

**PUBLIC HEARING MINUTES
MONDAY, NOVEMBER 26, 2018, 6:00 P.M.
TOWN COUNCIL CHAMBERS**

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

PLANNING COMMISSION MEMBERS: Elizabeth Shay-Chairperson (arrived at 6:03 p.m.), Eric Plaag-Vice Chairman, Chris Behrend, James Hedrick, and Frank Venio

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections and Brenda Henson-Board Secretary

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

CALL TO ORDER

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

Vice Chairman Plaag called the Planning Commission to order at 6:00 p.m.

APPROVAL OF MINUTES

Council Member Mason made a motion, seconded by Mayor Pro-Tem Clawson for Town Council to approve the September 24, 2018 Public Hearing minutes as written. Council Member Furgiuele wished to amend page 2, 4th paragraph, last sentence to read *Council Member Furgiuele said this topic might need to be further discussed because if the tax relief should only be for the contaminated lot by creating larger tracts of land might be counterproductive to the interest of the Town.* Council Member Mason and Mayor Pro-Tem Clawson accepted the amendment.

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

Vice Chairman Plaag made a motion, seconded by Commission Member Hedrick to approve the September 24, 2018 Public Hearing minutes as amended by Town Council.

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

Chairperson Shay arrived at the meeting at 6:03 p.m.

CASE PL02068-110118 COLLEGE OR UNIVERSITY-OPERATED COMMUNITY ENTERPRISE – UDO TEXT AMENDMENT

Ms. Shook presented this case as outlined in the meeting packet.

Council Member Furgiuele suggested some changes to the proposed text. He felt that Section 15.70 A.1. should read *The activities involved in the use must be the same or closely similar to, and clearly compatible*

with, those uses allowed as of right in the zoning district. Ms. Meade pointed out that the text pertained to activities within a use and not the use itself. Council Member Furguele stated the word activities should then be included in the latter part of the sentence to read *the activities in uses allowed as of right in the zoning district.*

Council Member Furguele suggested removing the words *zoning district* from 15.70(A)(5).

Council Member Furguele referred to Article 34 containing the proposed definition of Community Enterprise and felt the wording was problematic if there was no definition of community in the UDO. He suggested adding wording to say *“For purposes of this section, community shall mean and refer to residents of the Town of Boone at large”*. Ms. Meade stated she did try to define community but found it very difficult because all activities would not be geared toward just the residents of the Town and they could end up excluding some subsets of people, including tourists, if a narrower definition was provided. Therefore, Ms. Meade stated she did not include a definition for community at all. Council Member Furguele noted that he was not suggesting the enterprise serve residents of the Town only but felt if the enterprise did not meet the civic, cultural, or informational needs of the residents, the text should not be allowed as a special exception. Council Member Furguele stated he thought the idea of this text was to provide a benefit to the residents of Boone and if it provided benefits to others as well then that was okay. Ms. Meade suggested the revised definition of Community Enterprise could read *“An enterprise meeting the civic, cultural, or informational needs of residents of Boone”*. Council Member Furguele stated he was okay with that language.

Council Member Furguele then noted that 15.70(A)(3). was missing a word and suggested adding the word *–operated* after university near the end of the sentence.

Mayor Brantz asked if the mention of a private owner in 15.70(A)(4). would prevent the Town from leasing property to a private individual. Ms. Meade replied that it did not.

Vice Chairman Plaag expressed concern about the requirement that the lot cannot be located within 1,000 feet of another lot containing a college- or university-operated community enterprise as stated in 15.70(A)(3). He noted that the entire length of Howard Street from Water Street to Appalachian Street is only 1,600 feet and this creates a scenario with existing lots that could be problematic. Vice Chairman Plaag noted that the Turchin Center is located in the B-1 and would meet the definition of a community enterprise run by the University so there would be a 1,000' limit from that location. Vice Chairman Plaag stated that the Town was proposing to build a parking garage on property located within the B-1 and that, to him, would meet a civic need. However, the 1,000' limit could possibly set the Town up to not be able to meet the limits of the proposed text. Vice Chairman Plaag mentioned a parking lot on Howard Street that is owned by ASU that serves a civic need and would be too close to the HOW Space to meet these ordinance requirements. Vice Chairman Plaag stated he did not know how this would affect the arrangement the Appalachian Theatre is proposing to make where they would be allowing the use of their space by the University for classes during the day and questioned if this would count as a college- or university-operated enterprise if they are renting space from the theater. Vice Chairman Plaag noted he is on the Board of the Theater but had no financial interest in the theater. Council Member Furguele felt that holding classes inside the Theater would be a violation of the UDO and would be well beyond the scope of this proposed text. Ms. Shook responded that the Town has had conversation with the new director of the Theater and there will be further conversations about the use of the theater. She noted that the director had been made aware that allowing ASU to hold classes in the Theater was not a permissible use.

