

Town of Boone
Town Council/Planning Commission
Public Hearing
5:30 PM, Nov. 27, 2017
Council Chambers, 1500 Blowing Rock Road

I. Call to Order of Town Council and Planning Commission

II. Approval of Meeting Minutes

September 25, 2017 - Public Hearing

III. Case PL00800-080917 Robert Brown General Use Zoning Map Amendment

PL00800-080917 Robert Brown, Application Information

PL00800-080917 Robert Brown, Staff Report

IV. WITHDRAWN- Case PL00283-022417 Marketplace Planned Development Zoning Map Amendment Modification

V. Case PL00982-092517 Storage Uses, UDO Text Amendment

PL00982-092517 Storage Uses, Application Information

PL00982-092517 Storage Uses, Staff Report

PL00982-092517 Storage Uses, Request for Use Evaluation

VI. Case PL00991-092617 M1Manufacturing Use Expansion, UDO Text Amendment

PL00991-092617 M1 Manufacturing Use Expansion, Application Information

PL00991-092617 M1 Manufacturing Use Expansion, Staff Report

VII. Case PL01019-092917 Use 9.01 Temporary College and University Use, UDO Text Amendment

PL01019-092917 Temporary Use 9.01, Application Information

PL01019-092917 Temporary Use 9.01, Staff Report

VIII. Consistency Statement Discussion

" A Statutory Modification for Plan Consistency Statements" Coates
Canons Blog post by David Owens posted on June 20, 2017

"Consistently Inconsistent? Considering Consistency Statements for Zoning Amendments", Coates Canons Blog post by Adam Lovelady posted on September 15, 2014

IX. Adjournment of Town Council

X. Planning Commission Approval of Meeting Minutes

June 26, 2017 Planning Commission Minutes

XI. Consideration of Items Heard at the Public Hearing

XII. Adjournment of Planning Commission

**PUBLIC HEARING MINUTES
MONDAY, SEPTEMBER 25, 2017 AT 5:30 P.M.**

COUNCIL MEMBERS: Mayor Rennie Brantz, Mayor Pro-Tem Lynne Mason, Loretta Clawson, Charlotte Mizelle, and Jeannine Underdown Collins

PLANNING COMMISSION MEMBERS: Chairperson Connor Boyle, Elizabeth Shay, Becky Gosky, Abie Bonevac, and Alan Lee

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

OTHERS PRESENT: John Ward-Town Manager, Allison Meade-Town Attorney, and Phil Trew-High Country Council of Governments

CALL TO ORDER

Mayor Rennie Brantz called the Council to order at 5:31 p.m.

Planning Commission Chairman Connor Boyle called the Planning Commission to order at 5:31 p.m.

APPROVAL OF MINUTES

Council Member Mizelle made a motion, seconded by Council Member Collins, to approve the June 26, 2017 Public Hearing minutes as written.

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

Planning Commission Member Shay made a motion, seconded by Planning Commission Member Lee, to approve the June 26, 2017 Public Hearing minutes as written.

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

CASE PL00915-091117 CULVERTS – UDO TEXT AMENDMENT

Jane Shook, Director of Planning and Inspections stated she would like to have some discussion and direction from Council and the Planning Commission regarding the recommended text contained in the packet so that staff could fine tune the language before presenting it for a vote. Ms. Shook noted that the text in its current form would also need approval from the State.

Ms. Meade stated that, while the Town follows basic State requirements, there is very general language in the UDO and staff needs clearer direction. She explained that the purpose of the text change was to provide better control when an applicant wanted to culvert a stream on their property in an effort to maximize the commercial use of the property. Ms. Meade noted that Council had expressed a desire to promote natural streams instead of piped or channelized streams. She explained that the text change would not eliminate culverts that were needed to access property or replacements of existing culverts.

The text change would primarily affect new construction projects. Ms. Meade stated that language was still needed for perineal and intermittent streams as well as allowable plant materials.

Mayor Brantz asked if this text would affect the Precision Printing culvert failure. Ms. Meade replied that the Precision Printing culvert would be grandfathered and not be affected by this text change.

Mr. Ward reiterated that daylighting of streams would be required for new development with the exception of access to property.

Council Member David asked about the plant species. Mr. Ward felt there would be a reliance upon staff to create a plant list that would be acceptable for our region. Chairman Boyle felt Mr. Johnson had a good knowledge of what would be appropriate for the area.

Chairman Boyle felt that stream stabilization and restoration needed to be protected and asked if there could be some clarifying language in Section 20.04.03 to note that language pertained to a project during the construction phase.

Mr. Ward asked if the Town was restricted to whatever the State buffer requirements were and Ms. Meade replied she would check on that and see.

Chairman Boyle suggested that the allowance of 21 calendar days to place groundcover on disturbed areas in 20.04.03 (C) be changed to 7 days.

Council Member David asked if the Town wanted to mandate the daylighting of streams that were currently culverted. Ms. Meade suggested that the Town not mandate daylighting of current culverted streams but encourage daylighting the stream. Mr. Ward added that mandating the replacement of a culvert with the daylighting of the stream may not be feasible for all properties. Council Member Mason felt the Town should find ways to incentivize the daylighting of streams. Chairman Boyle stated there was grant money that could help pay for daylighting streams.

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

Mayor Brantz closed the public hearing on this case at 5:57 p.m.

DISCUSSION OF COMPREHENSIVE PLAN/BOONE 2030 PLAN MERGER

Ms. Shook noted that Council gave staff direction in November, 2016 to merge the Comprehensive Plan with the Boone 2030 Plan and Phil Trew with the High Country Council of Governments was present to provide an update on the work to date.

Mr. Trew began by stating his original estimation of being able to complete the merger in July and August was a little too optimistic. He noted that combining the Comprehensive Plan Map with the 2030 Plan Map was not feasible so the map would become what he called the Future Land Use Map. Mr. Trew stated he had compared and updated the plan so it would contain current information such as population and transportation data, narratives have been shortened, and obsolete information has been deleted. Mr. Trew stated the plan was currently down to 46 pages. He felt there were a few discrepancies in the plan that would require Town Council input. Mr. Trew stated he would like to get public involvement in October or November before developing the final draft to present to Council.

Ms. Shook stated that some of the photos currently contained in the 2030 Plan would be eliminated. She stated that staff would be working with other committees to get their input on sections that pertain to their particular committee. Ms. Shook stated she would like to have a kick-off meeting to obtain public input regarding the plan merger and update. She hoped this updated, merged plan would get the Town through the next 5 years, at which time a more comprehensive update should be conducted.

DISCUSSION OF ADDITIONAL USES IN THE M-1 ZONING DISTRICT

Ms. Shook noted that the Industrial Park was not the only M-1 zoned property in town. She stated there were about 23 properties with an M-1 zoning designation. She noted there were several vacancies in the Industrial Park and an interest in occupying those vacancies had been shown by other uses not currently allowed in an M-1 district. Ms. Shook stated letters had recently been sent to M-1 property owners but she would like more time to hear any feedback from those letters. She hoped to bring recommendations to the October Public Hearing.

Mr. Ward cautioned that some uses could take property off of the tax records. He also expressed concern with possible conflict of users.

Ms. Meade asked if other jurisdictions were facing these issues. Ms. Shook replied that industrial parks have taken on a shopping mall concept. Ms. Shook stated that, while manufacturing has decreased in North Carolina since 2000, the Town did not want to eliminate manufacturing altogether by allowing other uses. Ms. Meade asked what other uses would be acceptable in an M-1 zone. Ms. Shook suggested retail uses, office uses, and possibly recreation uses with some uses being more site specific. Ms. Shook stated residential uses would not be allowed.

