of him, but as he recalls, those lots in front of Green Street also touched King Street. He said he believes that was the original reason for their inclusion in the B1 Downtown Interface area.

Council Member Furguele said he agreed with what CAC Chair Williams said is correct. He said he also knows that a number of those apartment buildings are also accessed from Straight Street. He said the ironic part is that a single-family neighborhood was wrongly zoned R3, probably based upon who owned the property when the Town adopted zoning in the beginning. He said single-family homes were converted to apartment buildings that were built in essentially the backyards of a very viable middle-income neighborhood and had a very negative effect on the neighborhood. He said the apartments were included in the B1 Interface. He said there was a lot of discussion about protecting the surrounding neighborhood; across the street from where Mr. Dusty Stacey talked about is all R1. He talked about Park Street being very protective of its identity. He noted that going up Queen Street is a Neighborhood Conservation District. He said he felt those are all still viable, single-family neighborhoods.

CAC Chair Williams commented on this topic, saying, that he saw Mr. Deal's concern about the potential for adding additional commercial traffic to the Green Street area. He said if those properties were to be redeveloped as a mixed use for the commercial element, whether that be by desire or for repair that would push them over into a threshold that required commercial space on the bottom floor. He said he thought that there needs to be some mechanism for renovations to a structure that doesn't require people to make changes to the layout of a structure. He said the boards do not want to necessarily require a person to change the shape of their building in order to do a full cosmetic rehab.

Ms. Shook asked the audience to look at the story map that she spoke about at the beginning of the presentation. She said if you can see in the Straight Street area, there's one single family structure that we're saying is still residential, but we included in the Interface. She said the parcel that Mr. Dusty Stacey had spoken about earlier regarding where his office is located was a residential structure converted to the business. She explained that the parcel that he also owns adjacent to it is in the residential zoning district.

Ms. Shook stated if you come down from the Poplar Grove Connector you come to the parcel that Mr. Aceto was talking about. She said it is substantially below grade as you leave town, and is multi-family. Ms. Shook pointed out that on a parcel of three acres, the redevelopment option at a 50% building footprint would be one and a half acres of building footprint on the site. She thought the consideration of the Interface standards should be slightly different. Ms. Shook said she thought the Town might want to consider a different standard or not consider these properties for the B1 Downtown Interface.

Vice-Chair Plaag said he would like to propose an alternative that perhaps would make sense to end the B1 Interface at the spot where Pinnacle and Old Bristol Road come together at King Street. He said this would mean

that the large wooded lot on the south side of King Street would remain in the B1 Interface, but the Highland Woods 1395 to 1397 on West King, which is currently zoned R3, would remain R3.

He said on the north side of Green Street, he would recommend that the property at Green Street, which he believes is the stone building that touches King Street be included in the B1 Downtown Interface. He recommended that everything else to the west of that, which appears to be apartment complexes on the north side of Green Street, would remain R3. He said he is still uncertain about what to do about the Straight Street and Bent Street problem, but as he said, he is open to being told why it is a terrible idea.

Council Member Furgiuele said if you look at the full map, you can see a balance between the B1 Downtown Core going down to Greasy Corner and how far the Interface extends; this is about the same going west. Council Member Furgiuele stated what you don't want in the future is to facilitate more apartment buildings at the entrance to Boone.

Vice-Chair Plaag asked Council Member Furgiuele what his thoughts were on the Green Street parcels? Vice-Chair Plaag stated that he certainly takes his point about the ones out by Pinnacle and Old Bristol, but what about those that are on the north side of Green Street?

Council Member Furgiuele said it seems to him the balancing of the B1 Downtown Interface has merit.

Chair Shay said she was concerned with the large irregular lots. She asked if anything required a parcel to be fully designated in the B1 Downtown Interface, or can parcels be split?

Ms. Shook said that split zoning is allowed but normally not preferable. She said there are certain disadvantages to a developer with a split zoned property as far as density. She said a developer cannot transfer uses or density to higher density areas.

