

**Town of Boone
Public Hearing
6:00 PM, Oct. 25, 2021
Remote Meeting via WebEx**

WATCH OR FOR PUBLIC COMMENT: Individuals who wish to watch this meeting or who wish to address Council remotely can do so through WebEx either online or by phone. If you wish to provide public comment remotely, please email Town Manager, John A. Ward III at john.ward@townofboone.net or call in at [828-406-5563](tel:828-406-5563) and you will be provided with an invite to the meeting. All registrations must be completed by 12:30 PM on the day of the meeting. Staff will moderate the WebEx session to ensure all participants have an opportunity to address Council.

I. Call to Order of Town Council

II. Call to Order of Planning Commission

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

September 27, 2021 Public Hearing Minutes

IV. Public Hearing

General Guidelines for Each Case Presented at Public Hearing

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

V. Case PL05168-100621 Short-Term Rentals (Homestay or Vacation) - UDO Text Amendment

Case PL05168-100621 Application Information

Case PL05168-100621 Staff Report

Case PL05168-100621 Exhibit 1 Meeting Minutes

VI. Case PL05188-100821: Definition of Family and Occupancy Regulations - UDO Text Amendment

Case PL05188-100821 Application

Case PL05188-100821 Staff Report

VII. Case PL05169-100621: Town Utility Facility - UDO Text Amendment

Case PL05169-100621 Application

Case PL05169-100621 Staff Report

VIII. Case PL05189-100821: Major Subdivision Process - UDO Text Amendment

Case PL05189-100821 Application

Case PL05189-100821 Staff Report

IX. Adjournment of Town Council

X. Planning Commission Meeting

XI. Public Comment

XII. Approval of Planning Commission Minutes

September 27, 2021 Planning Commission Meeting Minutes

September 29, 2021 Planning Commission Meeting Minutes

XIII. Planning Commission Consideration of Cases Heard at Public Hearing

XIV. Other Matters

XV. Adjournment of Planning Commission

**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 Strait 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 the a drive-through is not currently an allowable accessory use in the B1 or as 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 voluntarily 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 the though 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 effect Council Street and how would that effect 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 about 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 would 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 Furguele 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 Furguele 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 Furguele 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 Furguele 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 Furguele 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

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:
Case PL05188-100621
Case Name:
Short-Term Rentals (Homestay & Vacation)

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): 7, 14, 15, 24, 34 and Appendix B

Section(s): _____

Brief Description of Amendment (Attach Proposed Text):

Amend UDO Article 7, 14, 15, 24, and 34 to modify and create new regulatory standards for short-term rentals (homestay or vacation rentals) of dwelling units.

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

10/06/2021
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: October 25, 2021

PC Meeting Date: _____

TC Meeting Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

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Communication: Case PL05168-100621 Application Information (Case PL05168-100621 Short-Term Rentals (Homestay or Vacation) - UDO Text



STAFF REPORT
PUBLIC HEARING
OCTOBER 25, 2021

Case PL05168-100621 Short-Term Rentals (Homestay & Vacation)- UDO Text Amendment

Request

Amend UDO Article 7, 14, 15, 24, and 34 to modify and create new regulatory standards for short-term rentals (homestay or vacation rentals) of dwelling units.

History

06-27-2019: Town Council held a public meeting to discuss short-term rentals. Please see attached Exhibit 1 for meeting minutes.

Proposed Ordinance Amendment

AN ORDINANCE TO REVISE ARTICLES 15 AND 34 OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE RELATING TO SHORT-TERM RENTALS

WHEREAS, the Boone Town Council has in several meetings over the prior years discussed the desirability of establishing new and clarified regulations for short-term rental uses within the town, and solicited public comment regarding the same;

WHEREAS, the Boone Town Council and the Boone Planning Commission held a public hearing on October 25, 2021 with respect to proposed changes to the Town's Unified Development Ordinance ("UDO") related to "homestay rentals" and "vacation rentals," as described herein;

WHEREAS, the Planning Commission considered the proposed amendments and made certain recommendations to the Town Council concerning their adoption;

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160A, Article 6; and

WHEREAS, the Boone Town Council finds that it is reasonable, in the public interest, and warranted to achieve purposes set forth in the Comprehensive Plan to adopt the amendments set forth herein in order to, among other things: (1) provide additional lodging opportunities for visitors to the Town that meets a clear demand for such lodging; (2) support local residents who supplement their incomes with rental income from homestays and vacation rentals; (3) require that homestay and vacation rental operators pay their fair share of occupancy taxes, and are not permitted to compete on unfair terms with hotel, motel, and other lodging operators; (4) safeguard the peaceful, residential character of the town's low-density residential neighborhoods, and protect against potential negative effects including but not limited to additional traffic, noise, and parking demands associated with transient lodging; and (5) seek to protect the affordability of properties in the town's residential neighborhoods for family and workforce housing as against the increased demand and prices that result from investor demand for and conversion of full-time residences to rental units;

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

SECTION 1. Articles 15 and 34 of the Town of Boone Unified Development Ordinance ("UDO") are hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference.

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council, upon such additional terms as are set forth in **Exhibit A**.

Adopted this the ____th day of _____, 2021.

Exhibit A

NOTES FOR HOMESTAY RENTALS
(SHORT-TERM RENTAL OF ROOMS IN A HOUSE OR APARTMENT)

1. The below new UDO section 15.05 creates a new use in the UDO called a "Homestay Rental." This is a short-term rental of one to two guestrooms in a dwelling, the remainder of the dwelling being occupied by a permanent resident. As drafted below, homestay rentals would be allowed in any type of dwelling unit – including not only single- and two-family detached houses, but also multi-family dwelling units and accessory dwelling units – where such unit is in lawful use.
2. Council will need to provide direction as to where (in which zoning districts) the new Homestay rental use will be allowed. The use tables in the UDO will then be populated accordingly. It is recommended that Council consider allowing homestay rentals for any home that is already being lawfully used as a single-family, two-family, or multi-family dwelling unit. If Council follows this recommendation, the homestay rental use could be allowed in all districts, as it is also a requirement of the use that the primary, permanent residential use is lawful (see section 15.05.15 below).

Article 15 Limited Use Requirements

...

15.05 ~~Reserved~~ Homestay Rental

A homestay rental is defined as a resident-occupied dwelling or dwelling unit with up to two guest rooms that are used, offered, and/or advertised (through an online platform or any other media) for transient overnight lodging accommodations for compensation for any period of less than one month and where the use is subordinate and incidental to the main residential use of the property. A homestay rental is considered a "Lodging" use under this UDO. Any use that comes within the purview of another use under this ordinance (e.g., motel, hotel, boarding house, etc.) shall be governed by the terms of that use and not as a homestay rental.

- 15.05.01** Every homestay rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. Upon application for an initial permit and for each renewal, the applicant must demonstrate compliance with all applicable provisions of this section on such forms as may be provided by the Administrator.
- 15.05.02** The homestay operation shall be managed and carried on by a person who: 1) is a full-time resident of the property; and 2) is present during the homestay term for the entire time lodgers are staying at the property. To be a "full time resident," the person must reside on the property on a permanent basis, and it must be the person's primary home. A person can have only one homestay permit at any one time.

- 15.05.03** For purposes of this homestay ordinance, a person can only have one primary, full-time residence, and the homestay must be operated from that primary, full time residence. In order to be "present during the homestay term," the full-time resident shall be at the property overnight and not away on vacation, visiting friends or family, travelling out of town for business or personal reasons, etc. during the homestay term. However, the full-time resident may be temporarily absent from the property for purposes related to normal residential activities such as shopping, working, attending class, etc. A minimum of two documents establishing proof of residency shall be supplied from an approved list of documents.
- 15.05.04** The maximum number of guest rooms used as a homestay rental is two (2) per detached single-family, two-family, or three-family dwelling unit located on a single lot. In addition, up to two guest rooms may be located in an accessory dwelling unit if the accessory structure and accessory residential use are lawful under the UDO with respect to the property at issue.
- 15.05.05** The maximum number of overnight guests for any dwelling used as a homestay rental is the greater of (i) two (2) adults and any number of children under those adults' care, or (ii) two occupants per guest room. The occupancy limit shall be posted prominently within the short-term rental and be included in property listings on online platforms or any other media.
- 15.05.06** Cooking facilities are not permitted in any bedroom. For the purpose of this regulation, cooking facilities include any refrigerator in excess of seven cubic feet; any stovetop range that operates on 220-volt electric service; any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance, which contains more than two cooking surfaces or burners.
- 15.05.07** No signs advertising the property as a rental are allowed.
- 15.05.08** No displays of goods, products, services, or other advertising may be visible from outside of the dwelling.
- 15.05.09** In residential zoning districts, homestay renters shall not utilize the premises for holding special events or large gatherings. The rental operator shall inform renters of this regulation and of the applicability of the town's noise ordinance (Chapter 82 of the Code of Ordinances), which regulates nuisance noises and makes it unlawful to create, cause, or allow the continuance of any unreasonably loud noise, particularly during nighttime, which interferes with neighboring residents' reasonable enjoyment of their properties.
- 15.05.10** The premises shall not be used for any home occupation that allows employees, customers, clients or patrons to visit.
- 15.05.11** Homestay rental operators shall comply with all applicable State and local laws, including those relating to fire and building codes, smoke detecting and carbon monoxide detecting equipment, and housing codes.

15.05.12 Homestay rental operators must remit occupancy taxes to the Town and pay any other applicable taxes.

15.05.13 The zoning permit number authorizing the homestay rental shall be conspicuously posted on (i) all advertisements for homestay rentals, and (ii) on the subject property in a place that is conspicuous from the exterior of the property.

15.05.14 A homestay rental must provide at least one (1) dedicated parking space per guest room, which may not be located on any street right of way and must conform to all applicable parking regulations of this ordinance.

15.05.15 Except as specifically set forth herein, a dwelling or dwelling unit must comply with all UDO requirements applicable to the primary residential use.

15.05.16 Revocation of Permit

A. The Administrator shall revoke a homestay rental permit following a written determination that an operator of the homestay rental has been:

1. Convicted of violating any of the following criminal laws on the homestay rental premises within the prior three-year period: Article 10 (kidnapping), Article 10A (human trafficking), or Article 27 (prostitution) of Chapter 14 of the North Carolina General Statutes;
2. Convicted of committing a violent felony as defined at N.C. Gen. Stat. §14-7.7 on the homestay rental premises within the prior three-year period.
3. Convicted of violating any of the following criminal laws on the homestay rental premises within the prior 365-day period:

Article 3 of Chapter 18B of the North Carolina General Statutes (sale, possession and consumption of alcohol)

N.C. Gen. Stat. §14-71.1 (possession of stolen goods)

N.C. Gen. Stat. §14-292 (unlawful gambling)

B. Received within a 365-day period two or more “Verified Violations” of any combination of the following, occurring on the homestay rental premises:

1. Any Town Code zoning regulation.
2. Any noise regulation set forth at Town Code Chapter 82.
3. Any nuisance prohibited by Town Code Chapter 80.

C. A Verified Violation means a determination made by a code enforcement official, law enforcement officer, or judge, following notice of violation being issued by the Town Code and opportunity to respond to the noticed alleged offenses and an order or other mandate issued to the owner or any other person imposing a sanction or requiring further actions to comply with the Town Code, including, without any limitation, the

payment of civil penalties or administrative fees, or implementation of corrective measures, or cessation of activities, or conviction of a criminal offense. A verified violation that is appealed continues as a verified violation unless it is overturned on appeal. If the violation is reinstated on a further appeal, it resumes its status as a verified violation.

- D. Once lawfully revoked, a new permit for a homestay rental cannot be issued or re-instated for the premise for a period of 365 days, except that in case of revocation under (1) or (2) above a new permit cannot be issued or re-instated for the premise for three years unless the person convicted of the criminal violation is no longer a resident, manager or operator of the homestay rental.

15.05.17 Compliance period; existing nonconformities

A. Homestay operators must apply for a permit as required in this section 15.05 within 12/18 months of adoption of this ordinance on _____, 2021, and must come into compliance with this section within 18[/24] months of the adoption of this ordinance.

B. Any existing homestay rental not conforming under this section 15.05 must come into compliance with this ordinance or cease operation within 18[/24] months of adoption of this ordinance on _____, 2021.

15.05.18 Neighborhood Conservation Districts

- A. Residents of Neighborhood Conservation Districts are encouraged to petition Council if they support a prohibition on homestay rentals in their neighborhood.