Council Member Mason expressed concern that current uses allowed in the M-1 might not have a place to go if some other use takes up the M-1 space.

Council Member David felt it was important to protect uses that are not allowed anywhere else. He noted that the Table of Uses in the UDO did not line up with the Building Code. Council Member David stated the Town needed to come up with what our definition was of manufacturing.

Ms. Shook stated that Boone did not have the infrastructure to attract large manufacturing due to the lack of air, rail, or transit.

Mr. Ward cautioned Council about allowing churches to occupy M-1 districts due to the fact that they often times also ran a daycare or preschool and these uses might not be compatible with manufacturing. Council Member Mason replied that uses needed to be compatible in order to reduce complaints about noise and traffic and urged caution about use allowed. Mr. Ward stated he was a proponent of being cautious and taking small steps.

Council Member Mason felt the Town needed to look at how to bring higher paying jobs to the area and suggested working with the EDC to come up with ideas.

Mayor Brantz expressed the importance of uses fitting with the character of the community.

Ms. Shook asked if Council wished for staff to move forward with making limited changes to bring back for further discussion. This was the general consensus of the Council.

DISCUSSION OF UNIVERSITY SWING SPACE

Ms. Shook explained University “swing space”. She stated that when buildings were being renovated or were under construction there was often times a need for the University to lease space elsewhere to temporarily house the use until construction was complete. Ms. Shook noted that ASU was interested in leasing space in the Industrial Park.

Council Member Mizelle felt there should definitely be a time limit and the space should be leased only. Ms. Meade added that the underlying use must be compatible and this would be a very special and limited category.

Ms. Shook explained that all UDO requirements would still have to be met for any renovations to the the leased space.

Council Member Mason felt the “swing space” should only allow B-3 uses.

Council Member David felt this would not line up with the Building Code because the UDO and the Building Code do not classify uses the same. Ms. Shook replied that the Building Code were different documents, regulating different items and would always most likely be different from each other.

Council Member Mizelle expressed concern with encroachment into neighborhoods.

Council Member Clawson stated she had some problems with the idea.

Ms. Shook stated that ASU was interested in meeting with Town Council to discuss their future building plans. Council agreed that this was a good idea and Council Member Mason felt Planning Commission should be included in this discussion.

Ms. Shook suggested that Council consider allowing this temporary use in the B-3, M-1, and possibly the O/I zoning districts.

Commission Member Lee asked if academic classes could be held in a Swing Space. Ms. Shook replied that it could be possible and cited ASU’s Solar Decathlon as an example. Commission Member Lee asked if there would be public transportation to these “swing spaces”. Ms. Shook felt that would be something the University would have to consider.

ADJOURNMENT

Mayor Brantz adjourned the Council from the hearing at 7:06 p.m.

Chairman Boyle welcomed new Planning Commission members Alan Lee and Abie Bonevac. Approval of the June 26, 2017 Planning Commission minutes was overlooked on the agenda and will be considered at the next meeting.

With no further business, Chairman Boyle adjourned the Planning Commission at 7:08 p.m.

Mayor, Rennie Brantz

Board Secretary, Brenda Henson

Planning Commission Chairman, Connor Boyle

Zoning/Planning Permit Application

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

PERMIT IS FOR (CHOOSE ONE):

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

A. CONTACT INFORMATION

Applicant: Tucker Deal Company: Deal, Moseley & Smith, LLP
Address: PO Box 311, Boone, NC, 28607
Phone Number: 828-264-4734 Email Address: tdeal@dealmooseley.com
Property Owner: Robert D. Brown Company: N/A
Address: 375 Hwy 105 Ext., Boone, NC, 28607
Phone Number: 828-264-1713 Email Address: N/A

B. PROPERTY INFORMATION

Watauga County Parcel Identification Number(s): 2910-27-5331-000

Address/Location: Hwy 105 ext., adjacent to 266 Hwy 105 ext.

Project Name: Brown Combination

C. PERMIT SUBCATEGORIES

Additional Forms Needed

Zoning Permits

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

Board of Adjustment Hearings

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

Planning/Other

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

D. DETAILED DESCRIPTION OF PROJECT

Robert Brown recently purchased two parcels of land on Hwy 105 Ext., which currently contain the Wheeler Produce building(s). The old produce building sits on a parcel that is currently zoned B-3, while the oddly shaped parcel adjacent to and surrounding the building parcel is zoned R-1. This R-1 parcel includes frontage on Hwy 105 Ext. Mr. Brown seeks to combine these two parcels for future, undetermined use consistent with the area.

E. PROJECT MANAGER DESIGNATION

A project manager is responsible for the activities listed in UDO Section 4.19. Single-family and two-family projects involving less than ½ acre of land disturbing activity or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity are exempt from this requirement.

Name: N/A Company: _____
 Address: _____ License #: _____
 Phone Number: _____ Email Address: _____

F. DESIGN PROFESSIONAL INFORMATION**Engineer:**

Name: N/A Company: _____
 Address: _____ License #: _____
 Phone Number: _____ Email Address: _____

Architect:

Name: N/A Company: _____
 Address: _____ License #: _____
 Phone Number: _____ Email Address: _____

G. 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.

J. Tucker Deal

Applicant¹ (Print)


Applicant Signature

8-8-17

Date

Robert D. Brown

Property Owner (Print)



Property Owner Signature

8-8-17

Date

Official Use Only

Project File Name:

Brown, Robert - General Use Map Amendment

Permit Number:

PL 00800-080917

Project Name/Number:

Date: 8-9-17	Fee: \$ 300.00	Receipt Number: 855557	Method of Payment: ck # 3594	Paid By: Brown Heights Apts.
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S:\FORMS\Forms_2015\Zoning\ZoningPlanningPermitApplication_052016.doc

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

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

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

Official Use Only

Project Name/Number:

Permit Name/Number:

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

A. ADDITIONAL APPLICATION INFORMATION

Hearing Date Requested¹: September 21, 2017, Town Council Meeting; October 23, 2017, Public Hearing

B. DEVELOPMENT INFORMATION

Existing Zoning District(s): R-1 Proposed Zoning District(s): B-3

Existing Land Use(s): Vacant Commercial

Adjacent Land Use(s): N: Commercial Medical Office E: Hwy 105 Ext./ Commercial Warehouse

W: Commercial Medical Office/
Horn in the West Dr. - Residential S: Commercial Vacant / Comercial Retail

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

If yes, describe: _____

Total Land Area: .248 acre

C. DOCUMENTS REQUIRED FOR SUBMITTAL

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

D. PROPERTY OWNER SIGNATURE:

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

Robert D. Brown

Property Owner (Print)

 8-8-17

Property Owner Signature

Date

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

Public Hearing Meeting Date: _____

PC Meeting Date: _____

TC Meeting Date: _____

Date of APO Mailed Notification: _____

Date of Posted Notification: _____

Project Approved: ☐ Yes ☐ No

Date Order Recorded: _____

Order Recordation Information: Book: _____ Page: _____

S:\FORMS\Forms_2015\GeneralUseZoningMapAmendmentProjectDataForm_062015.doc

FILED Amy J. Shook
Register of Deeds, Watauga Co, NC
Fee Amt: \$26.00
NC Excise Tax: \$220.00

Bk 1919 Pg 852 (3)
Recorded: 05/25/2017 at 09:28:11 AM
Doc No: 658482 Kind: DEED



Excise Tax: \$ 220.00 ✓

Mail after recording to: DEAL, MOSELEY & SMITH, LLP, P.O. BOX 311, BOONE, NC 28607

PREPARED BY: James M. Deal, Jr., DEAL, MOSELEY & SMITH, LLP
ATTORNEYS AT LAW,
P. O. BOX 311
BOONE, NC 28607 Tel (828) 264-4734

Brief Description for the Index: 0.248 acre & 5,358 sq. feet, Boone Township
Tax Parcel I.D. #2910-27-5331-000

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED, made this 25th day of May, 2017, by and between,

SUSAN DIANE WHEELER (Unmarried)

of 156 Old Butler Road, Mountain City, TN 27683

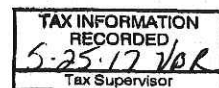
GRANTOR;

and,

ROBERT D. BROWN

of 375 Hwy. 105 Ext., Boone, NC 28607

GRANTEE.