Ms. Meade said she must say that she is a little concerned for how the uses appear. She said what will be included in this B1 Downtown Interface if it stays the way it is written now, allows multi-family but mixed use with commercial on the first floor. She said it seems like there's an aspect of the project that partly is about uses and the appearance coming into the Downtown. She said it might be helpful to think about distinguishing between those two things. She said do you want businesses or mixed-use?

Council Member Furgiuele said he thinks what Chair Shay said has merit and is worth considering. He said where the Department of Social Services is located and all those commercial buildings; those are some basically cool buildings. He said it would be nice if somebody restored them. He stated that one is a pawn shop. He said this is an excellent area for potential restaurants. He noted that the Wellborn Shell location is an excellent area for future development. He noted that mixed-use doesn't have to be stacked; the buildings can be mixed. Ms. Shook responded; I think that's true for the B3. She said she would have to check for the B1.

Vice-Chair Plaag added, there are two ways to think about these problems. He said one way is to figure out what does and doesn't belong in the B1 Downtown Interface. He explained that if the properties that are currently in the B1 on Straight Street, Bent Street, and Queen Street become R1A those properties essentially lose their ability under the strict zoning for B1 eligible uses. He said, particularly in those areas, there's a concern about what happens if an apartment building burns down. He said you would have to rebuild the whole thing. He said, suddenly, you're told that you will need to come back with a mixed-use project that doesn't fit the original model, when there was only a fire. He said there is a 180-day requirement that they get their permits to start rebuilding,

and it's a 365-day requirement that they complete the work. He noted that Mr. Deal is correct, particularly in the climate right now. He said there is no way somebody could rebuild an entire apartment complex in a year, given the supply chain difficulties we're experiencing right now. He said they would lose whatever grandfathering and legal nonconformity allowances they had because they couldn't meet the timeline.

Vice-Chair Plaag went on to say, if the Town is going to keep things exactly as they have been proposed in those R3 areas, a way of maybe addressing that specific concern for the B1 Downtown Interface is to change the days from 365 to 720 to complete the project. He explained that this gives people some insurance on sustaining their illegal nonconformity if something like that happens. He said at the same time accomplishing what Council Member Furguele was talking about, where you are planning for the long-term future and envisioning these areas as possible B1 areas down the road.

Ms. Meade added, she thinks she would add to those concerns the cost of renovation or rebuilding. She referenced in the current Article 7 that if you have an act of God that causes damage, then the cost of development will be over 50% of the value of the property. She said you would have to meet all current standards. She said if it didn't apply, the tiered system of redevelopment would be triggered. She said there are more general provisions about how you cannot enlarge the nonconformity, which in some circumstances may lead to a great deal of flexibility as well. She said there are a lot of provisions in Article 7 that I think would need to be reviewed; if you want it to provide flexibility with the cost of construction, it doesn't take much for a rehab or renovation to be over 50% of the value of the structure.

Ms. Shook answered Mr. Furguele's question about mixed uses in Article 15 Under Subsection 15.04, which is the multi-family and mixed uses. She said the first part of it implies that you could have a single-use building, but the only standards for single-use buildings are in the B3 area. She said there are no single-use building standards for mixed-use in the current B1.

Mr. Furguele noted that the Planning Commission and Community Appearance had discussed these topics for at least four years, and there has been a lot of discussions on them. He suggested that the Planning Commission make non-official recommendations to each of the individual requests that have been made so that the Council can see what the Planning Commission thinks on the individual topics. He further stated that in the last 36 years or 37 years, those neighborhoods have made a transition, which is quite painful for many people. He said the neighborhoods were transitioning to whatever people had as a vision at that time. He said we want to preserve the Downtown and he believes the proposed B1 Downtown Interface protects it. He said he thinks that we have a responsibility to be thinking about the future. He said it would be helpful to know what the Planning Commission thought on the request for parcel by parcel in terms of the requests that have been presented.