NOTES FOR VACATION RENTALS (WHOLE-HOUSE / WHOLE-UNIT SHORT-TERM RENTAL)

- 1. The Vacation Rental use is already contained in the UDO, essentially being defined as rental of a whole dwelling for less than a month. The definition of the use is refined in these proposed amendments, and additional regulations placed on the use (see 15.14.01 et seq. below).*
- 2. Currently, vacation rentals are permitted only in RA districts or for existing one- and two-family detached homes located in the R3, B1, B2, B3 districts.*
- 3. Town Council will need to consider whether it wishes to maintain the status-quo on these rentals or expand the use to any of the following residential districts: R1, R1A or R2, R1S and/or R4 districts.*
- 4. Currently, the UDO allows the short-term rental of multi-family dwelling units. Council will need to consider whether it wishes to impose, say, a density limit. Alternatively, Council might leave the issue to the developers or owner associations of multi-family buildings.*

~~15.14 — Vacation Rental~~

~~15.14.01 — A Vacation Rental is required to provide at least one (1) parking space per bedroom.~~

~~15.14.02 — In the RA Residential Agriculture zoning district, parking should be to the side or rear of the vacation rental dwelling.~~

~~15.14.03 — Without limiting the applicability of other Ordinance requirements, a Vacation Rental is subject to Article 31 Landscape Standards.~~

~~15.14.04 — Only existing single-family and two-family dwellings in the R3 Multiple-Family, B1 Central Business, B2 Neighborhood Business, and B3 General Business zoning districts may be converted to a Vacation Rental.~~

~~15.14.05 — The operator of a Vacation Rental must provide contact information if the operator lives more than fifty (50) miles from the Town of Boone corporate limits.~~

15.14 — Vacation Rental

A vacation rental is defined as a single-family detached dwelling, a two-family detached dwelling or a multi-family dwelling unit with up to six guest rooms that is used, offered, and/or advertised (through an online platform or any other media) for transient overnight accommodations for any period of less than one month. A vacation rental is considered a "Lodging" use under this UDO. Vacation rentals do not include homestay rentals (as defined herein). *A vacation rental includes any residential dwelling or dwelling unit, or portion thereof, provided to renters for any period of less than one month that does not qualify as a homestay rental under this ordinance; provided, that any use that comes within the purview of another use under this ordinance (e.g., motel, hotel, boarding house, etc.) shall be governed by the terms of that use and not as a vacation rental.*

15.14.01 — Every vacation rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. The zoning permit number authorizing the short-term rental shall be conspicuously posted on (i) all advertisements for short-term rentals, and (ii) on the subject property in a location easily viewable from the exterior of the structure.

15.14.02 — A Vacation Rental is required to provide at least one (1) parking space per bedroom, *which may not be located on any street right of way and must conform to all applicable parking regulations of this ordinance* In the RA Residential Agriculture zoning district, parking should be to the side or rear of the vacation rental dwelling.

15.14.03 — Without limiting the applicability of other Ordinance requirements, a Vacation Rental is subject to Article 31 Landscape Standards.

- 15.14.04** Only existing single-family detached dwellings and two-family detached dwellings in the R3 Multiple-Family, B1 Central Business, B2 Neighborhood Business, and B3 General Business zoning districts may be converted to a Vacation Rental.
- 15.14.05** Cooking facilities are not permitted in any bedroom. For the purpose of this regulation, cooking facilities include any refrigerator in excess of seven cubic feet; any stovetop range that operates on 220-volt electric service; any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance, which contains more than two cooking surfaces or burners. This shall not prohibit cooking facilities within a one-room studio vacation rental. For the purpose of this regulation, a studio shall be a single-room rental with a sleeping area, living area and kitchen/eating area in one consolidated room.
- 15.14.06** No signs advertising the property as a rental are allowed.
- 15.14.07** In residential zoning districts, renters of vacation rentals shall not utilize the premises for holding special events or large gatherings. The rental operator shall inform renters of this regulation and of the applicability of the town's noise ordinance (Chapter 82 of the Code of Ordinances), which regulates nuisance noises and makes it unlawful to create, cause, or allow the continuance of any unreasonably loud noise, particularly during nighttime, which interferes with neighboring residents' reasonable enjoyment of their properties.
- 15.14.08** The premises shall not be used for a home occupation that allows employees, customers, clients or patrons to visit.
- 15.14.09** For any multi-unit dwelling, no more than 25%, or two dwelling units, whichever is greater, may be operated as a vacation rental in any single building.
- 15.14.10** Vacation rental operators shall comply with all applicable State and local laws, including those relating to fire and building codes, smoke detecting and carbon monoxide detecting equipment, and housing codes.
- 15.14.11** The rental operator or the operator's employee, management company, or other agent must be available to respond to complaints or emergencies within two (2) hours at all times that a rental is occupied.
- 15.14.12** If the primary structure on a property qualifies for vacation rental use, a lawful accessory dwelling structure on the same property also may be used for vacation rental. The operators of such a vacation rental may, at any given time, offer for short-term rental either the single-family dwelling unit or the accessory apartment, or both units. The simultaneous rental of both the single-family dwelling unit and the accessory apartment to more than one party under separate contracts is prohibited. The units may, however, be rented out together to one party under a single contract.
- 15.14.13** Revocation of Permit

- A. The Administrator shall revoke a vacation rental permit following a written determination that an operator of the facility has been:
1. Convicted of violating any of the following criminal laws on the short-term rental premises within the prior three-year period: Article 10 (*kidnapping*), Article 10A (*human trafficking*), or Article 27 (*prostitution*) of Chapter 14 of the North Carolina General Statutes;
 2. Convicted of committing a violent felony as defined at N.C. Gen. Stat. §14-7.7 on the short-term rental premises within the prior three year period.
 3. Convicted of violating any of the following criminal laws on the rental premises within the prior 365-day period:
 - a. Article 3 of Chapter 18B of the North Carolina General Statutes (*sale, possession and consumption of alcohol*)
 - b. N.C. Gen. Stat. §14-71.1 (possession of stolen goods)
 - c. N.C. Gen. Stat. §14-292 (unlawful gambling)
 4. Received within a 365-day period two or more “Verified Violations” of any combination of the following, occurring on the short-term rental premises:
 - a. Any Town Code zoning regulation.
 - b. Any noise regulation set forth at Town Code Chapter 82.
 - c. Any nuisance prohibited by Town Code Chapter 80.
- B. A Verified Violation means a determination made by a code enforcement official, law enforcement officer, or judge, following notice of violation being issued by the Town Code and opportunity to respond to the noticed alleged offenses and an order or other mandate issued to the owner or any other person imposing a sanction or requiring further actions to comply with the Town Code, including, without any limitation, the payment of civil penalties or administrative fees, or implementation of corrective measures, or cessation of activities, or conviction of a criminal offense. A verified violation that is appealed continues as a verified violation unless it is overturned on appeal. If the violation is reinstated on a further appeal, it resumes its status as a verified violation.
- C. Once lawfully revoked, a new permit for a short-term rental cannot be issued or re-instated for the premise for a period of 365 days, except that in case of revocation under a)(i) or a)(ii) above a new permit cannot be issued or re-instated for the premise for three years unless the person convicted of the criminal violation is no longer a resident, manager or operator of the short-term rental.

ARTICLE 34 DEFINITIONS

...

Adult

Unless otherwise defined or implied from context, "adult" means an individual 18 years of age or older and not the legal ward of another person.

Child/Children

Unless otherwise defined or implied from context, "child" or "children" means an individual under 18 years of age.

Dwelling

Any building, structure, manufactured home, or mobile home, or part thereof, used, intended or designed to be used, rented, leased, let or hired out to be occupied for human habitation, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Dwelling unit

A single unit providing living space for one or more persons, including facilities for sleeping, cooking and sanitation.

Guest room

Guest room means an enclosed room designed for and outfitted to be used for sleeping and/or lodging of guests. A shared space or a space designed for or outfitted to be used for any purpose other than sleeping or lodging of guests shall not be counted as a guest room (e.g. living rooms, parlors, offices, game room, or utility room).

Homestay rental

A resident-occupied dwelling or dwelling unit with up to two guest rooms that are used, offered, and/or advertised (through an online platform or any other media) for transient overnight lodging accommodations for compensation for any period of less than one month and where the use is subordinate and incidental to the main residential use of the building. A homestay rental is considered a "Lodging" use under this UDO.

Multi-Family Dwelling

A building or combination of buildings on a single lot that includes three or more dwelling units.

Single-Family Dwelling

A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for one dwelling unit; not attached to any non-accessory building or dwelling unit; and not on the same lot as any other dwelling unit; unless another dwelling unit is explicitly authorized by this Ordinance.

Single-Family Detached Dwelling

A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for one dwelling unit; not attached to any non-accessory building or dwelling unit.

Two-Family Detached Dwelling

A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for two dwelling units; not attached to any non-accessory building or dwelling unit.

Vacation Rental

~~A single or two-family dwelling that is rented as a whole on a daily, weekly, or monthly basis.~~

Vacation Rental (or "Short term vacation rental" or "Short term rental" (STR))

A single-family or two-family detached dwelling [or a multi-family dwelling unit] with up to six guest rooms that is used, offered, and/or advertised (through an online platform or any other media) for transient overnight accommodations for any period of less than one month. A vacation rental is considered a "Lodging" use under this UDO. Vacation rentals do not include homestay rentals (as defined herein). A vacation rental does include any residential dwelling or dwelling unit, or portion thereof, provided to renters for any period of less than one month that does not qualify as a homestay rental under this ordinance.

Appendix B Comparative Tables

Use #	Specific Use	Zoning Districts																						Reference
		Low Density Residential				Medium to High Density Residential						Commercial/Industrial							Education					
		RA	R1	R1A	RR	R1S	R2	R4	MH	R3	R5	OI	B1	reserved	B2	B3	WD	M1	U1	U1	E2	E3	E4	
3.0 Transient Living																								
3.01	Home for Survivors of Domestic Violence	L	L	L			L	L				L			L									15.11
3.02	Shelter for Homeless, Category 1									L ^{T50}		L ^{T50}	L ^{T50}		L ^{T50}									15.12
3.03	Shelter for Homeless, Category 2									L ^{T300}		L ^{T300}			L ^{T300}									15.12
3.04	Bed and Breakfast, Category 1	L	S ^{T50}	S ^{T50}			L ^{T50}	L ^{T50}					L		L									15.13
3.05	Bed and Breakfast, Category 2						L	L ^{T125}					L ^{T125}		L ^{T125}									15.13
3.06	Homestay Rental	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L							15.04
3.067	Vacation Rental	L ^{T75}								L ^{T75}			L ^{T75}		L ^{T75}	L ^{T75}								15.14
3.087	Motel															p ^{T300}								
3.098	Hotel, Small												P			P	P							
3.109	Hotel, Large															p ^{T200}								
3.119	Hotel, extended stay															p ^{T300}								

NOTE: The UDO will be updated to reflect the change in use numbers and to reflect the change in the Table of Principal Uses in each zoning district.

NOTES:

Effective date: It is recommended that Council adopt a delayed compliance deadline to allow time for an education campaign and for property owners to come into compliance. An 18- to 24-month compliance period may be appropriate. For example, owner/operators be required to apply for permit within 12 or 18 months of the effective date of the ordinance, and come into compliance within 18 or 24 months.

Nonconforming uses: It is recommended that all property owners be required to come into conformance, regardless of prior use. For current claimed non-conforming uses, a compliance period of 18 to 24 months would allow owners time to fulfill current contractual obligations and come into compliance or cease operations. Staff recommends that this time period be consistent with the compliance period discussed above.

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.

2.3 THE COMMUNITY

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.

2.3.3 Housing and 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.

- A.1 As road widenings are proposed, carefully evaluate their potential impact on the integrity of residential areas, pedestrian-oriented commercial districts, and the ability of bicyclists and pedestrians to function in the affected area.

- A.2** Prepare at least two neighborhood plans, working closely with neighborhood residents, and incorporating the full range of neighborhood issues to include: land use, traffic, housing, neighborhood business services, infrastructure improvements, parks and recreation needs, crime and safety.
- A.3** Prepare a document readily accessible to the public that details residential zoning areas and the date on which each was implemented.
- A.4** Establish a planning and development policy that protects older established residential neighborhoods from the negative effects of adjacent commercial development.
- A.5** Establish a task force to determine how like communities successfully enforce their existing residential codes. Items requiring focused attention: Detailed analysis of implementation and enforcement. For example, penalties, personnel requirements, budget implications, long-term effect on town character and economic development.
- A.6** Implement a residential zoning enforcement policy based on the task force analysis above.
- 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.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160D-604(b), subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the Planning Commission for review and comment. If no written report is received from the Planning Commission within 30 days of referral of the amendment to that board, the Town Council may act on the amendment without the Planning Commission report. The Town Council is not bound by the recommendations, if any, of the Planning Commission. Per NCGS 160D-604(d), when conducting a review of proposed zoning text or map, the Planning Commission shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Commission shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Vote 1: 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:

Note 1

Vote 2: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

TOWN COUNCIL ACTION

Per NCGS 160D-605, when adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan.

Vote 1: 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:

Note 1

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Vote 2: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

**TOWN COUNCIL PUBLIC MEETING MINUTES
THURSDAY, JUNE 27, 2019 AT 6:00 P.M.**

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

TOWN STAFF PRESENT: John Ward-Town Manager, Jimmy Isaacs-Fire Chief, Jane Shook-Director of Planning and Inspections, Marty Little-Senior Planner, Christy Turner-Senior Planner, Stacey Miller-Building Inspections Supervisor, Darrell Pulliam-Building Inspector and Brenda Henson-Administrative Support Specialist

OTHERS PRESENT: Allison Meade-Town Attorney

CALL TO ORDER

Mayor Brantz called the public meeting with Town Council, held at 1500 Blowing Rock Road, to order at 6:19 p.m. and welcomed those in attendance.

Mayor Brantz asked the Town Manager, John Ward to provide a summary of the reason for the public meeting this evening.