Ms. Meade addressed Vice Chairman Plaag's concerns about the 1,000' separation requirement and stated that the Turchin Center was not privately owned and was an existing use meeting other use requirement of the UDO and would not fall under this proposed text.

Council Member Mason noted that the Turchin Center predated the text that prohibited University uses in the B-1 and was grandfathered in. She explained that University uses were no longer allowed in the B-1 in an effort to maintain the integrity of a viable downtown.

Vice Chairman Plaag wished to clarify that he was supportive of this idea and felt it was very necessary and a good thing.

Ms. Meade referred to Vice Chairman Plaag's comments that parking lots would meet the definition of a community enterprise. She felt that parking needs were very different from civic, cultural, or informational needs.

Vice Chairman Plaag asked if it was correct that because some of these properties were owned by ASU they would not meet the definition of a community enterprise. Ms. Meade replied that, as far as she knew, the HOW Space on Howard Street is the only community enterprise that would exist and noted that the 1,000' separation requirement left few areas in the B-1 where a community enterprise would even be possible. Ms. Meade explained that Council wanted this to be a very limited type of use with the understanding that it could always return to the issue if they decided it was a wonderful idea and wanted to modify the separation limit.

Council Member Furgiuele noted that the Community Appearance Commission was looking at expanding the B-1 and if that happens there could be other opportunities for community enterprises. Vice Chairman Plaag replied that his concern was that the Town did not set itself up for a problem with things that are already afoot.

Vice Chairman Plaag felt that the public could perceive a parking structure as a civic need and did not want to allow that perception if that was not the intent.

Commission Member Veno asked for the definition of enterprise and noted that he felt parking structures could be a civic need. Ms. Meade replied that the word enterprise was a broad term for an organized human effort and noted that a parking structure was not considered a civic need when it was really infrastructure.

Commission Member Veno asked for an example of what a community enterprise would look like. Ms. Shook replied that this text generally referred to the HOW Space on Howard Street. Mr. Ward added that the HOW Space was an event center that was staffed through a grant from the University. He explained that they did upgrades to a privately owned area and were hosting things such as art presentations and public meetings. Mr. Ward stated the idea behind this proposed text was to allow a University use that would also remain on the tax rolls. He added that the project fit the Howard Street concept because you could roll up the doors and have an inside and outside venue.

Mayor Brantz questioned the length of the lease and thought it was going to be 6 years. Ms. Shook explained that the proposed use was no longer going to be a temporary use but a permanent use and would therefore have no lease limit. Mr. Ward felt this would help with monitoring because lease limits were hard to track.

Council Member Furgiuele asked if there should be something included in the definition that excludes parking. Ms. Meade replied that she was uncomfortable with starting to name things that would be excluded. She noted that it was not the legislative intent for parking lots/structures to be considered as community enterprises and felt they had a good record of that legislative intent. Council Member Mason stated that parking was covered by another ordinance in the UDO.

Ms. Meade asked why 15.70(A)(5). referencing signage was needed when all other requirements of the UDO would still apply. Ms. Shook felt this language was left over from when they were going to propose this text as a temporary use and noted the language could be struck.

Council Member Furgiuele referred to 15.70(A)(1). and asked for examples of activities that would be closely similar to activities already allowed in the B-1. Ms. Meade replied that none readily came to mind. Ms. Shook stated that the University could likely have some activities that did not fit into any current use but would be closely related. Ms. Meade added that the UDO was not so comprehensive in its uses that a use couldn't come along that was very similar and clearly compatible and desirable with the Council that was not within the UDO and in that circumstance she felt it made no sense for an applicant to have to come back to Council to request an amendment. Council Member Furgiuele disagreed stating if there was such a use that was so wholly compatible with the Downtown and the B-1 then Council should be amending the UDO to change and add that use to the B-1 instead of allowing a use for colleges only. Ms. Meade replied that it did not make sense to come back to Council and go through the 90 day amendment process. Council Member Furgiuele stated that a private business owner could want to do the same thing on his property that the University is being allowed to do as a community enterprise but would not be allowed to do so unless they petitioned the Council for a text amendment so the only ones not having to go through the 90 day amendment process is the University. Council Member Furgiuele stated he would rather go through the amendment process one time at the beginning and make another use category for the B-1 instead of authorizing uses that couldn't be named because no one knew what they were.