The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple all that certain lot or parcel of land situated in BOONE TOWNSHIP, WATAUGA COUNTY, NORTH CAROLINA, and more particularly described as follows:

--SEE ATTACHED "SCHEDULE A" FOR DESCRIPTION--

THIS DOCUMENT HAS BEEN PREPARED WITHOUT TITLE EXAMINATION

The preparer of this document is not the disbursing agent and therefore is not required to file IRS Form 1099-S.

The property hereinabove described was acquired by Grantor in Book 330, Page 755 and Book

RECEIVED
AUG 09 2017

Communication: PL00800-080917 Robert Brown, Application Information (Case PL00800-080917 Robert Brown General Use Zoning Map

Bk 1919 Pg 853

Doc No: 658482 Kind: DEED

218, Page 531, Watauga County Registry.

A map showing the above described property is recorded in Plat Book ____ at Page ____.

All or a portion of the property herein conveyed ____ includes or ____ does not include the primary residence of a Grantor.

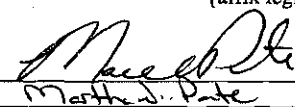
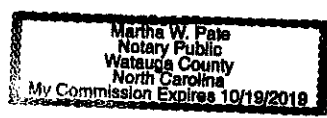
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

This conveyance is made subject to any easements, rights of way, restrictions and matters of record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing the day and year first above written.

 (SEAL)
SUSAN DIANE WHEELER

ACKNOWLEDGMENT	
STATE OF NORTH CAROLINA	COUNTY OF WATAUGA
I, a Notary Public of the County and State aforesaid, certify that SUSAN DIANE WHEELER (Unmarried), Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official seal, this the <u>25</u> day of <u>May</u>, 20<u>17</u>.	
(affix legible notarial stamp or seal <i>within the margins</i> below)	
 _____ Notary's Printed or Typed Name	Notary Public
My Commission Expires: <u>10-19-2019</u>	

G:\Martha\REAL ESTATE\CLIENTS\Wheeler-Brown Sellers Docs\deed.wpd

Bk 1919 Pg 854
Doc No: 658482 Kind: DEED

"SCHEDULE A"

TRACT ONE:

Adjoining J. H. Council, Frank Payne, and Dougherty heirs, and BEGINNING on an iron stake in the State Farm Road, 46 feet below the Northeast corner of the Lula Minton house on said road, and runs straight toward the center of a forked locust tree on the bank of the branch about 30 feet to J. H. Council and Frank M. Payne line; thence with Payne and Council line about 90 feet to a maple, corner to Payne and Council; thence with the line of Council and Payne and Dougherty heirs about 62 feet to a stake (locust) in State Farm Road; thence down said road about 90 feet to the BEGINNING.

TRACT TWO:

BEGINNING on an iron stake found in the northern line of the Wheeler property (DB 218, Page 531); said iron located N69-51-59E 27.78 feet from a leaning maple; thence with the Wheeler line S62-41-19E 59.19 feet; S62-41-19E 6.80 feet; S15-39-23E 99.00 feet to the center of NC Hwy. 105 (aka NCSR 1520); thence with the center of said road N03-59-23W 75.00 feet; N03-15-37E 68.98 feet; N10-29-37E 7.53 feet; thence with a division line as surveyed by Randy Rhodes S82-01-23W 28.68 feet to a 1/2 inch rebar at a power pole; S82-01-23W 81.26 feet to a 1/2 inch rebar on the south side of branch; S40-31-44W 153.01 feet to an iron stake on the eastern margin of Horn in the West Drive; thence with the line of a 0.314 acre tract N84-29-16E 123.38 feet to an iron stake, corner of Wheeler and Ward; thence with the Wheeler line N17-08-00W 88.56 feet to a leaning maple; N69-51-59E 27.78 feet to the point of BEGINNING, containing 0.248 acres inclusive of the existing right of way of NC Hwy. 105.

This being a portion of a 0.568 acre tract as described in deed recorded in Deed Book 293, Page 266 and a portion of a 1.277 acre tract as described in deed recorded in Deed Book 272, Page 396, Watauga County Public Registry.

Town Of Boone

Geographic Information Systems

Search Results Layers

Results List

Details

Show Tax Card (TaxCard.aspx?id=2910-)

Parcel ID: 2910-27-5331-000

Tax District: C02

Property Description: HWY 105 EXT

Property Address:

Tax Account: 1175587

Tax Name: WHEELER, JACK

Tax Address: C/O DIANE WHEELER

Tax Address 2: 156 OLD BUTLER RD

Tax City/St: MOUNTAIN CITY, TN

Tax Zip: 37683-

Landuse:

NBRH Code: 05C9

NBRH Desc: HWY 105 EXTENSION

Deed Book: 330

Deed Page: 755

Date Recorded: 6/8/1995

Instr Type: DEED

Sale Price: 20000

Year Built: 0

Buffer



Communication: PL00800-080917 Robert Brown, Application Information (Case PL00800-080917 Robert Brown General Use Zoning Map

STAFF REPORT
PUBLIC HEARING
OCTOBER 23, 2017
CASE PL00800-080917 ROBERT BROWN GENERAL USE ZONING MAP AMENDMENT



Request

Attorney Tucker Deal has submitted a Planning Permit Application for a General Use Zoning Map Amendment on behalf of Robert Brown to rezone Watauga County PIN: 2910-27-5331-000 from R1 Single Family to B3 General Business.

Parcel Information

Address:	None, vacant parcel
Watauga County PINs:	2910-27-5531-000
Property Owner:	Robert Brown
Total Lot size:	Approximately .248 acre (10,803 square feet)
Jurisdiction:	Corporate limits
Access:	Hwy 105 Extension
Topography:	Steep slope (approximately 40%) that drops off of Horn in the West Drive to behind the buildings on Hwy 105 Extension (West to East, approximately 40 feet in elevation change within 100 feet)
SFHA:	No
Watershed District:	No
Corridor District:	Yes
NCD:	No
Viewshed:	No
Transit Route:	Orange Route (across Hwy 105 Extension)
Utilities:	Town water and sewer available
Current Zoning:	R1 Single Family, Corridor District
Proposed Zoning:	B3 General Business, Corridor District
2030 Plan Designations:	G3 Mixed Use Centers/Corridors
Current Uses:	Vacant

Zoning District Descriptions:

- R1:** The R1 Single Family Residential District is established to provide a low-density living area consisting only of single-family dwelling units and other related uses necessary for a sound neighborhood. The regulations for this district are designed to stabilize and encourage a comfortable, healthy, safe, aesthetically pleasing and pleasant living environment for family life that promotes peaceful quiet enjoyment sheltered from incompatible and disruptive activities that properly belong in nonresidential districts.
- B3:** The B3 General Business District is established to provide a wide range of consumer goods, convenience goods and personal services for the community and surrounding region. Appropriate residential uses are allowed in this district, normally as part of mixed-use developments. The regulations for this district are designed and intended to create a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment for all appropriate uses.