Mr. Ward stated that at the June 18, 2019 Town Council meeting there was a proposed draft ordinance regarding amortization of nonconformities in neighborhoods.

With regards to short-term rentals, Mr. Ward stated this was a national issue with many single-family neighborhoods being lost to vacation rentals. Mr. Ward noted that the Town primarily received two types of complaints and they were noise and the transient nature of vehicles in neighborhoods. He stated the Town had seen an increase in complaints about possible drug sale activity due to the frequent traffic at homes that often turn out to be short-term rentals.

Mr. Ward stated that Town Council wished to hear from the community of both of these topics before moving forward.

Ms. Meade added that, in the Town's current zoning ordinance, short-term rentals were illegal in most zoning districts, including R1 Single-family Residential, but noted that the Town was currently not actively enforcing against short-term rentals, such as Airbnb and others. Ms. Meade stated there were different types of rental situations including renting a portion of a home where the owner also lived, or renting an entire home where the owner was absent. She encouraged speakers to speak to their type of rental situation and offer any suggestions or feedback that could be useful to Council when they consider whether or not to allow short-term rentals.

Mayor Brantz asked Ms. Meade if there was anything she would like to add about the amortization topic. Ms. Meade explained that amortization meant certain uses would be discontinued even if they had been going on for some time in the past. She provided an example: if a single-family home had been renting an accessory apartment that was unlawful in its zoning district, that unlawful accessory use would have to be discontinued. Ms. Meade stated there had also been some conversation by Council about phasing out multi-family structures that were built in single-family neighborhoods, but wished to assure everyone that Council would not be pursuing that idea at this time. She stated that the amortization being considered at this time would only be for buildings that were originally built as single-family homes. Ms. Meade explained that up until a couple of years ago there was no time limitation on a town's ability to enforce its zoning regulations so if there was a violation happening or an illegal non-conformity that the Town had been unaware of and had found out about, no matter how

long it had been happening, the Town could enforce the regulations. Ms. Meade stated that the law got changed several years ago by the State legislature and now there was a statute of limitations of 5 or 7 years. She stated that even if the Town knew nothing about the zoning violation, it could not go back and enforce the regulations on a use that had been happening past the statute of limitations.

SHORT-TERM AND HOMESTAY RENTAL PROPERTIES WITHIN RESIDENTIAL ZONING DISTRICTS

Mayor Brantz asked that each speaker try to keep their comments under 3 minutes in an effort to allow everyone an opportunity to speak.

The first speaker was Carol Norris. She stated she had been a resident of the Town for 50 years and did not have a short-term rental. Ms. Norris felt there was no reason a short-term rental would not work if the property owner was in town but expressed concern with short-term rentals where the owner was out of town.

The second speaker was Liz Bowman of 227 North Water Street. She stated her home was a duplex before she bought it and she had been doing Airbnb for 7 years. Ms. Bowman noted that her guests spent money downtown and she maintained her property beautifully and relied on the money she got.

The third speaker was Carol Quintero. She stated she had owned and operated a short-term rental in town for 4 years. Ms. Quintero urged Council to allow Airbnb's to continue adding that they bring money to the area.

The fourth speaker was Caleb Drown. He stated he had lived in Boone for 1 ½ years and had stayed at a short-term rental for 1 ½ months until his family got settled. Mr. Drown stated he now has his own short-term rental.

The fifth speaker was Berkeley Brown who stated he had planned to do a short-term rental. He noted it was expensive to live in Boone and felt short-term rentals could help offset costs. Mr. Brown suggested looking at models in North Carolina that were already working.

The sixth speaker was Pace Cooper, a resident of Boone for 27 years. He stated he had a short-term rental and had received no complaints or damage. Mr. Cooper stated he paid 6% occupancy tax and sales tax that Airbnb remits.

The seventh speaker was Cheryl Claassen. She stated she had an owner-occupied short-term rental. Ms. Claassen stated this was a good affordable housing option, noting it was cheaper to stay in a short-term rental for two nights than to stay one night in a hotel. She noted the added income helped people pay mortgages and the money stayed local. Ms. Claassen felt short-term rentals were largely being done by women. She noted that, while technically illegal, the Town still accepted occupancy tax money from Airbnb. Ms. Claassen felt short-term rentals were an experiment in trust.

The eighth speaker was Kenneth Beam. He stated he lived on Poplar Hill beside a short-term rental and it was a disaster. Mr. Beam noted there was property damage, trash, parties, people on his property, and his dog was attacked by one of the tenant's dogs. He stated he bought his house in an area zoned for single family homes so this type of thing would not happen but thought he might have to sell his property. Mr. Beam stated the Town needed to enforce its zoning ordinance.

The ninth speaker was Kevin Pearce of 300 Grand Boulevard. He stated he would like to have the opportunity to do a short-term rental and felt that short-term rentals were not the biggest threat to neighborhoods.

The tenth speaker was Benjamin Ray. He stated he had lived in town for 15 years and felt that short-term rentals provided a personal connection with the area. Mr. Ray stated he had multiple short-term rental properties and felt regulations should allow them.

The eleventh speaker was Serena Jones. She stated she had been operating a short-term rental for a year and felt there was value in allowing people to connect in this way. Ms. Jones noted there could always be some bad situations but felt the good outweighed the bad.

The twelfth speaker was Linda Rigell of Windy Drive. Ms. Rigell stated the house next door to her had deteriorated significantly and when it sold the new owner started operating a short-term rental and the property was now much better.

The thirteenth speaker was Jasmine Shoshanna. She stated she had been operating a short-term rental for 3 years and had never had a bad experience. Ms. Shoshanna noted she had rented to hikers, mothers visiting ASU, and various types of visitors. She loved short-term rentals.

The fourteenth speaker was Jordan Sellers. He stated he had an owner-occupied short-term rental downtown and he could not make a living without it.

The fifteenth speaker was Steve Rigell of Windy Drive. Mr. Rigell stated he had lived in Boone for 30 years and felt short-term rentals worked because of the relationships. He stated that short-term rentals with absentee ownership was just a transaction.

The sixteenth speaker was Ed Midgett of 212 Water Street. He stated he lived across the street from a short-term rental and it was nothing but positive. Mr. Midgett felt absentee owners did not have an emotional investment.

The seventeenth speaker was Catherine McClennon of Gragg Street. She stated she has had approximately 200 guests in a year and felt there should not be restrictions on meeting other people from the planet.

The eighteenth speaker was John Langston. Mr. Langston asked how many Town Council members had stayed in a short-term rental. Council Members Mason and Furgiuele indicated they had. Mr. Langston asked if they had a positive experience. Council Member Furgiuele replied that short-term rentals were currently illegal in Boone.

The nineteenth speaker was Carly Cosalito. She stated she was an absentee owner and had had amazing experiences with short-term rentals. Ms. Cosalito relayed that her parents lived in Deep Gap and took care of the house for her. She stated if short-term rentals were not allowed to continue, she would have to sell her house.

The twentieth speaker was Rob Holton. Mr. Holton stated he managed approximately 600 rental units and felt Council needed to consider if they wanted to allow short-term rentals in other zoning districts when making a decision on this topic.

The twenty-first speaker was Wright Tilley with the Tourism Development Authority. Mr. Tilley felt the Airbnb model was the better short-term rental model because Airbnb collected tax on the front end and that tax goes to the State who sends it back to the municipality. He stated that short-term rentals play into the product as a whole, noting that 30-31% of occupancy tax comes from short-term rentals in Watauga County. Mr. Tilley suggested some type of identifying factor that could be placed at homes so people would know they were short-term rentals.

With no further comments, Mayor Brantz announced the next topic for public comment.

AMORTIZATION OF NON-CONFORMING USES IN LOW DENSITY RESIDENTIAL DISTRICTS

The first speaker was Frank "Ham" Wilson. He stated that legal non-conforming uses without interruption were vested rights and property owners were dependent upon those uses. Mr. Wilson felt amortization took away vested rights without compensation. He proposed that legal non-conforming

uses be identified and a zoning classification created for them. Mr. Wilson stated this was a wonderful place to live and urged Council not to micromanage or choke citizens by their regulations.

The second speaker was Stephen Berndt of 860 Hunting Hills. He stated he applauded and endorsed Mr. Wilson's comments. Mr. Berndt stated it was unfair to change the uses that have been used for decades. He noted that people relied on the income from renters and Council needed to get serious about national trends. Mr. Berndt asked that Council not pursue amortization.

The third speaker was John Langston. He noted that ASU had a student population of about 19,000 and that was rising. Mr. Langston stated the town was already having a housing crunch and needed to do more to ease the housing burden, not restrict it. He suggested converting vacant mixed-use commercial space into apartments to help ease the housing burden.

The fourth speaker was Ron Henries, Chairman of the Watauga County Board of Education. Mr. Henries noted there was about 900 students in Hardin Park School and about 300 of them had free or reduced lunches because their families could not afford to pay for them. He asked that the Town not further reduce their income opportunities.

The fifth speaker was Harold Tilley of 747 Market Hills Drive who spoke about occupancy violations and non-conforming uses.

The sixth speaker was Maggie Tilley. She stated there was a broader issue of economic development as it related to affordable housing. Ms. Tilley stated she opened another office in Asheville simply because an affordable, non-student option was not available in Boone. She felt existing legal non-conforming properties should be grandfathered.

The seventh speaker was Trevor Gagnon of Gragg Street. He stated he owned three houses and felt legal con-conformities should be exempt from amortization. Mr. Gagnon stated people who follow the law should not be penalized.

The eighth speaker was Linda Rigell of Windy Drive. She stated she had lived in Boone for 30 years and there was a mix of R3 and R1 on her street. Ms. Rigell noted that the yards become parking lots and she wanted to prevent her neighborhood from being trashed. She stated it was very obvious which houses were rented to college students.

The ninth speaker was Steve Rigell. He stated whatever the Town decided to do, they should enforce it. Mr. Rigell stated he would like to see the Town get its act together and do some serious enforcing instead of relying on neighbors to complain.

The tenth speaker was Benjamin Ray. He felt that taking away reasonable, nicer places to rent that were not around students was a disservice. Mr. Ray asked how many houses in the Town were legal non-conforming uses. Council Member Furguele replied that the Town did not have that type of information.

The eleventh speaker was Jack "Danny" Slade of 284 West King Street. He stated he had owned that property since 1988 and it was an apartment when he bought it. Mr. Slade stated the investment was his retirement and he thought this idea was ludicrous. He noted that he had paid taxes for 31 years and kept the apartment up and it was a shame that Council was entertaining this idea.

The twelfth speaker was Richard Randall of 142 Blanwood Drive. Mr. Randall stated he supported amortization of illegal non-conformities. He noted that single family home owners have also paid taxes in this town and suggested a surcharge to properties who use their property as something other than what it was supposed to be. Mr. Randall stated the 6% tax revenue might be nice for the town but the costs were passed along to others.

The thirteenth speaker was Carol Norris of Woodland Drive. Ms. Norris noted that her property backed up to Windy Drive and she needed the income from rental property as a disabled widow.

The fourteenth speaker was Elizabeth Kivette of Hillcrest Circle. She stated her house was built as a three-unit dwelling and felt amortization would be a taking without compensation. Ms. Kivette stated this would be a removal of citizen's legal property rights.

The fifteenth speaker was Penny Laine. Ms. Laine stated she lived in the county but bought a house 21 years ago on Castle Heights which was a legal non-conforming use. She felt if the Town did not have records proving the use, she would have to go back to the previous owner's word.

The sixteenth speaker was Ari Bargil. He noted that he was an attorney that represented properties against the government. He stated that amortization in Boone would be unconstitutional. Mr. Bargil stated that amortization was controversial and barred in some towns and the trend was for additional property rights. He felt distinguishing between legal and illegal non-conformities would be difficult.

The seventeenth speaker was Michael Krenn. He stated he had lived on Blanwood Drive for 20 years and bought the house because it was in an R1 neighborhood. Mr. Krenn felt he now lived in an R1 neighborhood on paper only and stated any home in an R1 district that was not single-family was non-conforming. Mr. Krenn stated if people wanted to rent their house in an R1 district then they should rent it to a family. He felt that R1 neighborhoods were constantly infringed upon with no protection.

The eighteenth speaker was Edie Tugman of Cherry Drive. She stated she lived on a one-lane street and felt that private property owners had rights. Ms. Tugman offered to volunteer to help determine which properties were legal and illegal non-conformities.

The nineteenth speaker was Stuart "Sonny" Tugman. He stated people who live in an R1 district expect to have single-family homes in their neighborhood. Mr. Tugman suggested having a paralegal do research at the tax office and make a list of properties being used as residences. Council Member Furgieuele stated the General Assembly made a law that the Town could not enforce its ordinance if the use had been taking place for more than 5-7 years.

The twentieth speaker was Ned Fowler with Northwest Regional Housing Authority. Mr. Fowler noted there were housing problems in Boone with affordability and availability and stated this area had the least affordable housing stock of the areas they serve. He asked that Council consider the consequences of amortization to those less fortunate like the elderly and disabled.

The twenty-first speaker was Denise Carroll. Ms. Carroll stated she owned a four-unit apartment building on Green Street that should be grandfathered and not subject to amortization.