Council Member Mason asked Council Member Furgiuele if he was suggesting the activity must be within an allowed use. Council Member Furgiuele stated that was correct, noting that it would then be compatible, and then if someone came up with something that was not allowed but would be compatible Council could look at that to see if it could be a use that could be allowed for anyone in the B-1, not just colleges and universities.

Vice Chairman Plaag suggested adding language to 15.70(A)(4). that the private property owner must not be affiliated with a college or university.

Vice Chairman Plaag asked why there was a definition of community enterprise when it seemed redundant to the text contained in 15.70(A)(2). Ms. Meade explained this was in keeping with the structure of the UDO. Vice Chairman Plaag suggested having the same language in (A)(2) as in the definition. After some discussion, the general consensus seemed to be to use the term *community as a whole* in both (A)(2) and in the definition.

Ms. Shook outlined the following suggested revised text:

1. The activities involved in the use must be the same as activities of uses allowed as of right in the zoning district.

2. The organization operating the community enterprise shall clearly demonstrate that the enterprise is dedicated to meeting the civic, cultural, or informational needs of the community as a whole as opposed to the needs of the college or university alone.
3. No lot containing a college- or university-operated community enterprise shall be located within 1,000 feet of another lot containing a college- or university-operated community enterprise.
4. The use must be conducted pursuant to a lease between the applicant and a private owner not affiliated with a college or university.
5. Remove this text.

Community Enterprise definition: An enterprise meeting the civic, cultural, or informational needs of the community as a whole.

There was general agreement with these revisions.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 7:09 p.m.

TRANSITIONAL ZONE DISCUSSION

Ms. Shook stated this was supposed to be a joint discussion with Council and requested by Planning Commission regarding multi-family and mixed-use projects that trigger transitional zones and the possibility of removing the need for a Special Use Permit if particular standards are met by the developer. Ms. Shook noted that Planning Commission struggled to understand the direction Council wanted them to take.

Council Member Furguele stated he was the one to propose the idea because he was approached by a developer who told him they were spending a lot of money to go to the Board of Adjustment for transitional zones and were ending up with the same mitigating factors like enhanced landscaping and no outside balconies facing neighborhoods. Council Member Furguele noted that he at first questioned whether incentivizing smaller developments or less density might be things a developer could agree to that might exempt them from going through the Special Use Permit process.

Council Member Furguele stated that mitigating factors for one project may not be the best mitigating factors for another project and, upon further consideration, felt it might be best to stick with the transitional zone process they have.

Council Member Mason stated that developers do have the option to not develop in the transitional zone. She also noted that cottage housing has been discussed as a possible use for transitions.

Ms. Shook stated that the current transitional zone language is a site specific process and it would be difficult to craft requirements in the transitional zone language that the applicant can utilize to obtain a zoning permit by right. Ms. Shook felt there were some process issues that could improve, such as the requirement for neighborhood meetings. Council Member Furguele stated he thought Council Member Ashcraft had requested Planning & Inspections pursue the idea of neighborhood meetings. Ms. Shook replied that the issue had been discussed though specific direction had not been given to her department.

Ms. Shook explained to Planning Commission members that Town Council asked the Planning Department to identify all R-3 and R-4 properties under certain parameters. She noted they have identified the properties with building values less than \$100,000, those currently undeveloped and those not developed with multi-family uses and Town Council will be going through each of those properties one by one to

evaluate whether or not those properties need to be rezoned. Council Member Mason added that part of the discussion will be to decide if more multi-family residential zones are needed to allow for less dense R-3 uses that also might be more compatible as you transition to an R-1, so there may be a community of townhomes rather than a 3 or 4 story apartment complex.

Mayor Brantz thanked Ms. Shook for all the work she did to pull together all the history contained in the packet regarding transitional zone cases and noted that it was very enlightening and he had learned a great deal.

Ms. Shook asked if there was consensus that Planning Commission no longer continue looking into the transitional zone matter. Council Member Furguele felt the transitional zones had been successful in almost every instance. Council members were in agreement.

OTHER MATTERS

There were no other matters discussed at this hearing.

ADJOURNMENT OF TOWN COUNCIL

Council Member Mason made a motion, seconded by Council Member Furguele to adjourn the Council at 7:22 p.m.

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

Rennie Brantz, Mayor

Brenda Henson, Board Secretary

Elizabeth Shay, Planning Commission Chairperson

Chair Shay called a break in the Planning Commission meeting from 7:22 p.m. until 7:29 p.m.