Zoning & Use of Adjacent Properties		
Zoning		Land Use
North	B3 General Business	Medical Office; Office
East	B3 General Business	Commercial, Retail
South	R1 Single Family	Vacant, though the bottom portion contains parking 282 Hwy 105 Extension
West	R1 Single Family	Single-Family dwelling across Horn in the West Drive

Permissible Uses

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

15.07 Table of Principal Uses

Use #	Specific Use	Zoning Districts		Reference
		R1	B3	
1.0 Household Living				
1.01	Single-Family Dwelling	P		
1.02	Manufactured Home “Class A”			15.08
1.03	Manufactured Home “Class B”			15.08
1.04	Manufactured Home “Class C”			
1.05	Manufactured Home Park			15.09
1.06	Duplex (one duplex building per lot)			
1.07	Duplex (more than one duplex building per lot)			15.10
1.08	Townhouse (up to 30 bedrooms)			15.10
1.09	Townhouse (31-100 bedrooms)			15.10
1.10	Townhouse (> 100 bedrooms)			15.10
1.11	Multi-Family Dwelling (up to 30 bedrooms)			15.10
1.12	Multi-Family Dwelling (31-100 bedrooms)			15.10
1.13	Multi-Family Dwelling (> 100 bedrooms)			15.10
1.14	Multi-Family Dwelling in Mixed Use (up to 30 bedrooms)		L	15.11
1.15	Multi-Family Dwelling in Mixed Use (31-100 bedrooms)		L ^{T125}	15.11
1.16	Multi-Family Dwelling in Mixed Use (> 100 bedrooms)		L ^{T125}	15.11
2.0 Group Living				
2.01	Family Care Home	L		15.13
2.02	Family Care Institutions			15.14
2.03	Halfway House, Category 1			15.14
2.04	Halfway House, Category 2			15.14
2.05	Nursing Care Home	L	L	15.14
2.06	Nursing Care Institution		L ^{T125}	15.14
2.07	Skilled Nursing Facility		L ^{T300}	15.14
2.08	Retirement Community, Category 1			15.15
2.09	Retirement Community, Category 2			15.15
2.13	Fraternity or Sorority Dwelling			15.16
2.14	Boarding House		L	15.17
3.0 Transient Living				
3.01	Home for Survivors of Domestic Violence	L		15.18
3.02	Shelter for Homeless, Category 1	S ^{T50}	L ^{T50}	15.19
3.03	Shelter for Homeless, Category 2		L ^{T300}	15.19
3.04	Bed and Breakfast, Category 1			15.20
3.05	Bed and Breakfast, Category 2		L ^{T125}	15.20

Use #	Specific Use	Zoning Districts		Reference
		R1	B3	
3.06	Vacation Rental		L ^{T75}	15.21
3.07	Motel		p ^{T300}	
3.08	Hotel		p ^{T200}	
4.0 Institutional Uses				
4.01	Airport/Landing Strip			15.22
4.02	Heliport			15.22
4.03	Funeral Home Establishment		P	
4.04	Cemetery	P	P	
4.05	Post Office		P	
4.06	Post Office, Distribution		P	
4.07	Animal Sanctuary			
5.0 Government Uses				
5.01	Government Cultural Facility		P	
5.02	Government Neighborhood Cultural Facility, Indoor Activity Only	S	P	
5.03	Government Neighborhood Cultural Facility, Includes Outdoor Activity		P	
5.04	Recreation Facility, Category 1	P	P	
5.05	Recreation Facility, Category 2	S	P	
5.06	Recreation Facility, Category 3		p ^{T50}	
5.07	Event Venue, Category 1		P	
5.08	Event Venue, Category 2		P	
5.09	Event Venue, Category 3		p ^{T50}	
5.10	Landfill			
5.11	Solid Waste Processing			
5.12	Police Substation	P	P	
5.13	Utility Facility, Town	L	L	15.23
5.14	Utility Facility, Government, Neighborhood	L	L	15.23
5.15	Utility Facility, Government, Regional		L ^{T300}	15.23
5.16	Government Facility		P	
6.0 Non-Government Utility Facility				
6.01	Utility Facility, Neighborhood	L	L	15.23
6.02	Utility Facility, Regional		L ^{T300}	15.23
7.0 Telecommunications				
7.01	Antenna Collocation on Existing Wireless Support Structure not requiring additional accessory equipment	P	P	
7.02	Antenna Collocation on Existing Wireless Support Structure requiring additional accessory equipment	L	L	15.24
7.03	Building Mounted Antenna not requiring additional accessory equipment	L	L	15.24
7.04	Building Mounted Antenna requiring additional accessory equipment		L	15.24
7.05	Antenna Collocation on Electrical Transmission Towers			15.24
7.06	Other Antenna		L	15.24
7.07	Wireless Support Structure which meets district height requirements	S	L	15.24
7.08	Stealth Wireless Facility which exceeds district height requirements	S	L	15.24
7.09	Wireless Support Structure which does not meet district height requirements up to and including 120'			15.24
7.10	Other Tower that exceeds 120' in height			15.24
7.11	Emergency Response Communication Antenna	P	P	
8.0 Assembly				
8.01	Religious Assembly, Category 1	P	P	

Use #	Specific Use	Zoning Districts		Reference
		R1	B3	
8.02	Religious Assembly, Category 2	pT125	P	
8.03	Religious Assembly, Category 3		pT200	
8.04	Club/Lodge, Category 1		pT75	
8.05	Club/Lodge Which Does Not Serve Alcohol		P	
9.0 Education				
9.01	Public Colleges and Universities			
9.02	Private Colleges and Universities			
9.03	Trade School			
9.04	High School			
9.05	Elementary School			
9.06	Boarding School			
10.0 Daycare				
10.01	Child Daycare, Large		L	15.25
10.02	Child Daycare Center		L	15.25
10.03	Adult Daycare, Large		L	15.25
10.04	Adult Daycare Center		L	15.25
10.05	All Other Daycare			
11.0 General Sales and Service				
11.01	Kennel		L T125	15.26
11.02	Veterinary Office/Hospital with Outdoor Kennels		L T125	15.26
11.03	Veterinary Office/Hospital without Outdoor Kennels		P	
11.04	Financial Institution ≤ 5,000 ft ²		P	
11.05	Financial Institution > 5,000 ft ²		P	
11.06	Restaurant ≤ 2,500 ft ² open to the public during 10 pm – 6 am		pT75	
11.07	Other Restaurants ≤ 2,500 ft ²		P	
11.08	Restaurant > 2,500 ft ² open to the public during 10 pm – 6 am		pT200	
11.09	Other Restaurants > 2,500 ft ²		pT125	
11.10	Bar			
11.11	ABC Store		P	
11.12	Personal Service Establishment open to the public during 10 pm – 6 am		pT75	
11.13	Other Personal Service Establishments		P	
11.14	Retail Store up to 5,000 ft ²		pT200	
11.15	Retail Store more than 5,000 but less than 25,000 ft ²		L T300	
11.16	Retail Store 25,000 ft ² and greater		L T300	15.27
11.17	RESERVED			
11.18	Business or Professional Office open to the public during 10 pm–6 am		pT75	
11.19	Other Business or Professional Office		P	
11.20	Medical Office, Category 1		pT300	
11.21	Medical Office, Category 2		pT125	
11.22	Medical Office, Category 3		pT125	
11.23	Medical Office, Category 4		P	
11.24	Hospital			
11.25	Medical Emergency Response		pT300	
11.26	Open Air Market, Recurring		L T75	15.29
11.27	Vehicle Sales and Service		L T75	15.30
11.28	Equipment Sales and Service		L T125	15.31
11.29	Moped Sales and Service		P	
11.30	Boat or Marine Craft Sales and Service		L T75	15.32