The twenty-second speaker was Rob Holton. He suggested allowing legal non-conformities in R1 and R2 districts to rezone in order to come into compliance but noted he was still against amortization. Mr. Holton stated he managed four properties at the beginning of Windy Drive and he has tried to keep them maintained. Council Member Furgieuele stated the idea was to get as many people to be in compliance as possible and noted the current requirement of a 180-day period of discontinuance was hard to determine. Council Member Furgieuele stated he proposed amortization because of the change by the General Assembly and a desire to protect low density neighborhoods.

Ms. Tugman noted that in the 1930's houses were built with one or two apartments and asked if they were destroyed would they be allowed to build the same thing back in an R1 district. Council Member Furgieuele replied that if the home was destroyed by an act of God it could be built back to its original state.

With no further public comment, Mayor Brantz thanked everyone for coming out and for caring about the community.

Council Member Furgiuele announced that there were numerous committees of the Town that needed volunteers. He noted these committees helped to inform the decisions of the Town and urged those in attendance to consider applying to serve on a Town committee.

ADJOURNMENT

Mayor Brantz adjourned the public meeting at 9:11 p.m.

Rennie Brantz, Mayor

Brenda Henson, Admin. Support Specialist

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:
Case PL05188-100821
Case Name:
Definition of Family and Occupancy
Regulations

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): 7, 14, 24, and 34

Section(s): 14.04, Article 34 Definitions, 7.06

Brief Description of Amendment (Attach Proposed Text):

Amend UDO Article 14 to revise regulations relating to the siting of Town Utility Facilities on town properties and rights-of-way.

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

10/08/2021
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: October 25, 2021

PC Meeting Date: _____

TC Meeting Date: _____

Text Approved: ☐ Yes ☐ No

Notes:

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STAFF REPORT
PUBLIC HEARING
OCTOBER 25, 2021

Case PL05188-100821 Definition of Family and Occupancy Regulations - UDO Text Amendment

Request

Amend UDO Articles 7, 14, 24 and 34 to modify and clarify regulations regarding residential occupancy controls, including but not limited to the definitions of family and unrelated persons, the permissible number of occupants of residential dwellings, and parking requirements.

History

04-15-2021: Council Meeting Excerpt: Council Member Hicks presented a request for discussion regarding the potential removal of unrelated persons restrictions in all zoning districts or alternatively, a removal of occupancy limitations. Mr. Furguele stated that he believed occupancy limitations of the Town had been motivated out of the interest to protect neighborhoods, and to be able to maintain the neighborhoods which had been under enormous attack by development. He believed that there were many considerations that needed to be discussed, such as adequate parking. Mr. Furguele agreed with Mr. Hicks's assessment that the definition of "family" was narrow and that there was room to reassess that term in light of the commitment the Town recently made regarding non-discrimination in the Town. He added that he believed this could be done without a wholesale destruction of the occupancy limits. Mr. Furguele suggested that Ms. Meade examine the definition of family in light of the recent ordinance and see how it might be redefined in a way that recognized non-traditional but committed relationships. Ms. Roseman and Ms. LaPlaca agreed that the definition of family needed to be revisited. Mayor Pro-Tem Ulmer felt that this change could potentially help with affordable housing in Town. Mr. Furguele made a motion to authorize Ms. Meade to examine the definition of family in the UDO and to come back to Council with recommendations in light of the non-discrimination ordinance recently passed. Mayor Pro-Tem Ulmer seconded the motion which passed unanimously.

Proposed Ordinance Amendment

ORDINANCE # PL05188-100821

**AN ORDINANCE TO REVISE ARTICLES 7, 14, 24 and 34 OF THE TOWN OF BOONE UNIFIED
DEVELOPMENT ORDINANCE RELATING TO THE DEFINITION OF FAMILY AND OCCUPANCY
REGULATIONS**

WHEREAS, the Boone Town Council desires to modify and clarify the definition of "family" and occupancy regulations within the Town of Boone; and

WHEREAS, the Town Council finds that it is in the best interest of the town and its citizens that the occupancy regulations and the definition of "family" in the Unified Development Ordinance be modified to be more inclusive and better reflect and accommodate diverse family structures and housing needs and preferences; and

WHEREAS, the town has a legitimate interest in preserving the character, stability, and peacefulness of low-density residential neighborhoods by adopting regulations with respect to the

number of persons who may occupy a dwelling or structure and required off-street parking in order to control density, noise, disturbance and traffic congestion; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160D, Article 19 as well as its general police powers to protect the health, safety, and welfare of town residents;

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

SECTION 1. Section 14.02.03 of the Town of Boone Uniform Development Ordinance (“UDO”) is hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference, with deletions and additions shown in ~~red~~ and blue respectively:

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this the ____th day of _____, 2021.

EXHIBIT A

NOTE: Applicable building codes require a minimum floor area per occupant. In particular, the codes require at least 150 feet for the first occupant, and 100 feet for each occupant thereafter. A minimum of 70 square feet is required for a bedroom occupied by one person, and 100 square feet for a bedroom occupied by two persons.

Alternative 1: Incremental approach that changes current regulations to include “domestic partners” (fairly broadly defined) in the definition of family and provides additional clarification of the regulations.

ARTICLE 14

14.04 Residential Occupancy Controls

14.04.01 Except for authorized group living, residential occupancy is limited in the Town’s jurisdiction as enumerated each district within this Article. Review Appendix B to view comparative tables that comprehensively list the occupancy controls set forth for the zoning districts enumerated in Section 14.01.

~~**14.04.02** A family is counted as one occupant for purposes these controls:~~

~~A. Before any persons will be determined to be “cousins” and thereby included within the definition of “family”, each such person shall be required to deliver to the Administrator the following documentation:~~

~~1. A copy of their birth certificates.~~

~~2. A copy of the parent’s birth certificate which establishes the relationship.~~

14.04.02 For purposes of the occupancy regulations set forth in this Article:

A. A “family” means individuals related by blood, marriage, domestic partnership, or adoption occupying a premises and living as a single, non-profit housekeeping unit, which may include live-in help but does not include roomers or boarders. A “single, non-profit housekeeping unit” means individuals who live and cook together, as with or similar to a traditional family, on a single lease if renting the premises. The following individuals may constitute a family: a single person or a couple that is married or are domestic partners; that person’s or persons’ children, parents, siblings, grandparents, great-grandparents, grandchildren, or great-grandchildren; and the spouses of any of the foregoing persons. “Domestic partners” means two persons who are both at least 18 years of age, are each other’s sole domestic partner, have a common residence, and intend to maintain a common residence together indefinitely. “Child” and “children” shall for these purposes include a biological, foster, step- or adopted child, or other legal ward. The term “family” shall not be construed to include a fraternity or sorority, club, rooming house, group of students rooming together, institutional group or the like.

Commented [AM1]: This language is unnecessary and confuses or contradicts other provisions and definitions (s below).

Commented [AM2]: (1) Per below revised definition family, it is recommended that Council consider striking from the definition of family unless the cousins are child family unit that includes their parents (who are siblings the foregoing recommendation is not adopted, this “pr language that is applicable only to cousins appears unn and unjustified: there is no reason to include explicit requirements only for cousins to establish lineage. Enfi officers, if they inquire into evidence of family relations all, should require evidence for any relationships that a be in doubt / not obvious on their face.

Commented [AM3]: Note that these changes remove from the definition of family, unless the cousin is a legal w member of the family.

Case PL05188-100821 Definition of Family and Occupancy Regulations - UDO Text Amendment | 4

B. "Unrelated" individuals are persons who are not members of the same family as defined above. For clarification, cousins are deemed "unrelated" for purposes of these occupancy regulations unless part of a single housekeeping unit that includes a parent, grandparent or great-grandparent of one of the cousins.

A.C. ~~A14.04.03~~ A person shall be presumed to be an "occupant" of a dwelling if their clothes or other daily living supplies such as items of personal hygiene are maintained at the dwelling unit.

- a. The absence of such described items does not prevent a finding that a person is an occupant.
- b. That a person regularly and recurrently lives in, sleeps at, or possesses another dwelling unit does not prevent a finding that a person is an occupant.

14.04.034 The number ~~or identity~~ of occupants in a dwelling, ~~whether consisting of family or of unrelated individuals~~, does not constitute a use and cannot create a legal nonconformity.

A. To clarify, over-occupancy (i.e., occupancy control violations) arising after the effective date of this ordinance (January 1, 2014) cannot give rise to a legal nonconformity; and

A.B. Any over-occupancies as to which owners can prove that over-occupancy predated the 2014 ordinance and has been continuous until the time of written notice of the occupancy violation must be remedied within two years from written notification of the record owner of the dwelling unit of the nonconformity. To the extent practicable, all occupants of such dwelling units, as of the date of notification of the record owner, shall also be provided written notice of the nonconformity and the deadline for bringing the dwelling unit into compliance. This section shall not be construed to prevent immediate enforcement of any building or health code regulations regarding the number of occupants that may inhabit a dwelling unit.

14.04.045 A residential dwelling unit ~~with more than two (2) occupants~~ shall contain at least one (1) bedroom for each two (2) ~~unrelated~~ occupants. ~~For purposes of these occupancy regulations, an efficiency dwelling unit shall be considered a one-bedroom dwelling unit.~~

Occupancy language used in ~~the Article 14 of the~~ UDO - two current alternatives:

[R3, B3, and M1 districts:] **Occupancy:** ~~Unlimited~~ One family or up to 4 unrelated persons (see Section 14.04). [OPTION: make provision for roomer(s)/boarder(s): A dwelling occupied by a family (but not by unrelated persons) may also have one/two roomers/boarders.]

[All other districts:] **Occupancy:** ~~Unlimited~~ One family or up to 2 unrelated persons (see Section 14.04). [OPTION: make provision for roomer(s)/boarder(s): A dwelling occupied by a family (but not by unrelated persons) may also have one/two roomers/boarders.]

In applicable districts set forth at Article 14 and/or in definitions at Article 30, add the following language as appropriate:

A single-family detached dwelling shall be classified as a boarding house if occupied by more than [2 or 4] unrelated persons.

A dwelling unit of a two-family detached dwelling shall be classified as a boarding house if occupied by more than [2 or 4] unrelated persons

An accessory dwelling unit shall be classified as a boarding house if occupied by more than [2 or 4] unrelated persons

ALTERNATIVE 2: Incrementally broad approach then Alternative 1 – excludes minor children so as to allow greater flexibility in family structure and occupancy:

14.04.02 For purposes of the occupancy regulations set forth in this Article:

- A.** A "family" means one or more *adults* related by blood, marriage, domestic partnership, or adoption occupying a premises and living (*with or without minor children in their care*) as a single, non-profit housekeeping unit, which may include live-in help but does not include roomers or boards. A "single, non-profit housekeeping unit" means *adults* who live and cook together (*with or without minor children in their care*), as with or similar to a traditional family, on a single lease if renting the premises. The following *adults* may constitute a family: a single person or a couple that is married or are domestic partners; that person's or persons' children, parents, siblings, grandparents, great-grandparents, grandchildren, or great-grandchildren; and the spouses of any of the foregoing persons. "Domestic partners" means two *adults* who are each other's sole domestic partner, have a common residence, and intend to maintain a common residence together indefinitely. "Child" and "children" shall for these purposes include a biological, foster, step- or adopted child, or other legal ward. The term "family" shall not be construed to include a fraternity or sorority, club, rooming house, group of students rooming together, institutional group or the like.
- B.** "Unrelated" individuals are *adults* who are not members of the same family as defined above.
- C.** A person shall be presumed to be an "occupant" of a dwelling if their clothes or other daily living supplies such as items of personal hygiene are maintained at the dwelling unit.
 - 1. The absence of such described items does not prevent a finding that a person is an occupant.
 - 2. That a person regularly and recurrently lives in, sleeps at, or possesses another dwelling unit does not prevent a finding that a person is an occupant.

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- 14.04.03** The number or identity of occupants in a dwelling, whether consisting of family or of unrelated individuals, does not constitute a use and cannot create a legal nonconformity.
- A.** To clarify, over-occupancy (i.e., occupancy control violations) arising after the effective date of this ordinance (January 1, 2014) cannot give rise to a legal nonconformity; and
- B.** Any over-occupancies as to which owners can prove that over-occupancy pre-dated the 2014 ordinance and has been continuous until the time of written notice of the occupancy violation must be remedied within two years from written notification of the record owner of the dwelling unit of the nonconformity. To the extent practicable, all occupants of such dwelling units, as of the date of notification of the record owner, shall also be provided written notice of the nonconformity and the deadline for bringing the dwelling unit into compliance. This section shall not be construed to prevent immediate enforcement of any building or health code regulations regarding the number of occupants that may inhabit a dwelling unit.
- 14.04.04** A residential dwelling unit shall contain at least one (1) bedroom for each two (2) unrelated *adult* occupants. For purposes of these occupancy regulations, an efficiency dwelling unit shall be considered a one-bedroom dwelling unit.

Occupancy language used in Article 14 of the UDO- two current alternatives:

[R3, B3, and M1 districts:] **Occupancy:** One family or up to 4 unrelated *adults* (see Section 14.04).

[All other districts:] **Occupancy:** One family or up to 2 unrelated *adults* (see Section 14.04)

In applicable districts set forth at Article 14 and/or in definitions at Article 30, add the following language as appropriate:

A single-family detached dwelling shall be classified as a boarding house if occupied by more than [2 or 4] unrelated *adults*.