APPROVAL OF PLANNING COMMISSION MEETING MINUTES

Vice Chairman Plaag made a motion, seconded by Commission Member Behrend to approve the October 22, 2018 Planning Commission meeting minutes as written. Chairperson Shay wished to amend page 2, paragraph 4, in the first sentence to say that she did not *necessarily* feel she was qualified. Vice Chairman Plaag suggested adding the word *strictly* after the word based. All parties agreed to the amendments.

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

CASE PL02068-110118 COLLEGE OR UNIVERSITY-OPERATED COMMUNITY ENTERPRISE – UDO TEXT AMENDMENT

Ms. Shook explained to Commission members that they could make recommendations on the text at this meeting, postpone making recommendations until another date-specific meeting, or make

recommendations at their next regularly scheduled meeting, which would currently be on December 24, 2018.

Mr. Ward stated that if Planning Commission made recommendations at this meeting, Town Council would take those recommendations and vote on the issue at their December 18, 2018 meeting.

Vice Chairman Plaag stated his intent regarding this text was not to imply he wanted more ASU incursion in the Downtown but wanted to make sure the Town did not hamstring itself regarding their future development.

Vice Chairman Plaag asked if it was inappropriate for Commission members to ask questions during the Public Hearing without the Council asking for their input first. Ms. Shook and Mr. Ward both assured Commission members that their input was encouraged and necessary and they did not have to be silent until Council asked for their input.

Brief discussion ensued on Staff enforcement when applicants undertook activities not allowed under the approved use.

Commission Member Veno asked what the letters PT200 meant in the Table of Uses. Ms. Shook explained that the P meant the use was permitted in that zoning district and the T200 meant that the use would be subject to a 200' transitional zone.

Vice Chairman Plaag suggested the group discuss the Comprehensive Plan Policies they would like to cite in their recommendations prior to making any votes in an effort to make the motions go smoother.

Chairperson Shay suggested 1.1 Overall Objectives – Economic Development and University.

Chairman Plaag suggested 2.1.1 Economic Development A., D., and I. Chairperson Shay wished to add 2.1.1 H.

Chairman Plaag suggested 2.1.5 Downtown C., D., and F.

Chairman Plaag and Chairperson Shay both suggested 2.3.2 Community Character A.

First Motion and Vote:

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

Comprehensive Plan Update 1.1 Overall Objectives, 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.

Comprehensive Plan Update 1.1 University: Emphasize cooperative planning among the Town, County, and University.

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.

- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
- H. The Town shall promote coordination of economic development resources with the appropriate institutions and agencies. Regional coordination and interaction among areas with a shared economic interest shall be encouraged.
- I. Small business start-ups, expansions and spin-offs shall be encouraged. The presence of ASU and Caldwell Community College and Technical Institute shall be recognized as a necessary and important resource for area businesses.

Comprehensive Plan Policy 2.1.5 Downtown:

- C. A variety of mutually compatible and supportive mixed uses shall be encouraged in the downtown area,
- D. Public and private developments shall be encouraged to incorporate local artistry into public and semi-public spaces downtown.
- F. The maintenance and revitalization of downtown Boone, as well as planning for its future development, will reflect the realities and qualities befitting its geographical setting and function as a center of (1) commercial and service activities, (2) educational and cultural activities, events and (3) public services; and

Comprehensive Plan Policy 2.3.2 Community Character:

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

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

Second Motion and Vote:

Chairperson Shay made a motion, seconded by Commission Member Behrend, that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning ordinance and believes approval is reasonable and in the public interest because of the Comprehensive Plan Policies listed in the first motion and vote and because the proposed text will promote growth and development that enhances the Town's identity and assets and is consistent with the Comprehensive Plan.

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

OTHER MATTERS

Ms. Shook stated that Town Council withdrew their request to change the board appointment process for the Planning Commission and Board of Adjustment and has asked Staff to come back with a draft text that follows the recommendations made by the Planning Commission. Ms. Shook anticipated the text would go to Council in January. Commission Member Veno asked what would happen now. Ms. Shook replied that the process would remain the same until the new ordinance language went into place and Chair and Vice Chair elections could take place after that.

Ms. Shook handed out complete, updated copies of the UDO to all Commission members.

Ms. Shook reminded everyone of the Volunteer Breakfast planned for December 7, 2018 at 9 a.m. at the Dan'l Boone Inn and asked those who had not already done so to RSVP to the Town Clerk, Nicole Worley.

Ms. Shook noted that, because there were no agenda items, there would be no December Planning Commission meeting.

ADJOURNMENT OF PLANNING COMMISSION

Vice Chairman Plaag made a motion, seconded by Commission Member Behrend to adjourn the meeting at 8:03 p.m.

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

Elizabeth Shay, Planning Commission Chairperson

Brenda Henson, Board Secretary