Use #	Specific Use	Zoning Districts		Reference
		R1	B3	
11.31	Impound Lot/Towing Service		L ^{T125}	15.33
11.32	Gas Station		p ^{T125}	
11.33	Car Wash		p ^{T125}	
11.34	Seasonal Retail Activities and Amusements		P	
12.0 Recreation				
12.01	Indoor Shooting Range		L ^{T75}	15.34
12.02	Outdoor Shooting Range			
12.03	Indoor Theater		P	
12.04	Outdoor Theater		p ^{T125}	
12.05	Event Venue, Category 1		P	
12.06	Event Venue, Category 2		p ^{T125}	
12.07	Event Venue, Category 3		p ^{T200}	
12.08	Campground and Recreational Vehicle Park		L ^{T200}	15.35
12.09	Coliseum		S ^{T300}	
12.10	Recreation Facility, Category 1		P	
12.11	Recreation Facility, Category 2		p ^{T50}	
12.12	Recreation Facility, Category 3		p ^{T200}	
13.0 Agriculture				
13.01	Garden, Community	L	L	15.36
13.02	Garden, Residential	L	L	15.37
13.03	Agricultural Operation Excluding Livestock			
13.04	Agricultural Operation Including Livestock			
13.05	Swine Farm			
13.06	Confined Animal Feeding Operation (CAFO)			
13.07	Custom Slaughterhouse			
13.08	Other Slaughterhouse			
13.09	Forestry	L	L	15.38
14.0 Manufacturing				
14.01	Microbrewery		L ^{T125}	15.39
14.02	Brewpub		L ^{T125}	15.39
14.03	Brewery/Distillery		L ^{T125}	15.40
14.04	Brewery/Distillery, Other			15.41
14.05	Winery Associated with a Vineyard			15.42
14.06	Winery		L ^{T125}	15.42
14.07	Winery, Other			
14.08	Extraction of Earth Materials			
14.09	Machine/Welding Shop		L ^{T200}	15.44
14.10	Manufacturing, Other			15.45
15.0 Parking				
15.01	Parking Lot		L	15.46
15.02	Parking Structure		L	15.47
15.03	Park and Ride Lots		L	15.46
16.0 Storage				
16.01	Mini-Storage		L ^{T78}	15.48
16.02	Outdoor Storage			15.49
16.03	Warehouse			
16.04	Fuel Storage Facility		p ^{T300}	
16.05	Chemical Storage Facility			

Use #	Specific Use	Zoning Districts		Reference
		R1	B3	
17.0 Transportation				
17.01	Passenger Terminals		pT200	
17.02	Trucking or freight terminal ≤ 10,000 ft²		pT125	
17.03	Trucking or freight terminal > 10,000 ft²			
18.0 Waste Related Uses				
18.01	Recycling Drop-off Station			15.49
18.02	Recycling and Salvage			15.49
18.03	Junkyard			
18.04	Private Landfill			
19.0 Particular Activities which pose Particular Concerns about Public Health				
19.01	Electronic and Internet Gaming		S	15.50
19.02	Adult Establishments		S	15.51

15.07.01 Table of Accessory Uses

Use #	Accessory Uses	Zoning Districts		Reference
		R1	B3	
A-1	Secondary Suite	L	L	15.52
A-2	Home Occupation	L	L	15.53
A-3	Accessory Dwelling Unit		L	15.54
A-4	Drive-Through		L	15.55
A-5	Outdoor Display		L	15.56
A-6	Outdoor Storage		L	15.57
A-7	Outdoor Dining		L	15.58
A-8	Automated Teller Machine (ATM)		P	
A-9	Automated Teller Machine (ATM), Freestanding		L	15.59
A-10	Produce Stand			15.60
A-11	Poultry	L	L	15.61
A-12	Livestock, Small	L	L	15.62
A-13	Livestock, Large			15.63
A-14	Bees	L	L	15.64
A-15	Garden, Residential	L	L	15.65
A-16	Satellite receiving antennas less than 1 meter in diameter	L	P	
A-17	Satellite receiving antennas less than 2 meters in diameter		P	
A-18	Satellite receiving antennas 2 meters and greater in diameter		S	
A-19	Helistop		S ^{T300}	
A-20	Swimming pools, spas, and hot tubs	L	L	15.66
A-21	Caretaker's residence		L	15.67
A-22	Vehicular Gate	L	L	15.68
A-23	Vehicle Washing Station		P	
A-24	Chemical Storage Facility		pT125	
A-25	Open Air Market, Accessory	L	L	15.29
A-26	Daycare, Small	P	P	

15.07.03 Table of Temporary Uses

Use #	Temporary Uses	Zoning Districts		Reference
		R1	B3	
T-1	Temporary Care Provider Dwelling		L	15.69
T-2	Temporary Construction or Repair Dwelling	L	L	15.69
T-3	Temporary Construction Trailer	L	L	15.69
T-4	Temporary Mobile Medical Unit		L	15.69
T-5	Temporary Classroom		L	15.69
T-6	Temporary Portable Storage Containers			15.69
T-7	Temporary Staging		L	15.69
T-8	Temporary Non-Fixed Site Event Venue		L	15.69
T-9	Carrier on Wheels (COW)	L	L	15.69
T-10	Yard Sales	L	L	15.69
T-11	Itinerant Merchant/Peddler	L	L	15.69
T-12	Open Air Market, Temporary		L	15.29

Intensity/Density Regulations:

Zoning District	Min. Gross Land Area	Min Lot Width	Min. Street Frontage	Min. Livability Space Ratio (LSR)	Setbacks	
					Street	Interior
R1	8,000 ft ²	70 ft.	56 ft.	.53	20 ft.	14 ft.
B3	5,000 ft ²	50 ft.	40 ft.	.27	20 ft.	17 ft.

Building Height

Zone	Height Limitation (Feet)
R1	3 stories
B3	3 stories /45' (primary) – 5 stories/67' (secondary)

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

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15):

The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Open Space: Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes.

Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

Mass Transit: Enhance and support the mass transit system as an effective alternative to the congestion created by the individual automobile.

Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

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

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

1.2 Growth Strategy Map (p. 17): The property is located within Primary Growth Area. The Primary Growth Area is that portion of the urban growth area where urban level of facilities are already in place or can be provided most cost effectively. This is the area where near term growth and development is to be especially encouraged.

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 cost 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.
- 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.

2.2 INFRASTRUCTURE

2.2.2 Utilities

- A. Extensions of water and/or sewer services that could result in scattered, non-directed development and costly provision of other urban services shall be prohibited.
- B. Water and sewer services shall be concentrated within the limits of a geographically defined Urban Growth Area. The Primary Growth Area shall receive first priority for the provision or enhancement of water and sewer services.
- C. The Town shall consider the highest level of participation in the cost of providing water and sewer services within the Primary Growth Area with the next highest level of participation considered for the Secondary Growth Area.
- E. The Town shall employ incentives to encourage a concentration of intense urban type development within the Urban Growth Area.