A dwelling unit of a two-family detached dwelling shall be classified as a boarding house if occupied by more than [2 or 4] unrelated *adults*.

An accessory dwelling unit shall be classified as a boarding house if occupied by more than [2 or 4] unrelated *adults*

Adult [new definition] – A person at least 18 years of age and mentally competent to lawfully consent to a contract.

ARTICLE 34: DEFINITIONS

Family

~~One or more~~ Individuals related by blood, marriage, domestic partnership, or adoption, occupying a premises and living as a single, non-profit housekeeping unit, which may include ~~ing domestic servants,~~ live-in help. A "single, non-profit housekeeping unit" means individuals who live and cook together, as with or similar to a traditional family, on a single lease if renting the premises. The following individuals may constitute a family: a single person or two persons who are married or domestic partners; that person's or persons' children, parents, siblings, grandparents, great-grandparents, grandchildren, or great-grandchildren; and the spouses of any of the foregoing persons. "Domestic partners" means two persons who are both at least 18 years of age, are each other's sole domestic partner, have a common residence, and intend to maintain a common residence together indefinitely. "Child" and "children" shall for these purposes include a biological, foster, step- or adopted child, or other legal ward, and does not include roomers or boarders. The term "family" shall not be construed to include a fraternity or sorority, club, boarding or rooming house, group of students rooming together, institutional group or the like, biological, foster or adopted child, a step child, or other legal ward;

~~A. a single person or married couple's parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great or great-great;~~

~~B. spouses of any persons named in the above groups;~~

~~C. cousins, who are defined to be relatives who are decedents from a common grandparent.~~

Occupant, Residential

~~Any person who, on a regular and recurrent basis, is present at a dwelling unit a substantial period of time.~~

Single-Family Detached Dwelling [definition per proposed STR regulations]

A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for one dwelling unit; not attached to any non-accessory building or dwelling unit.

Two-Family Detached Dwelling [definition per proposed STR regulations]

A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for two dwelling units; not attached to any non-accessory building or dwelling unit.

[End of Exhibit A]

FURTHER DISCUSSION ITEMS:

**Possible alternative and/or additional approaches
to occupancy controls in low-density residential districts:**

- (1) ***Focus on directly addressing the ills created by over-occupancy rather than indirectly regulating via occupancy controls.*** For example, limit the number of parking spaces allowed for each dwelling rather than the number of occupants (to encourage walking and discourage extra cars, traffic, and parking in streets); impose parking standards to prevent parking in front yards; direct additional town resources to enforcement of nuisance ordinances relating to parking in streets, trash receptacles, noise, and litter. As to possible parking regulations, consider:
- a. Allowing no more than one parking space per bedroom, except that at least two spaces are allowed for any dwelling unit. So, a two-bedroom house gets two parking spaces, a three-bedroom house can have no more than 3 parking spaces, etc. Phase in compliance based upon notification of current violation (e.g., 6 to 12 months to come into compliance following notification).
 - b. Adopting parking standards that require designated and improved/marked-off parking pads and limit parking in front yards. For example, in its neighborhood conservation districts, Chapel Hill's ordinance allows a maximum of 4 cars, except that staff may approve up to 6 cars for duplex and triplex properties if additional requirements are met:

EXAMPLE: Chapel Hill –neighborhood conservation districts regulations – parking

Standard Regulation

Maximum number of parked 4-wheeled motor vehicles used for the conveyance of persons or goods **per zoning lot** for the following Table 3.7-1: Use Matrix use categories: "Dwelling Units, Single-family;" "Dwelling Units, Single-family with Accessory Apartment;" "Dwelling units, duplex;" "Dwelling Units, multi-family: 3 dwelling units."

Administrative exception for duplex and triplexes

Maximum of 4 motor vehicles. Upon approval of Site Plan Review by the Planning Commission in accordance with 4.7 of LUMO, up to 6 motor vehicles may be allowed for zoning lots with the Table 3.7-1: Use Matrix use categories of "Dwelling units, duplex" or "Dwelling Units, multi-family: 3 dwelling units" through demonstration of adequate parking that is in compliance with applicable regulations, including front yard parking regulations. The parking area: (1) must be clearly defined and or marked with appropriate materials such as rocks, timbers and hedges; (2) must be maintained in a safe and sanitary condition; (3) cannot contribute to soil erosion or tree damage; (4) must be accessed by properly approved curb cuts or other approved access points; (5)

shall be screened by means of an effective screening device between the parking area and the street which is at least four (4) feet in height above the grade of the edge of the parking area. Appropriate screening devices may include decorative brick walls, fences, evergreen hedges which shall reach the required height within two (2) years of planting, or any combination above. Parking in the back and side yard is encouraged to minimize visibility.

7.6. - Nonconforming parking areas in front yards.

Any nonconforming parking area in a front yard shall either be eliminated or made to conform to current regulations of this appendix within six (6) months after the date of notice of nonconformity.

Maximum Percent of Front Yard Used for Parking - Varies by neighborhood conservation district. (*The front yard is defined as the area between the street and a line drawn parallel to the street from the point of the house that is closest to the street.) Examples:

- 30%. This standard applies only to single-family development (and single-family dwellings with accessory apartments).
- 25%
- 33% for lots less than 21,780 square feet; 25% for greater than 21,780 square feet

(2) **Create a Student Housing use and/or overlay district.** Some codes specifically regulate dwellings used for student housing. Two examples:

- a. Hamden, CT: Includes in their definitions of “family” and “unrelated” the following carve-out: *“Unrelated individuals occupying a dwelling unit and meeting the definition of students will be classified as a student-housing unit.”*

The zoning ordinance then establishes a use called “student housing” as follows:
Student Housing The following section is adopted to provide for the needs of students for off-campus housing while at the same time providing for the health, welfare, and safety of students and residents and the livability of residential neighborhoods. Student housing unit is defined as a dwelling unit occupied primarily by unrelated individuals enrolled in a program of study at an educational institution, college or university, trade school, training facility or similar entity.
The use is allowed in all residential districts (as well as various others), but includes particular regulations, including 1 parking space per student and 2-space minimum that is off-street and does not impinge on required front yards, zoning permit, fire marshal approval, identified contact person, etc...
The keeping of no more than 2 roomers or boarders is allowed for family-occupied (but not maximum “unrelated” occupied) residential detached dwellings, but specifically NOT including students.

- b. St. Paul, MN: Student housing overlay district:

Within the SH student housing neighborhood impact overlay district, a student dwelling is a one- or two-family dwelling requiring a fire certificate of occupancy in which at least one (1) unit is occupied by three (3) or four (4) students. For the purposes of this article, a student is an individual who is enrolled in or has been accepted to an undergraduate degree program at a university, college, community college, technical college, trade school or similar and is enrolled during the upcoming or current session, or was enrolled in the previous term, or is on a scheduled term break or summer break from the institution.

This overlay district was created in 2012 to manage the perceived negative impact of a concentration of students living in single-family neighborhoods around local colleges and universities. These effects include increased parking and traffic, behavioral and property management shortcomings, and a loss of ownership single-family housing stock to student rental properties. The zoning standards require a distance of 150 feet (about three single family home lot widths) from another student dwelling, and that it provide all necessary parking as if it were a new structure (no nonconforming parking permitted). Additionally, a student dwelling must be registered with the Department of Safety and Inspection. Also of note: relatedness does not factor into what constitutes a student dwelling.

By definition, the only SH district encompasses the blocks around the University of St. Thomas, a product of years of concern by residents in the area. Since implementation of the district, the neighborhood has seen a slowdown in turnover of ownership housing to student rentals. Recently the University of St. Thomas has constructed new dormitories on campus, and now requires first- and second-year students to reside on campus, both changes that should accomplish a similar relief intended by the SH overlay spacing requirements. As other municipalities have considered amending their occupancy allowances, concerns about disturbances by high densities of students have received the most attention.

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.

2.3 THE COMMUNITY

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.

2.3.3 Housing and 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.
 - A.1** As road widenings are proposed, carefully evaluate their potential impact on the integrity of residential areas, pedestrian-oriented commercial districts, and the ability of bicyclists and pedestrians to function in the affected area.
 - A.2** Prepare at least two neighborhood plans, working closely with neighborhood residents, and incorporating the full range of neighborhood issues to include: land use, traffic, housing, neighborhood business services, infrastructure improvements, parks and recreation needs, crime and safety.
 - A.3** Prepare a document readily accessible to the public that details residential zoning areas and the date on which each was implemented.
 - A.4** Establish a planning and development policy that protects older established residential neighborhoods from the negative effects of adjacent commercial development.
 - A.5** Establish a task force to determine how like communities successfully enforce their existing residential codes. Items requiring focused attention: Detailed analysis of implementation and enforcement. For example, penalties, personnel requirements, budget implications, long-term effect on town character and economic development.
 - A.6** Implement a residential zoning enforcement policy based on the task force analysis above.
- 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

Case PL05188-100821 Definition of Family and Occupancy Regulations - UDO Text Amendment | 13

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.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160D-604(b), subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the Planning Commission for review and comment. If no written report is received from the Planning Commission within 30 days of referral of the amendment to that board, the Town Council may act on the amendment without the Planning Commission report. The Town Council is not bound by the recommendations, if any, of the Planning Commission. Per NCGS 160D-604(d), when conducting a review of proposed zoning text or map, the Planning Commission shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Commission shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Vote 1: 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:

Note 1

Vote 2: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

TOWN COUNCIL ACTION

Per NCGS 160D-605, when adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan.

Vote 1: 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:

Note 1

Vote 2: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the 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:
Case PL05169-100621
Case Name:
Town Utility Facility

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): 14

Section(s): 14.02

Brief Description of Amendment (Attach Proposed Text):

Amend UDO Article 14 to revise regulations relating to the siting of Town Utility Facilities on town properties and rights-of-way.

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

10/06/2021
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: October 25, 2021

PC Meeting Date: _____

TC Meeting Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

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Communication: Case PL05169-100621 Application (Case PL05169-100621: Town Utility Facility - UDO Text Amendment)



STAFF REPORT
PUBLIC HEARING
OCTOBER 25, 2021

Case PL05169-100621 Town Utility Facilities - UDO Text Amendment

Request

To modify the UDO Article 14 Zoning District Regulations to revise language regulating Town Utility Facilities.

Proposed Ordinance Amendment

ORDINANCE # PL05169-100621

AN ORDINANCE TO REVISE ARTICLE 14 OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE RELATING TO REVISING LANGUAGE REGULATING TOWN UTILITY FACILITIES

WHEREAS, the Boone Town Council desires to modify, clarify and streamline the requirements for approval of town utility placements; and

WHEREAS, the Town Council finds that it is in the best interest of the Town and its citizens that Town Council directly consider and approve utility placements within town rights-of-way and on town properties, with input from the public as deemed appropriate by Council; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160D, Article 6;

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

SECTION 1. Section 14.02.03 of the Town of Boone Uniform Development Ordinance ("UDO") is hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference, with deletions and additions shown in ~~red~~ and blue respectively:

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this the ____th day of _____, 2021.

Communication: Case PL05169-100621 Staff Report (Case PL05169-100621: Town Utility Facility - UDO Text Amendment)

EXHIBIT A

Article 14 Zoning District Regulations

...

14.02.03 Uses Not Requiring Development Approvals

A. Notwithstanding any other provisions of this ordinance, no zoning or special use permit is necessary for the following uses:

1. Public streets, ~~or~~ sidewalks or greenways.
2. Electric power, telephone, telegraph, cable television, gas, water and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way with the permission of the public owner.
- 2.3. Town utility facilities located within ~~a~~ the Town's ~~public~~ right-of-way or on Town property with the permission of the ~~owner~~ Town; provided, that if the proposed Town utility facility would exceed any otherwise applicable development standard relating to height, size, or intensity of use, the Administrator shall notify the Town Council and Town Council may direct that a hearing be held to solicit public comment with respect to the proposed facility.

Article 34 Definitions

...

Utility Facility

Any above-ground structures or facilities other than buildings, unless such buildings are incidental to the operation of such structures or facilities operated by a public utility as authorized by North Carolina law and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas oil, or electronic signals (other than use category 7.0 Telecommunication Uses). Excepted from this definition are utility lines and supporting structures such as electric power, telephone, telegraph, cable television, gas, water and sewer lines, and wires or pipes located within public right-of-way authorized by the appropriate government entity pursuant to Section 14.02.03(A)(2).

Utility Facility, Government

A utility facility owned or operated by a government entity other than the Town.

Utility Facility, Neighborhood

Utility facilities that are designed to serve the immediately surrounding neighborhood and for reasons associated with the purpose of the utility in question must be located in or near the neighborhood where such facilities are proposed to be located.

Utility Facility, Regional

All utility facilities other than neighborhood facilities.

Utility Facility, Town

Any above-ground structure , or use of land owned or operated by the Town and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, stormwater or electronic signals.

Utility Pole

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

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.

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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.