CAC Chair Brian Williams added that he thinks Vice-Chair Plaag's proposal was on track with the Green Street properties to exclude those properties west of the stone-faced and brick-faced building, basically where Green Street intersects King Street. Vice-Chair Plaag did not want to include those portions west of Straight Street in the B1 Downtown Interface because they enter into the R1 neighborhood up the hill. CAC Chair Williams added that he believes the R1A situation on Straight Street occurred as we were concerned about the B1 adjoining R1 and R1A properties

Vice-Chair Plaag said he has not heard at this public hearing any significant objections to the B1 Core proposal or any significant objections to the Historic District proposal. He said he thought the bulk of the concerns have

focused on the B1 Downtown Interface. He said his recommendation for the Planning Commission would be for them to consider the proposals with the least complex issues and to spend the bulk of their time reviewing solutions to the B1 Downtown Interface issues.

Ms. Shook announced that the Planning Commission selected Wednesday at 6pm to make their recommendations.

Council Member Furguele agreed with CAC Chair Williams, and Vice-Chair Plaag suggestion for the Planning Commission to reduce their recommendations so the boards can move forward with establishing the B1 Downtown Interface. Council Member Furguele noted that the properties could later be rezoned individually, if necessary. He said that a lot of discussion has occurred about the B1 Downtown Interface. He said that many attempts had been made to make the appearance standards compatible with the Downtown and to create corridors that transition the town from the unzoned County. He encouraged that the Planning Commission move forward with the B1 Downtown Interface.

Vice Chair Plaag addressed Council Member Furguele, saying; he wasn't proposing that we not take up the Interface on Wednesday. He was hoping that we would work through all of it and recommend all of it. What he was suggesting was that, since this appears to be where the bulk of the work is, he'd like to see us get through those in the Downtown Core and the Historic Districts first since I think those will be relatively straightforward, before we make recommendations on the more complicated issues of the B1 Downtown Interface.

Mayor Brantz closed the Public Hearing.

Adjournment of Town Council

Council Member Furguele made a motion, seconded by Council Member Ulmer, to adjourn the Town Council at 10:15 pm.

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

Rennie Brantz, Mayor

Marlene Crosby, Board Secretary

Elizabeth Shay, Planning Commission Chair

Continuation of Planning Commission Meeting

Chairperson Shay called a break in the Planning Commission meeting.

Meeting Minutes

Commission Member Behrend made a motion, seconded by Vice-Chair Plaag, to approve the July 26, 2021, and August 23, 2021 minutes.

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

Case PL05007-081221 SDL II – General Use Zoning Map Amendment

Chair Shay noted that she had taken Vice-Chair Plaag’s comments at a public hearing and agreed that the decisions we make at one point have impacts on future decisions. She said by reviewing the current zoning map and she wondered about the merit of hanging on to one last R1 parcel when the uses around it have changed.

Vice-Chair Plaag noted he thought the request under the present conditions made sense but noted it is an interesting moment to pause and reflect because the Town got here through a series of actions taken over many years. He noted that he knew that this request would happen relatively quickly, and it doesn’t mean that Mr. Dixon is wrong for asking.

Discussion then ensued on the most recent rezoning cases in the area.

First Motion and Vote:

Chair Shay made a motion, seconded by Commission Member Behrend, 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 because of:

1.1 Overall Objectives for the Boone Comprehensive Plan

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 2.1.1 Economic Development

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

Comprehensive Plan Policy 2.3.2 Community Character

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

Comprehensive Plan Policy 2.3.2 Neighborhoods and Housing

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

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

Second Motion and Vote:

Chair Shay made a motion, seconded by Commission Member Behrend, that the Planning Commission recommend approval of the proposed amendment to the town zoning map and believes approval to rezone the portion of the property from R1 Single family to R3 Multi-family is reasonable and in the public interest, because it supports increasing consistency in zoning.

Vote: Aye – All

Nay – None

The motion passed.

Motion and Vote:

Vice-Chair Plaag made a motion seconded by Member Tippet to table the rest of the Planning Commission agenda topics until Wednesday, September 29, 2021 at 6 p.m. via WebEx.

Vote: Aye – All

Nay – None

The motion passed.

Adjournment of Planning Commission

Chair Shay adjourned the meeting at 10:44 p.m.

Vote: Aye – All

Nay – None

The motion passed.

Elizabeth Shay, Planning Commission Chair

Marlene Crosby, Board Secretary