2.3 THE COMMUNITY

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

2.3.1 Community Appearance

- C. The significance of major roadway entrances into Boone as measures of community image and quality shall be recognized through building placement, landscape, signage and other visual improvements. The Town, along with private property owners and developers, shall work to jointly improve the appearance and design of major street corridors.

2.3.2 Community Character

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

BOONE 2030 LAND USE PLAN

Framework Plan: The Framework Plan located in Article 4 of the Boone 2030 Land Use Plan is a land use policy map intended to provide guidance to Boone's leaders as they make decisions on where and how the community should grow. It provides the overall structure for orchestrating appropriate patterns of growth and environmental conservation throughout the community. As such, it provides the framework for and is the cornerstone of the Land Use Plan. The Framework Plan methodology divides land within the study area into six separate classifications or "sectors" (labeled as O-1 through G-4). These range from the most natural (Preserved Lands) to the most urbanized areas (Downtown/Mixed-Use), with each sector reflecting the appropriate balance between environmental conservation and development intensity for the area.

This property is located primarily within the G3 Sector.



G3 Sector: Sector G-3, indicated in dark orange/red, is intended to apply along high-capacity regional thoroughfares at major transportation nodes, or along portions of highly-traveled corridors. G-3 land generally falls within areas for higher-intensity regional-serving development. Care should be taken to limit the length of G-3 corridor developments to avoid the creation of lengthy, undifferentiated linear strip development. Attention to local geography and environmental conditions can assist in this definition, with special attention given to areas in O-1 and O-2 sectors along water courses.

Appropriate Land Uses/Development Types: single-family and multifamily residential; neighborhood-serving commercial uses (retail and office); civic uses; traditional neighborhood developments; neighborhood centers; regional centers; industrial districts

Certificate of Mailing

I, Brenda Henson, certify that individual notices meeting the requirements of Article 9 of the Town of Boone UDO were placed in the mail (first class) on October 9, 2017.

Marlene Crosby, Administrative Support Specialist

Certification of Posting

I, Marty Little, certify that the subject property was posted as required in Article 9, Subsection 9.03.03(B)(2) of the Town of Boone UDO on October 9, 2017.

Marty Little, Planner

PLANNING BOARD REPORT

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning map ☐is OR ☐is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial for the following reasons:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

ACTION TAKEN

First motion and vote: The proposed amendment to the Town's zoning map ☐is OR ☐is not consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: I move to ☐approve OR ☐deny the proposed amendment to the Town's zoning map and believe ☐approval OR ☐denial is reasonable and in the public interest because:

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:
PL00982-092517
Case Name: Storage Uses,
UDO Text Amendment

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: PO Drawer 192, Boone, NC 28607
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 15

Section(s): 15.07, 15.48, 15.36

Brief Description of Amendment (Attach Proposed Text):

In May 2017, Planning Staff received a request for evaluation of use for a facility using temporary storage containers as a principal use (request). Staff has reviewed the existing uses listed in Section 15.07 Table of Principal Uses (Use Category 16.0 Storage), and in UDO Subsection 15.07.01 Table of Accessory Uses (Temporary Portable Storage Containers) and determined that this type of use has not been explicitly permitted, prohibited or restricted by the UDO, therefore is considered an "unlisted use" which required evaluation in accordance with UDO Section 15.02 Unlisted Uses. Staff determined that this type of use changes the nature and location of storage outside of a principal building and may impact the transportation requirements that were customarily considered for Use 16.01 Mini-Storage. Therefore pursuant to UDO Section 15.02 Unlisted Uses, the Planning Director has initiated an UDO amendment because this particular use is likely to be common or recur frequently and the omission is likely to lead to public uncertainty and confusion.

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, P&I Director
Applicant (Print)

Jane Shook, P&I Director
Applicant Signature

September 25, 2017
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
09/25/2017	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting Date: October 23, 2017

PC Meeting Date: October 23, 2017

TC Meeting Date: November 16, 2017

Text Approved: ☐ Yes ☐ No

Notes:



**STAFF REPORT
PUBLIC HEARING
OCTOBER 23, 2017**

CASE PL00982-092517 STORAGE USES, UDO TEXT AMENDMENT

Request

In May 2017, Planning Staff received a request (attached) for evaluation of use for a facility using temporary storage containers as a principal use (request). Staff has reviewed the existing uses listed in Section 15.07 Table of Principal Uses (Use Category 16.0 Storage), and in UDO Subsection 15.07.01 Table of Accessory Uses (Temporary Portable Storage Containers) and determined that this type of use has not been explicitly permitted, prohibited or restricted by the UDO, therefore is considered an “unlisted use” which required evaluation in accordance with UDO Section 15.02 Unlisted Uses. Staff determined that this type of use changes the nature and location of storage outside of a principal building and may impact the transportation requirements that were customarily considered for Use 16.01 Mini-Storage. Therefore pursuant to UDO Section 15.02 Unlisted Uses, the Planning Director has initiated an UDO amendment because this particular use is likely to be common or recur frequently and the omission is likely to lead to public uncertainty and confusion.

Proposed Amendment

The text below in ~~red strikethrough~~ is the text proposed to be deleted and the blue underline is the new text for consideration.

§ 15.48 ~~MINI-STORAGE.~~Self-Storage Facilities

15.48.01 Facilities can only be used for storage of materials and must not be used for assembly, fabrication, processing or repair.

15.48.02 Storage of hazardous, toxic, explosive substances, or any other substance requiring a 704 placard, is prohibited.

15.48.03 ~~Mini~~Self-storage units accessed by customers on site must be constructed with the compartment doors facing internally.

15.48.04 All ~~mini~~-warehouse compartment doors accessed by customers on site must open on an internal access driveway having a minimum paved width of twenty feet.

15.48.05 A 100% opaque fence with a minimum of height of six feet and a maximum height of eight feet shall be provided around the portion of the property used for the ~~mini-storage development~~. Fences shall be constructed of wood, brick, stone or other similar materials, but also must be architecturally compatible with ~~the~~any proposed structure.

15.48.06 If the ~~mini-warehouse-storage~~ facility has a locked and keyed entrance, two staging spaces of at least 35 feet must be located outside of the public right-of-way.

15.48.07 The following activities shall be prohibited on the premises:

A. Commercial, wholesale or retail sales, flea markets, peddling, garage sales or other similar types of activities. However, the management of the self-storage mini-warehouse complex may conduct an auction or sale of abandoned or stored materials to settle unpaid storage bills consistent with North Carolina law.

B. Habitation of storage units by humans or animals.

15.48.08 Outdoor storage ~~in a mini-storage development~~ of items other than storage containers shall not exceed 25% of the total land area and must be secured and screened in accordance with Section 15.57.

15.48.09 Storage facilities that use temporary portable storage containers may only leave the portable storage containers in parking and loading areas the length of time it takes to place them in the secured storage area, not to exceed twenty-four (24) hours. Temporary portable storage containers may not be used for on-site advertising.

15.48.10 Storage facilities that store temporary portable storage containers outside of a fully enclosed building may not stack the units unless the units are substantially screened by the required fence, and the fence together with existing mature landscape material or topography result in an opaque screen so that the stacked units are not visible to adjacent property owners or from a public way.

§ 15.69 TEMPORARY USES.