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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 160D-604(b), subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the Planning Commission for review and comment. If no written report is received from the Planning Commission within 30 days of referral of the amendment to that board, the Town Council may act on the amendment without the Planning Commission report. The Town Council is not bound by the recommendations, if any, of the Planning Commission. Per NCGS 160D-604(d), when conducting a review of proposed zoning text or map, the Planning Commission shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Commission shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Vote 1: 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:

Note 1

Vote 2: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

TOWN COUNCIL ACTION

Per NCGS 160D-605, when adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan.

Vote 1: 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:

Note 1

Vote 2: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the 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:
Case PL05189-100821
Case Name:
Major Subdivision Process 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): 5 and 9

Section(s): 5.08, 9.09

Brief Description of Amendment (Attach Proposed Text):

Amend UDO Article 14 to revise regulations relating to the siting of Town Utility Facilities on town properties and rights-of-way.

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

10/08/2021
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: October 25, 2021

PC Meeting Date: _____

TC Meeting Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

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Communication: Case PL05189-100821 Application (Case PL05189-100821: Major Subdivision Process - UDO Text Amendment)



STAFF REPORT
PUBLIC HEARING
OCTOBER 25, 2021

Case PL05189-100821 Major Subdivision Process Modification - UDO Text Amendment

Request

To modify UDO Article 5 Subdivisions and Article 9 Amendments to revise the process for the approval of major subdivisions.

Proposed Ordinance Amendment

ORDINANCE # PL05189-100821

AN ORDINANCE TO REVISE ARTICLE 5 AND ARTICLE 9 OF THE TOWN OF BOONE UNIFIED DEVELOPMENT ORDINANCE RELATING TO APPROVAL OF FINAL PLATS FOR MAJOR SUBDIVISIONS

WHEREAS, the Boone Town Council desires to modify, clarify and streamline the requirements for approval of final major subdivision plats, consistent with the requirements of state law; and

WHEREAS, the Town Council finds that it is in the best interest of the Town and its citizens that nondiscretionary approvals be processed without unnecessary expenditure of staff and Town Council time; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160D, Article 6;

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

SECTION 1. Articles 5 and 9 of the Town of Boone Uniform Development Ordinance (“UDO”) is hereby revised as set forth in the attached Exhibit A to this Ordinance, which is incorporated by reference, with deletions and additions shown in ~~red~~ and blue respectively.

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective immediately upon its adoption by Town Council.

Adopted this the ____th day of _____, 2021.

Communication: Case PL05189-100821 Staff Report (Case PL05189-100821: Major Subdivision Process - UDO Text Amendment)

EXHIBIT A

Article 5 Subdivisions

...

5.08 Major Subdivision

- 5.08.01** Major subdivisions are subject to a four (4) step approval process: sketch plan consultation, preliminary plat approval, zoning permit for the construction of subdivision-related infrastructure, and final plat approval.
- 5.08.02** **Sketch Plan:** A sketch plan submittal is required for major subdivisions.
- A.** A sketch plan is a plan prepared in advance of formal submittal for the purpose of receiving informal staff comments.
 - B.** Although there are no minimum requirements for the content of a sketch plan, applicants are encouraged to provide as much detail as possible.
- 5.08.03** **Preliminary Plat:** A preliminary plat is required for all major subdivisions.
- A.** The preliminary plat shall be submitted in accordance with Article 4.
 - B.** The preliminary plat shall contain the information as described in Appendix A.
 - C.** Board of Adjustment Review:
 - 1. The Administrator shall present completed major subdivision preliminary plats to the Board in accordance with Article 4.
 - 2. The Board must approve, approve with conditions, or deny the preliminary plat in accordance with Article 6.
 - 3. If the major subdivision preliminary plat is granted approval with conditions, the applicant has thirty (30) calendar days to revise and resubmit the preliminary plat to the Administrator which incorporates the revised conditions.
 - a. If all of the conditions have been met and the preliminary plat is otherwise unchanged, the Administrator must approve the preliminary plat.
 - b. If the preliminary plat is not revised within thirty (30) calendar days to meet the approval conditions, or the applicant notifies the Administrator that no more revisions to the preliminary plat will be made, the Administrator shall deny the preliminary plat.
 - 4. An applicant for a major subdivision preliminary plat denied by the Board may seek judicial review pursuant to Article 6.
 - 5. A modification to an approved major subdivision preliminary plat is subject to the requirements of Section 4.~~15~~16.

6. A major subdivision preliminary plat approval remains valid for two (2) years and may be extended in accordance with the provisions of Section 4.14. Once constructed the subsequent development of individual lots shall not require modification of the subdivision plat approval unless explicitly required in the original approval or prior modification.
7. An applicant for a major subdivision preliminary plat approved by the Board may thereafter proceed with an application for a zoning permit in accordance with Article 4, for the construction of subdivision-related infrastructure.
8. All infrastructure approved through the preliminary plat process must be completed or the applicant must provide a performance guarantee per Section 4.13 prior to proceeding with Final Plat approval.

5.08.04 Final Plat: The final plat is proof that all the requirements of the preliminary plat have been met. A final plat is required for all major subdivisions.

- A. Upon approval of a major subdivision preliminary plat, and completion of all required subdivision-related infrastructure as authorized by the preliminary plat approval, the applicant is eligible to submit a final plat for approval.
- B. The final plat shall be submitted in accordance with Article 4.
- C. The final plat shall contain the information as described in Appendix A.
- D. The final plat shall be prepared and certified by a North Carolina licensed professional land surveyor.
- E. The final plat must be in compliance with the approved preliminary plat.
- F. ~~Town Council~~The Administrator shall approve the final plat if the subdivision improvements are consistent with this Ordinance and the preliminary plat approval.
- G. The approved final plat shall be recorded within forty-five (45) days of approval by the Planning and Inspections Department or the approval shall be void.

9.09 Conditional Districts (CD)

9.09.01 Property may be placed in a conditional district only in response to a petition by all owners of the property to be included.

9.09.02 Neighborhood Meeting

- A. The applicant shall conduct a neighborhood meeting prior to the submission of the application for a Conditional District Zoning Map Amendment. This meeting will allow the applicant to explain the proposed development and to be informed of the concerns of the neighborhood and surrounding property owners.

- B. A meeting notice must be mailed to property owners within 300' of the development at least 25 days prior to the meeting in accordance with Subsection 1.13.02 herein. A copy of the notice shall also be provided to the Planning Department. The notice shall contain a summary of the proposed development, the applicants contact information, the date, time, and location of the meeting.
- C. The meeting must be held at an accessible and convenient location and time in light of available options. Upon coordination through the Planning Department, the meeting may be held at Town Council Chambers if that location is available.
- D. At the meeting, the petitioner, at a minimum, shall present all the following information:
 - 1. Contact information of the parties involved in the ownership, design, and development of the property;
 - 2. The location of the property and general information on the current conditions of the site;
 - 3. Proposed use(s) and site development;
 - 4. Any preliminary plans or renderings, if available; and
- E. The applicant shall provide the Administrator with a summary report of the meeting which includes a list of all attendees and details the meeting including all concerns expressed by attendees and commitments made by the petitioner. This report shall be included in the staff report.

9.09.02 The authorization of a CD for any major subdivision preliminary plat approval or 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 such use.

9.09.0~~2~~3 All variances proposed by the petitioner must be obtained from the Board prior to the scheduling of the public hearing for the CD.

9.09.0~~3~~4 **Transitional Zones.** Any proposed CD development within a transitional zone is subject to the standards and requirements of 6.02.02 herein.

9.09.0~~5~~4 Specific conditions applicable to a CD may be proposed by the applicant or the Town or its agencies, but only those conditions approved by the Town and consented to by the petitioner in writing may be incorporated into the development approval requirements.

- A. Conditions and site-specific standards imposed in a CD shall be limited to those that (i) address the conformance of the development and use of the site to Town Ordinances and the comprehensive plan and other applicable plans and (ii) the impacts reasonably expected to be generated by the development or use of the site.

1. Unless consented to by the applicant in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.
- B. Town Council members and the applicant shall endeavor to discuss and agree to conditions as part of the public hearing process provided at section 9.03; notwithstanding the foregoing, proposed conditions may be discussed or negotiated at any time that Town Council is considering the proposed application.
- C. The applicant shall forthrightly answer any request by a Town Council member to agree to a proposed condition. Before doing so, however, the applicant may request continuance of the meeting or postponement of the applicant's response until a subsequent meeting so that the applicant may further consider the requested condition before making a response. Such request for delay in responding may be granted by a consensus of the Town Council or, there being none, majority vote. Town Council shall continue or postpone the meeting to the next available public hearing or such earlier meeting as it shall deem appropriate.
- D. An applicant's refusal to answer a request to agree to a proposed condition shall be deemed a withdrawal of the application per section 9.06.03.
- E. After the Town has published the notice of public hearing for the application, the applicant shall make no changes to the conditions or site-specific standards that are less restrictive than those stated in the application, including but not limited to smaller setbacks, more dwelling units; greater height; more access ways; new uses; and fewer improvements. More restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least ten (10) business days before the date scheduled for final Town Council action on the application.

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

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

9.09.067 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.

- 9.09.078** 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.
- 9.09.089** Should a petition for a CD be denied, then no new petition for making similar use the same property shall be considered within twelve (12) months of the date of the original denial.
- 9.09.0910** 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.

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 160D-604(b), subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the Planning Commission for review and comment. If no written report is received from the Planning Commission within 30 days of referral of the amendment to that board, the Town Council may act on the amendment without the Planning Commission report. The Town Council is not bound by the recommendations, if any, of the Planning Commission. Per NCGS 160D-604(d), when conducting a review of proposed zoning text or map, the Planning Commission shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Commission shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the Planning Commission, but a comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

Vote 1: 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:

Note 1

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Vote 2: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

TOWN COUNCIL ACTION

Per NCGS 160D-605, when adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken. When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

Vote 1: 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:

Note 1

Vote 2: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because:

Note 2

Note 1: describe elements of controlling land use plans and how the amendment is or is not consistent.

Note 2: briefly explain why, factors may include (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment.

**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 Strait 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 the a drive-through is not currently an allowable accessory use in the B1 or as 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 voluntarily 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 the though 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 effect Council Street and how would that effect 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 about 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 would 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 Furguele 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 Furguele 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 Furguele 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 Furguele 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 Furguele 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

**SPECIAL PLANNING COMMISSION MEETING MINUTES
WEDNESDAY, SEPTEMBER 29, 2021, 6:00 P.M.
VIA WEBEX SOFTWARE**

PLANNING COMMISSION MEMBERS PRESENT: Chair Elizabeth Shay, Vice-Chair Eric Plaag Chris Behrend, Smith Warren and Frank Veno

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Stacey Miller-Chief Deputy Director, Christy Turner-Senior Planner, Mike James-Senior Planner, Brian Johnson-Urban Design Specialist, and Marlene Crosby-Board Secretary

Others Present: Allison Meade-Town Attorney

Continuation of the Planning Commission Meeting

Call to Order

Chair Shay called the Planning Commission meeting, held via WebEx, to order at 6:00 p.m.

Public Comment

There was no one from the public who wished to speak.

Downtown Planning Projects

Ms. Jane Shook, Director of Planning and Inspections, explained that Ms. Allison Meade, Town Attorney, would be available to attend this meeting via WebEx from 7 p.m. to 8 p.m. to answer questions on the text. Ms. Shook suggested that the Planning Commission discuss text amendment-related changes before Ms. Meade joined the meeting.

Vice-Chair Plaag suggested that the Planning Commission discuss the Historic District because he felt those items could be addressed quickly and then the Planning Commission move on to the more extended topics for discussion about the B-1 Expansion project. Chair Shay and Ms. Shook agreed to this approach to discuss the said topics.

Ms. Shook noted that there are two topics to be discussed. She noted that one of the topics came in during public input, but was not addressed.

Ms. Shook noted that the first topic was whether the installation of works of art on public or private property was subject to a Certificate of Appropriateness.

Discussion ensued on the installation of works of art on public or private property. Ms. Shook noted that at the public input sessions that public installations were discussed in general. Vice-Chair Plaag noted that this topic had been addressed in the Downtown Boone Local Historic District Design Standards. He said the only guidance given is in public hearing packet page number 1104 in Section 3.8 and the public hearing packet page number 1112, Section 11.3 Parks and Public Spaces. Vice-Chair Plaag read aloud these two sections of the public hearing packet.

Ms. Shook said that at the public input session, the question came up regarding the possible requirement for a Certificate of Appropriateness to change the public art such as the art installed by Town or the Downtown Boone Development Association. Vice-Chair Plaag noted he felt it would be handled the same way as any other legal nonconformity. He said that the only thing that would trigger a review would be if the location itself changed or the square footage of the art pad site was expanded somehow. He said otherwise, the existing art pad would be a legal nonconformity not subject to review.

Ms. Shook gave two examples, one public and one private. She talked about the planter that is located at Town Hall. She said that the planter had been used for a variety of work. She asked what would be consider the footprint because it changes based on the artwork installed in the planter. Vice-Chair Plaag reviewed the 2018 street view of the planter and said that it appears to be a concrete pad within the stone wall boundary of the planter. He said he assumes that there is no new concrete pad poured every time new art is installed. Ms. Shook agreed with Vice-Chair Plaag that the concrete pad is not being changed every time new art is installed, but it could be. Vice-Chair Plaag said he thought that if the size of the art is increasing in size and the pad is not large enough, the HPC would want to review the content of the art to see if the expansion of the art space would be necessary for that is appropriate to that location. Vice-Chair Plaag said if the HPC approves the COA, at that point, any future art installation at that location would have to stay the size of the art space that was approved. He also said if the town decided to demolish the planter area in the future, that's a whole new COA process. He said if the area is expanded for some reason, it would be subject to COA review.