15.69.01 General regulations.

- A. Unless otherwise provided here in, all listed temporary uses are required to obtain a permit in compliance with the regulations of this section.
- B. Unless expressly permitted no sign may be erected in conjunction with a temporary use.
- C. Only those improvements and modifications minimally necessary for the temporary use to function are permitted.
- D. In the event the property owner fails to remove a temporary structure within the described time frames after the permit authorizing its use has been terminated, the town may remove the said temporary structure at the expense of the owner, and may seek to recover through collection efforts or a civil action against the owner, the costs of removal, court costs and attorney fees.
- E. A sight triangle ten feet by 70 feet must be observed at all intersections of driveways or streets with adjacent streets.
- F. Temporary uses shall not be subject to the requirements of Article 25 Community Appearance Standards unless provided in this section.
- G. No required existing landscape buffer may be disturbed for any temporary use.
- H. All temporary uses shall meet all applicable North Carolina building codes.
- I. Unless otherwise provided herein, the land use intensity ratios of Section 16.01 shall apply.
- J. Unless otherwise provided herein, landscaping is not required for temporary uses.

...

15.69.07 Temporary portable storage containers. Placement and use of a temporary portable storage container ~~are(s) is~~ subject to the following conditions and limitations:

~~—A. General standards for temporary portable storage containers.~~

~~1. The temporary portable storage container(s) is only allowed on a vacant lot (those with no principal uses) in the OI Office Institutional and the M1 Light Industrial zoning districts.~~

~~a. Temporary portable storage container(s) located on a vacant lot must be related to an individual business entity.~~

~~2. The temporary portable storage container(s) shall be placed on the lot in such manner that it meets all required setbacks.~~

~~3. The location and placement of the temporary portable storage container(s) must be selected so as to minimize any negative effects on adjacent properties.~~

~~a. Temporary portable storage containers may not be placed against any pedestrian way.~~

~~4. The land use intensity ratios of Section 16.01 do not apply to a temporary portable storage container(s).~~

~~5. A temporary portable storage container(s) may not be placed within any public right-of-way.~~

~~6. Placement of all temporary portable storage container(s) must be approved by the Fire Marshall.~~

~~7. A temporary portable storage container(s) shall neither display any attached signage nor be used as signage for any business.~~

~~8. For a period not exceeding 30 days, a lot may have no more than 20 temporary portable storage containers per acre.~~

~~a. A short-term permit for a temporary portable storage container(s) shall be valid for no more than 30 days in any 12-month period.~~

~~b. The 30-day time frame for the temporary permit begins the day the first temporary portable storage container is placed on the lot after the permit is issued.~~

A. Use. Temporary portable storage containers:

1. Shall only be used for storage of goods and materials.

2. Storage of hazardous, toxic, or explosive substances, or any other substance requiring a 704 placard is prohibited.

3. Commercial, wholesale or retail sales, flea markets, peddling, garage sales or other similar types of activities is prohibited.

4. Habitation of storage units by humans or animals is prohibited.

5. Shall be placed only on the lot for which the temporary portable storage container is being used.

6. Temporary portable storage containers not associated with a principal use are allowed only in the M1 Manufacturing District.

B. Number allowed.

1. Single-family and two-family dwellings units are limited to two (2) temporary portable containers at any given time.

2. Multi-family developments and mixed use developments with multi-family dwelling units are allowed at least two (2) temporary portable containers and can have more so long as the total number of temporary portable containers does not exceed 1 container for every 20 dwelling units.

3. Non-residential commercial developments are allowed at least two (2) temporary portable containers and can have more so long as the total number of temporary portable containers does not exceed 5% of the total vehicular surface area for the total development.

C. Duration of use.

1. Single-family and two-family dwelling units may utilize a temporary portable storage container for a period of fourteen (14) consecutive days, up to two (2) times per calendar year.

2. Each dwelling unit in multi-family and mixed-use developments may utilize a temporary portable storage container for a period of seven (7) consecutive days, up two (2) time per calendar year.

3. Non-residential commercial uses may utilize a temporary portable storage container for a period of sixty (60) consecutive days, up to two (2) times per calendar year.

4. In any district, a temporary portable storage container being used in connection with or to accommodate the repair, modification or construction of a structure or development may be utilized for the duration of a building permit on the same parcel.

5. The time, in all instances, shall run from the time of delivery of the container to the time of removal.

D. Placement. A temporary portable storage container:

1. Is subject to and shall be placed on a lot so as to comply with all interior setback requirements

2. Shall be placed so as to minimize negative impacts on adjacent property.

3. Shall not be placed on a street, sidewalk or trail or within any right-of-way.

4. Shall be placed within a vehicular surface area though it shall not be placed in any location that would interfere with vehicular or pedestrian circulation or cause reduced visibility at street intersections.

5. Shall adhere to all applicable building and fire code regulations for the purpose of ensuring safe passage for fire protection, to and from structures, and access to utility shut-off valves.

6. Shall not be located in any required landscaped area.

7. May not be stacked on top of each other outside of the provider's storage facility.

E. Signage: A sign displaying the container provider contact information is required to be attached to the container. There are no limitations on the amount of signage that can be

displayed on a container, however, signage is limited to provider information and cannot include advertisements for any other product or service.

F. Permitting:

1. A zoning permit is not required for use of a temporary portable storage container at a dwelling unit.

2. Non-residential commercial users are required to obtain a zoning permit for any utilization of a temporary portable storage unit for more than 14 consecutive days. A zoning permit is required for each separate time of utilization.

...

15.07 TABLE OF PRINCIPAL USES.

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
16.0 Storage																			
16.01	Mini-storage <u>Self-Storage Facilities</u>	L ^{T125}											L ^{T75}	L ^{T75}					15.48
16.02	Outdoor storage													L ^{T75}					15.49
16.03	Warehouse													P ^{T75}					
16.04	Fuel storage facility												P ^{T300}	P ^{T300}					
16.05	Chemical storage facility																		

15.07.03 Table of temporary uses.

Use #	Temporary Use	Zoning Districts																Reference	
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3			
T-1	Temporary care provider dwelling	L			L	L	L	L	L	L	L	L	L					15.69	
T-2	Temporary construction or repair dwelling	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69	
T-3	Temporary construction trailer	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69	
T-4	Temporary mobile medical unit										L		L					15.69	
T-5	Temporary classroom									L			L					15.69	
T-6	Temporary portable storage containers	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	L	<u>L</u>	<u>L</u>	<u>L</u>	L				15.69	
T-7	Temporary staging									L			L	L				15.69	
T-8	Temporary non-fixed site event venue	L								L			L					15.69	
T-9	Carrier on wheels (cow)	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69	
T-10	Yard sales	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69	
T-11	Itinerant merchant/peddler	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69	
T-12	Open air market, temporary	L								L	L	L	L	L				15.269	

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15):

The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Open Space: Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes.

Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

Mass Transit: Enhance and support the mass transit system as an effective alternative to the congestion created by the individual automobile.

Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

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

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

Comprehensive Plan Policies: Staff has reviewed land use and comprehensive plan policies, and listed those policies which in staff's opinion have a bearing on the request. The Commission and Council should review these policies carefully. Each member may make his or her own interpretation as to the relevance of each and which carry the most weight thereby shaping their overall recommendation.

COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources.

E.1 Continue to look for ways to make development regulations and permit procedures more predictable and timely. Evaluate opportunities for administrative review and permit issuance for development projects which, due to their small size or relatively minor impacts, may not require review by a formal public commission or board.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial for the following reasons:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: I move to ☐approve OR ☐deny the proposed amendment to the Town's zoning ordinance and believe ☐approval OR ☐denial is reasonable and in the public interest because:

HAMPTON PROPERTY CO., LLC
And
CAREFREE PROPERTY COMPANY, LLC
1846 US HWY 421 S
BOONE, NC 28607
828-263-9076

To: Jane Shook
Town of Boone
Planning Department

RECEIVED

MAY 19 2017

From: Scott Porter
Member/Manager
Hampton Property Company, LLC

May 4, 2017

We own the 1.675 acre site at 1846 US Hwy 421 S in Boone. The parking area behind the main building is used for materials, trailer, equipment and vehicle storage for our business. Existing site improvements include a 14,000 sq. ft. office warehouse, and a small free-standing block office/storage building. There is a model home on the site which is being moved shortly.