Ms. Shook said that the Planning and Inspections Department is currently not consulted when the town changes the art. She noted the Town department that changes the art and the limitations of changing it.

As another example, Ms. Shook talked about the mural on the ECR building located on Howard Street. She said that ECR Software asked about the requirements to install a mural if they wanted to change out the mural. Vice-Chair Plaag said at present, the mural is a legal nonconformity. He said if they wanted paint it whatever it says now with a new message, he thought that was fine. He said that wouldn't require anything but if they decided to modify it to smaller or larger. He said that if the mural was made larger, he thought it would need a COA process. He said just changing the content on the attachment would not require a COA process. He said other than what is acceptable under the way that signs are reviewed. Ms. Shook noted that they do not consider works of art signs. She said in this particular case, ECR Software didn't paint the brick; they just attached something to the brick. She said the only thing ECR Software was required to do was get a building permit for the attachment to the wall. Vice-Chair Plaag asked Ms. Shook if there was any language regarding abandoned features. He said he didn't think the UDO had language that addresses if a property owner removes a nonconformity feature, then decided five years later that they want to bring it back. He said he thought that would require a COA process. He added that if they removed it to repair it, it wouldn't trigger a COA process.

Ms. Shook noted the next topic related to Historic Landmarks. She pointed out that there are two-three existing landmarks within the Downtown area. She said these landmarks do not have any specific standards for renovations except for the Secretary of Interiors Standards for Rehabilitations which are note the specific standards being proposed to for the local historic district that they are located in.

Brief discussion ensued on historic landmarks. There was consensus from the Planning Commission, to modify the Historic District language, if allowable, to also apply to any Historic Landmarks in the district until such time speck standards were written for the landmarks. Ms. Shook said she would talk to Ms. Meade about this topic.

Discussion ensued on the B-1 Interface Expansion. Vice-Chair Plaag asked whether the Beasley Broadcasting building should be included in the proposed Historic District boundary because of the language which requires the State of North Carolina to consent to its inclusion in the Historic District boundary. Ms. Shook said she had spoken to Ms. Meade about this situation and while the property can be included in the overlay, the town could not enforce the overlay standards. She also noted the University would still have to meet the requirements of the zoning district that they are in.

Discussion ensued on how to handle the occupancy concerns heard at the Public Hearing. She noted the overall concern was two-fold. The first concern is regarding multi-family uses that are currently on R3 zoned property that allow up to four unrelated persons are proposed to be rezoned to a B1 District which

no longer allows multi-family as a use outside of a mixed-use and that only allows up to two unrelated persons.

Ms. Shook noted that a similar concern is that some of the properties in the existing B1 zoning district or R3 zoning district in the project area are single-family dwellings, and their occupancy the B1 prior to 2014 and in the R3 was more significant than what is allowed in either of the new B1 districts or the R1A district.

Ms. Shook reminded the Planning Commission that Ms. Meade had made an interpretation for the multi-family units which noted that occupancy of those units went with the approval of the use and the occupancy would be part of the legal non-conforming use if rezoned to B1. Ms. Shook noted that she felt that the issue remains for how to handle the single-family and two-family dwellings that are currently in the B1 since the approvals for those would not automatically have an approval for increased occupancy. will. Vice-Chair Plaag pointed out that a few houses on the North side of Howard Street and near the Presbyterian Church and a couple of houses on the North side of King Street near Terry Drive would be affected.

Ms. Shook said some of the occupancy concern was hurting the income of the single-family homes that are currently rentals within the project area. Vice-Chair Plaag asked the risk of inserting proposed language discussed at the public hearing if they had already enjoyed it before this change. He said this means they are essentially grandfathered in. The ordinance clearly says that the occupancy is not a use and cannot be legally grandfathered. She pointed out that no single-family or two-family homes should have been created after January 1, 2014, because they were no longer permissible use within the district.

Vice-Chair Plaag thought of one exception that is a student union house at the intersection of Appalachian Street and Howard Street that would be newly zoned as B1 Core. He said it is currently being used as a social house or meeting house. He said presumably it is a single-family dwelling. He said someone could buy it from the owner and say they would put four unrelated people in it. He said he didn't know if that would be an adverse change at that location. Ms. Shook noted that someone has already purchased that property, and they are running an office out of it and are renting out the rooms in it. She said it is not a single-family anymore. He said that introducing the proposed language solves the problem that exists without creating an obvious adverse effect. He said he is supportive of that proposed language.

Discussion ensued on to what language should be created. Vice-Chair Plaag asked why the properties on the east side and Queen Street, including Bent Street, were selected for the R1A when the entire neighborhood to the north is also single-family homes and zoned R3. He said it almost sounds like we are creating more restrictive zoning on single-family dwellings. Ms. Shook explained that the area to the north of Queen Street and Bent Street is actually zoned R4 and the properties next to the R4 were zoned R1. She said the R4 zoning district allows single-family, two-family, manufactured homes or townhomes. She reminded the HPC that the Council worked on a project about two years ago and asked the Planning Staff to look into possibly rezoning these properties. She said that the neighborhood to the north was considered to be potentially rezoned to R1A from R4.

Member Veno asked about the properties that take access directly from Bent Street that are causing a concern over the rezoning. Ms. Shook said that the owners of these properties would have to provide parking. She said that having additional parking on Bent Street would not be advisable. She noted that the streets have to be 18 feet wide, which is not that wide. Ms. Shook said the change for these property owners in zoning overall means that they would not be able to develop it in the future under B1 standards but under the standards of the R1A.

Vice-Chair Plaag said that his understanding is that the argument that Mr. Jordan Sellers and Mr. Dusty Stacey made was that they purchased these properties, knowing and anticipating that they would enjoy

the development rights at some point in the future and now they feel the properties would be worthless because they don't have that expanded range of commercial possibilities for these lots.

At 7 p.m. Ms. Allison Meade, Town Attorney, joined the meeting. Discussion ensued on Ms. Meade's participation. Ms. Shook and the HPC agreed that they would continue with the agenda topics and report any complicated issues that would need to be addressed with Ms. Meade.

Discussion ensued on Building Height in the B1 Downtown Interface. Ms. Shook said the original recommendations did not recommend any changes to the height standards. She said the standards tell you how to measure building height on a site, which is the average sidewalk elevation at the street level. She said some of the properties discussed on the west side of town have a change in grade. She said if the HPC wanted to recommend approval to remove these properties as discussed at the public hearing, there would be no issue. She said if the HPC does not want to recommend approval to extract these properties, then a standard for measuring height would have to be developed for said properties. She asked the HPC if they wanted to table this topic to a later in the meeting when the boundaries were up for discussion. There was consensus from the HPC to wait to discuss this topic with the boundary discussion.

Discussion ensued on minimum building footprint in the B1 Downtown Interface. Ms. Shook explained that both B1 districts currently require a building footprint of 50 percent which works in the downtown area on smaller lots. Larger lots on the fringes of the project area though starts to create a development that the Town would not want. Discussion ensued on not requiring a minimum building footprint in the B1 Downtown Interface. Ms. Shook explained the proposed B1 Interface would contain more greenspace than the B1 Downtown Core because they have a building setback and because every vehicle parking space has to be within 60 feet of an over story tree. She explained that the Town regulates density by regulating a minimum livability space, setbacks and building height in all other zoning districts.

Chair Shay said the danger in keeping the minimum footprint is that significant buildings might be created on the larger parcels. She said otherwise; if we allow a smaller percentage, we might get buildings that look scattered because of the size of the lots. She said these buildings might look that way where we want to start transitioning into the B1 Downtown Core. Ms. Shook said that the sidewalk standards would have to be met; they would have to orient their buildings even if they are smaller towards the street and pull them up to 15 feet setback. Ms. Shook said the only reason they can go larger than 15 feet is to provide additional pedestrian amenity between the street and more green space. While slightly more contemporary, Ms. Shook said, the appearance would still be the same as we transition to the Downtown area.

Vice-Chair Plaag talked about the large parcel on the west end near the property owned by Watauga County. He said, for example, if a large hotel was proposed on the top of that hill with a winding driveway to it. He said his point is that in this example, they would not be using 50 percent of their lot on this large parcel. He said that he did not see the wisdom in forcing more intensive development. He said he thought it was appropriate to provide more intensive development in the B1 Core. He said he did not know it was wise to say you have to go big with your development. He said he did not see the benefit to the community overall in doing that. Chair Shay agreed with Vice-Chair Plaag, and she said she wouldn't want to force a more intensive development in the Interface area. She said she thought we could provide the opportunity without forcing things that we might regret later. Ms. Shook asked if the Planning Commission was comfortable requiring a minimum footprint in the B1 Downtown Core and let the other standards regulate development in the B1 Downtown Interface.

Member Veno asked what if a Dollar General, or Motel Six wanted to build there, what standards would they would be required to meet. Ms. Shook said if the B1 Downtown Interface no longer had a minimum building footprint, they would have to meet the Unified Development Ordinance, appearance standards,

setback, building height standards. She said the developer would design their development to fit those standards.

Member Behrend said that she would recommend that we do not require a minimum building footprint.

Vice-Chair Plaag asked that if anyone purchased one of the current parcels that they always have the option to subdivide those parcels and develop them individually. Ms. Shook said that is correct.

Member Veno asked about the ramifications of not having any minimum building requirements. Ms. Shook explained the difference between the B1 Downtown Core and B1 Downtown Interface. She said in the B1 Downtown Core, the developer has to have a building footprint which covers 50 percent of the lot, but they can build something larger than 50 percent; they can build on the entire lot depending on the use. She said some of the uses require parking, and some of them do not. She said the same thing could be done in the B1 Downtown Interface, considering building massing and scale. She noted it is unlikely to happen on some of these parcels because of topography.

There was consensus from the Planning Commission to recommend the minimum building footprint only apply to the B1 Downtown Core.

Discussion ensued on extending the timeframe on the expirations to rebuild nonconforming uses in the B1 Downtown Districts that were damaged or destroyed by acts of God. Chair Shay confirmed that we are discussing extending the 6 and 12 months to 12 or 24 months as discussed at the public hearing. Vice-Chair Plaag suggested that if there is to be an increase in the time then there should be a time limitation from the date that the ordinance is passed because the Town would be granting an exception to these areas that are not available to the other zoning districts in the town.

. He suggested a timespan of five years for a safety net given the properties most likely affected by this updating and only for a catastrophic event that forces a property owner to rebuild.

Member Warren noted that he was undecided on the five- or ten-year extension period. He said he thought no less than five years, maybe ten years, as a maximum extension period.

Vice-Chair Plaag confirmed that no other zoning district in town enjoys the doubled extension periods being proposed for these specific properties that might be affected because of their change from an R3 to B1 Downtown Interface. Member Behrend said that she agreed that the time should be limited. She said that five years made sense, but we would want to revisit it in five years. She also confirmed that the reason it is being extended is because of the shortage of building supplies.

There was consensus that everyone agreed on the five-year extension period for these properties.

Member Veno asked if there might be feedback from people from other zoning districts on the five-year extension period proposed change. Ms. Shook said she would consult with Ms. Meade on this particular solution. Ms. Shook said the Council could decide to extend the time period to the other zoning districts.

Discussion ensued on rooftop additions to existing commercial block buildings. Ms. Shook read the section from packet page 84 "rooftop additions to existing commercial block buildings". She asked the Planning Commission about removing the term "block" in this section. Vice-Chair Plaag suggested that the term "block" be removed from this section of text. He explained that commercial block buildings are boxy, rectangular, and square, usually two and three-story buildings in Downtown Boone. He said they date from the 1860s through typically the 1950's. He suggested that Ms. Shook also review the Design Standards for the Historic District to see if it is the same language for both. There was consensus from the Planning Commission to recommend this change for both projects.

Ms. Shook next discussed issues for renovations and additions to existing development where the principal structure was not historic and now have facades constructed with nonconforming materials. Ms.

Ms. Shook said that there was a concern for the changes to buildings that were less than 50 years old during the public input sessions. She said those building do not get the benefit of using materials that exist on the building though buildings that are older than 50 years do.

Discussion ensued on historical material. Ms. Shook referred to packet page 85 which notes "historical" material found on existing buildings used for the same purpose or location will be found to be acceptable. She said several buildings in the downtown area are one and two-story that are not historic buildings. She said on a historic building, if the historic material was no longer acceptable materials, they could still use those materials because they are found acceptable. She asked how we can ensure that additions or renovations to these non-historic buildings are still architecturally compatible with the existing development.

Ms. Shook talked about a gap in the B1 Downtown Core and the B1 Downtown Interface regarding the materials used on additions and how they relate to the original materials of a building. She noted that there are newer buildings in the B1 Downtown Interface. Vice-Chair Plaag pointed out that for new additions to historical buildings that you don't want your addition to look the same as the historical part of a building because it creates a false sense of historic preservation; you do want there to be a distinction.

Vice-Chair Plaag talked about additions to non-historic buildings. He said that you can change things on a building and still meet the material requirements of the district. He pointed out that the issue is what you do with the material that is original to a building rather than the case being whether it is a new addition or new construction.

Vice-Chair Plaag said the other way around these issues is for the property owner to seek a variance for what they would like to propose to their property. Ms. Shook noted that she had mixed feelings on saying that someone could get a variance because variances by nature should be hard to obtain. She added that there should be a particular outstanding reason why the variance should be issued. Vice-Chair Plaag pointed out that he thought part of the challenge in this particular language was applying it to the B1 Downtown Interface. He said the Community Appearance Commission, when drafting this language, tried to mirror many aspects of the historic district standards and extend them to some degree to the B1 Downtown Interface. He said the CAC's intention was not for someone to return with a non-original treatment to a non-historic building simply because it has been on it for 25 years.

After more discussion, the Commission came to a consensus that a section should be added noting that original materials to non-historic buildings can be replaced with original materials that are similar in design, workmanship and composition.

Ms. Shook noted that those were the only text issues that she noted that needed to be discussed unless anyone else had anything to add. The Commission had no other items to discuss and asked if they could take a break and then come back and discuss the Historic District.

At 8:35 p.m., Chair Shay called for a seven-minute break.

At 8:47 p.m., Chair Shay reconvened the meeting.

1st Motion and Vote:

Vice-Chair Plaag made a motion, seconded by Chair Shay, that the proposed amendments to the town's zoning ordinance and zoning map to create the Downtown Boone local Historic District overlay is consistent with the Town's Comprehensive Plan and any other adopted plans(s) of the town that are applicable with the following two amendments

1. Modify the language to indicate that changes to historic landmarks within the historic district conform to the district standards until such time as individual landmark standards are developed.

2. Remove the word "block" from references to commercial block buildings in regard to rooftop additions.

Because the amendments are 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.
- 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.

Comprehensive Plan Policy 2.3.2. Community Character

- A. The identification, restoration, and active use of structures, buildings, monuments, and neighborhoods of historical 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 architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town.

Comprehensive Plan Policy 2.3.3

- 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.

Comprehensive Plan Policy 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 Count, 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.

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

2nd Motion and Vote:

Vice-Chair Plaag made a motion, seconded by Member Warren, that the Planning Commission recommends approval of the proposed amendments and believes that approval of the text and zoning map amendments to create the Downtown Boone Historic District is reasonable and in the public interest because the proposed Historic District will help to ensure the long term viability and preservation of our Town's Downtown history, architecture and will provide a cohesive relationship among the resources within the district; because the district will encourage tourism and help ensure the sustained and increased property values of the properties within the district over the long term and Because it will be beneficial to Downtown businesses over the long term.

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

Discussion the continued on the concerns with the B1 Downtown Interface boundaries. Ms. Shook said at the public hearing and there was some discussion on concerns from property owners regarding their properties being included in the B1 Downtown Interface. Ms. Shook showed a map that had both the existing and proposed properties to be rezoned.

Vice-Chair Plaag noted he had considered the discussion at the public hearing about creating a gateway into Downtown Boone. He said he would be comfortable with the B1 Downtown Interface starting roughly at Old Bristol Road and Hwy 421. Chair Shay agreed with Vice-Chair Plaag.

Discussion ensued regarding the western boundary of the B1 Downtown Interface. Ms. Shook noted that this would be the time to also discuss building height. She noted that standards for height would have to be created if the boundary was not changed.

Discussion ensued as to removing 1395/1397, 1469 and 1520 West King Street from the project area. Chair Shay, Member Behrend, and Member Warren said they supported removing the three properties. Member Veno noted that he supported removing the three properties because they are unsightly properties. Still, he also stated that he agreed with Council Member Sam Furgieule that one of the reasons we created the B1 Downtown Interface was to preserve this corridor.

Ms. Shook noted that as the town grows, the town could revisit the need for other districts along the corridor. She suggested that at some point a residential district may want to be included in the area at appropriate locations

Discussion next ensued on the properties on Green Street, Straight Street, and Queen Street. Chair Shay pointed out some of the parcels in the area do not face King Street. She said that if you go up to Green Street to the west, some parcels face Green Street, but some face Queen Street on the north end. Member Veno asked Ms. Shook if any other property owners had contacted her from Green Street other than Mr. Jim Deal. Ms. Shook said that she had received some phone calls from people who had received the adjoining property owner letters. Ms. Shook said the people wanted to know what was going on and how it would affect their properties.

Ms. Shook talked about traffic in the Green Street, Straight Street, and Queen Street areas. She noted that you could see as soon as you leave this multifamily area that you enter a heavily intense residential area on the map. Discussion ensued on potential traffic concerns generated by commercial properties. Member Veno talked about the traffic concern and the fact that only one person at the public hearing opposed the proposed rezoning change for this area. He said he didn't know if the proposed rezoning would be any worse than what it already is in that said area.

Ms. Shook noted that Mr. Brian Williams, Chair of the Community Appearance Commission, had also indicated that he not opposed to removing some of the properties along Green Street at the Public Hearing.

Vice-Chair Plaag said that Ms. Diane Blanks, who lives on Green Street, voiced her concern at one of the public input sessions. He noted that Ms. Blanks noted that it was wrong to let the R3 zoning in that area. She said the damage has already been done, and allowing the proposed rezoning to the B1 Downtown Interface will only make it worse in that area.

Vice-Chair Plaag said knowing the neighborhood's concerns or what could be developed in terms of the B1 Downtown Interface knowing it could potentially be even more intensive than the R3 that currently exists there. He said he would be inclined to remove certain properties on Green Street and Queen Street from the proposed B1 Downtown Interface.

Vice-Chair Plaag suggested that the following properties remain in the R3 zoning district and not be placed in the B1 Downtown Interface: 135 Straight Street, 130 Green Street, 150 Green Street, 555 Queen Street, and 575 Queen Street. Chair Shay, Member Veno, Member Behrend agreed with Vice-Chair Plaag on his suggestion to remove said properties from the proposed B1 Downtown Interface.

Vice-Chair Plaag pointed out that with the next Council, they might want to examine these same three properties to restore this neighborhood to some degree. He said they might want to look at potentially reverting them to R1A even though they currently have structures on them. He asked Ms. Shook if the Planning Commission could make a recommendation on this topic at this time. Ms. Shook said that the Planning Commission could make a recommendation for further study on it. Vice-Chair Plaag said this topic would be worth exploring at a different time. Member Veno asked Vice-Chair Plaag what would be the benefit of reverting the zoning to R1A. Vice-Chair Plaag said the rezoning would mean that if someone decided to redevelop on one of these parcels and tear down the existing buildings on it, they would have to come back to the town with an R1A compatible development plan. He said this type of plan would essentially put back a single-family residence with accessory apartments. Ms. Shook explained that there are other neighborhoods that have single-family residential homes that are zoned R3 that probably need attention such as Oak Street and Windy Drive.

Discussion ensued on the property on the east of Queen Street between Park Street and Water Street. Chair Shay pointed out that is the property owned by Mr. Dusty Stacy. She said he had a concern for his rental home that is located beside his office. Vice-Chair Plaag confirmed that the Community Appearance Commission had decided not to include Mr. Stacy's office, a residential home, into the B1 Downtown Interface since it was already being used commercially. The house that Mr. Stacy owns to the west of his office is still a residence.

Discussion ensued on the proposed Starbucks site on King Street. Vice-Chair Plaag noted that one person was concerned with the proposed rezoning change and potential traffic congestion that would be added to this area with the proposed Starbucks site. He further stated that, at present, the current zoning allows for the proposed Starbucks drive-through. He also said if the proposed rezoning is passed, the drive-through would not be permitted. Ms. Shook pointed out that the Planning Staff has already requested and received a Traffic Impact Study for the proposed Starbucks site.

Discussion ensued on the concern at 753 Howard Street. Mr. Mike James, Senior Planner, said that he had spoken to Mr. Potter, who owns 753 Howard Street, and he was concerned that the rezoning would make his property nonconforming. Ms. Shook noted that Mr. Potter's property is currently zoned R3 and that Mr. Potter noted his concerns about commercial development on properties that faced Howard Street and noted he thought his concern was the similar to the concerns heard on the western edge of the project area. Ms. Shook said the rationale for this area was that the commercial redevelopment

opportunities were there, and Howard Street could handle additional traffic if it were already handling residential traffic.

Staff and the Planning Commission reviewed the changes discussed and came up with a list of seven items that they felt needed to be addressed if the projects were to be approved. The Commission noted that they were coming up with conceptual ideas for the most part that Staff would then work out with the Town Attorney and Town Council:

1. Allow existing single-family and two-family dwellings within the project area that are to be rezoned to B1 occupancy of unlimited family and up to 4 unrelated. The exception would end when the property was redeveloped.
2. Allow existing single-family and two-family dwelling within the project area that are to be rezoned to R1A occupancy of unlimited family and up to 4 unrelated. Perhaps specify the addresses in the text.
3. Only require a minimum building footprint for the B1 Downtown Core.
4. Allow an exception to UDO Subsection 7.03.05 to allow uses made nonconforming by a Town-initiated zoning that have been then damaged or destroyed be given 12 months to obtain a permit and 24 months to occupy. This exception is to expire five years from date of adoption.
5. Remove term "block" from Subsection 14.19.04(H)(8)(d)
6. Add language to allow original materials on non-historic buildings to be replaced with original materials similar in design, workmanship and composition.
7. Remove 135 Straight Street, 130 Green Street, 150 Green Street, 150 Green Street, 555 Queen Street, 575 Queen Street, 1395/1397 W. King Street, 1469 W. King Street, and 1520 W. King Street from the project area.

1st Motion and Vote:

Member Venio made a motion, seconded by Member Warren, that the proposed amendment to the town's zoning ordinance and zoning map for the B1 Downtown Expansion project is consistent with the town's comprehensive plan and any other adopted plan(s) of the town that is applicable with the following seven proposed changes:

1. Allow existing single-family and two-family dwellings within the project area that are to be rezoned to B1 occupancy of unlimited family and up to 4 unrelated. The exception would end when the property was redeveloped.
2. Allow existing single-family and two-family dwelling within the project area that are to be rezoned to R1A occupancy of unlimited family and up to 4 unrelated. Perhaps specify the addresses in the text.
3. Only require a minimum building footprint for the B1 Downtown Core.
4. Allow an exception to UDO Subsection 7.03.05 to allow uses made nonconforming by a Town-initiated zoning that have been then damaged or destroyed be given 12 months to obtain a permit and 24 months to occupy. This exception is to expire five years from date of adoption.
5. Remove term "block" from Subsection 14.19.04(H)(8)(d)
6. Add language to allow original materials on non-historic buildings to be replaced with original materials similar in design, workmanship and composition.
7. Remove 135 Straight Street, 130 Green Street, 150 Green Street, 150 Green Street, 555 Queen Street, 575 Queen Street, 1395/1397 W. King Street, 1469 W. King Street, and 1520 W. King Street from the project area.

Because of:

Comprehensive Plan Policy 2.1.1

- 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.
- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
 - D.1. Evaluate development regulations for amendments providing flexibility in the renovation and redevelopment of existing structures and sites.

Comprehensive Plan Policy 2.2.2 Utilities

- E. The Town shall employ incentives to encourage a concentration of intense urban type development with the Urban Growth Area.

Comprehensive Plan Policy 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.
 - A.1 Conduct on-going assessments of critical locations in community deserving special attention by the zoning ordinance, in light of their high visibility, traffic impact, strategic location, or other unique features. Continue to encourage significant new public buildings and outdoor spaces to locate in these and other positions of visibility and strategic prominence. Encourage the private sector to do likewise.
 - A.2 Seek out locations of historical merit in the community, and prepare an action plan for their enhancement, rehabilitation, or relocation as may be necessary.
- B. Multiple and appropriate adaptive reuse of historic resources shall be encouraged.
 - B.1. Amend development regulations to offer flexibility for restoration and active use of historic structures and other resources.
- C. Wise development of the tourism potential of the area's architectural, historic, scenic and natural resources shall be encouraged.

Comprehensive Plan Policy 2.3.3 Housing and 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.
 - A.2. Prepare at least two neighborhood plans, working closely with neighborhood residents, and incorporating the full range of neighborhood issues to include: land use, traffic, housing, neighborhood business services, infrastructure improvements, parks and recreation needs, crime and safety.

Chair Shay made a friendly amendment to also include

Comprehensive Plan Policy 1.1 Overall Objectives

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.

Member Veno and Member Warren accepted the friendly amendment.

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

2nd Motion and Vote:

Chair Shay made a motion, seconded by Member Veno, that the Planning Commission recommends approval of the proposed amendments and believes the approval of the UDO text and zoning map amendments for the B1 Expansion project is reasonable and in the public interest because it provides a tool for orderly and predictable development and redevelopment in the downtown and it strengthens the community's identity as a high country small town.

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

Ms. Shook thanked the Planning Commission for the time the Commission had dedicated to the projects.

Adjournment

Vice-Chair Plaag made a motion to adjourn the meeting at 10:05 p.m. Commission Member Behrend seconded the motion.

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

Elizabeth Shay, Planning Commission Chair

Marlene Crosby, Board Secretary