We want to begin operations as a portable storage business; similar to the PODS operations you may be familiar with. We are investigating and have visited a MiBox dealership in Greensboro. (<http://mobilecontainersales.com/>) These types of business have portable storage containers of varying sizes which they keep on-site and which are moved to a customer's location when requested and then generally the unit is returned to the PODS business' site for temporary storage of the customer's possessions. The containers may or may not include the business logo and/or advertising. We want to store containers outside on our site and advertise them for rent. The area for storage would principally be behind the building on the vacant land area. In addition, we want to place some units next to our building in the area currently occupied by our model home and occasionally we would have units temporarily parked in front of the building, waiting to be moved to the storage area in back. We want to start with a few units (>21) and use the existing parking area. We would want to add some lighting and gates and fencing for security at this time, but do not anticipate any significant grading, modification or other improvements. As demand dictates we would add additional units and undertake the site improvements to the parking area described below.

Once the business is established, we would perform site work consisting of: We would need to grade the area out and provide gravel for the containers to sit on and add some paving to the area the trucks would use. We may remove the existing small free-standing block building. In addition, The total cost of improvements should not exceed \$100,000. The property just appraised for in excess of \$1,000,000.

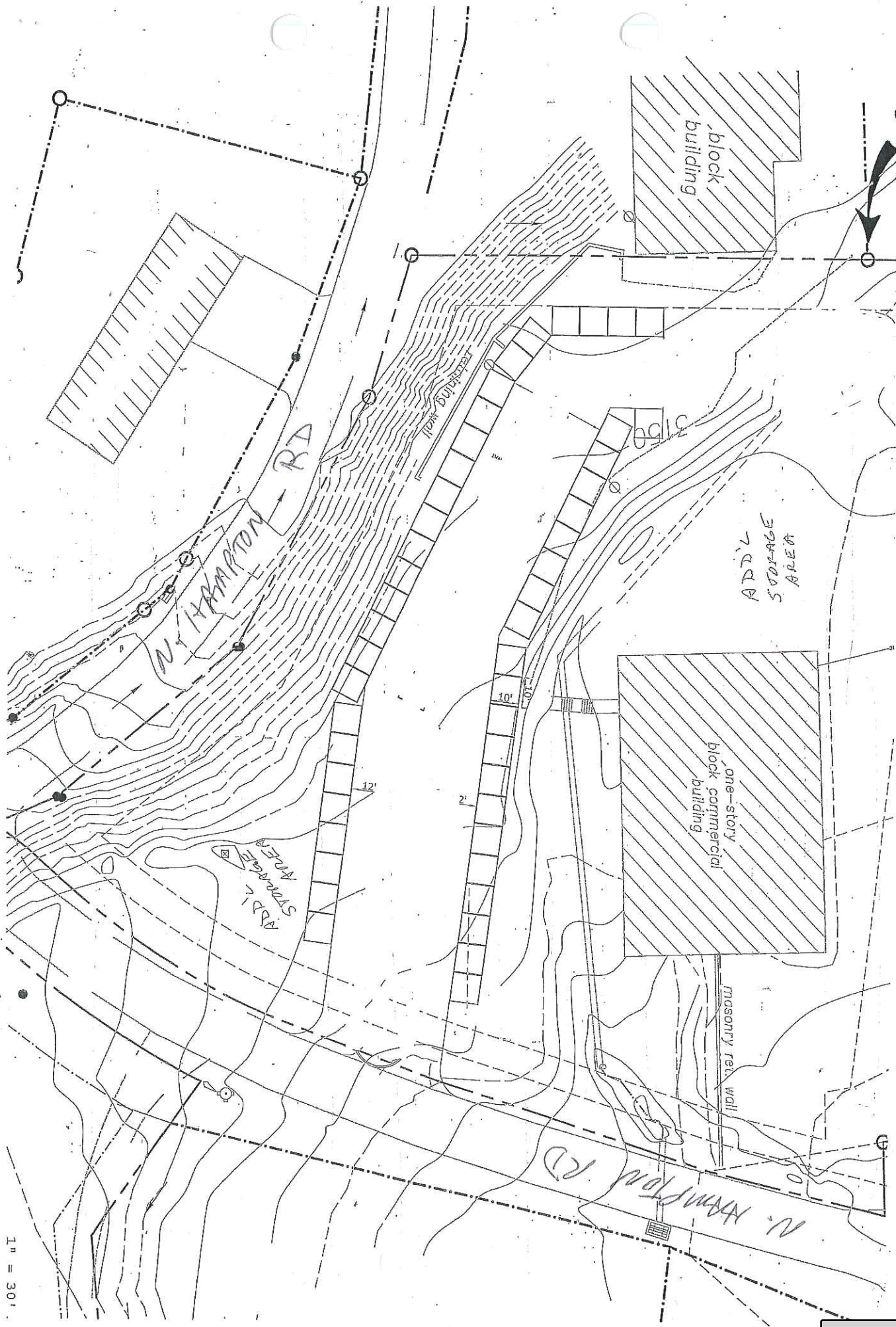
As we discussed, it doesn't appear that this type of business is specifically covered in the UDO. Please consider what type of permitting process we need to undertake to make this business a reality.

Respectfully yours,

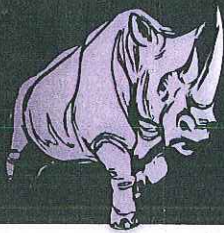


S. Scott Porter
Manager

EXAMPLE PLAN







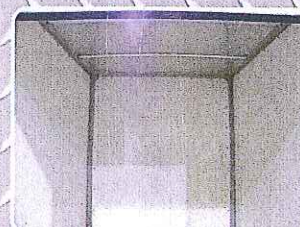
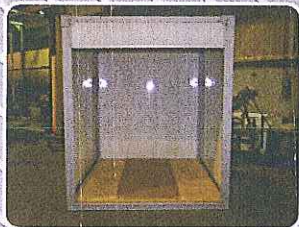
MOBILE CONTAINER SALES

Portable Storage Manufacturer and Supplier



8 FT. MOBILE STORAGE VAULT

- 7'-2" wide X 8'-4" high X 7'-10" long
- Empty weight: 1,330 lbs.
- Full width forklift tubes 6" X 3" —30" OC
- Dura Plate wall panels
- 3/4" flooring over 20" center I beams
- Front and rear D-Rings (heavy duty)
- One piece seam sealed and riveted aluminum roof
- Stackable 3 high fully loaded
- Grade 8 fasteners
- Galvanized steel finish



- The longest lasting, most durable mobile storage container available.
- Many years of engineering, research and testing are incorporated into this container design.
- Versatile enough to be delivered with any type of delivery system and withstand any climate.
- Cost effective to ship anywhere and easy to assemble.
- Built to last a lifetime and strong enough to withstand mobile storage use.
- Build your business with quality containers that last.

SHIPPING:

30 Vaults shipped per flatbed truck – Modular flat-pack

8' Mobile Storage Vault with Roll-up Door
(any color) Additional shipping charges to be applied

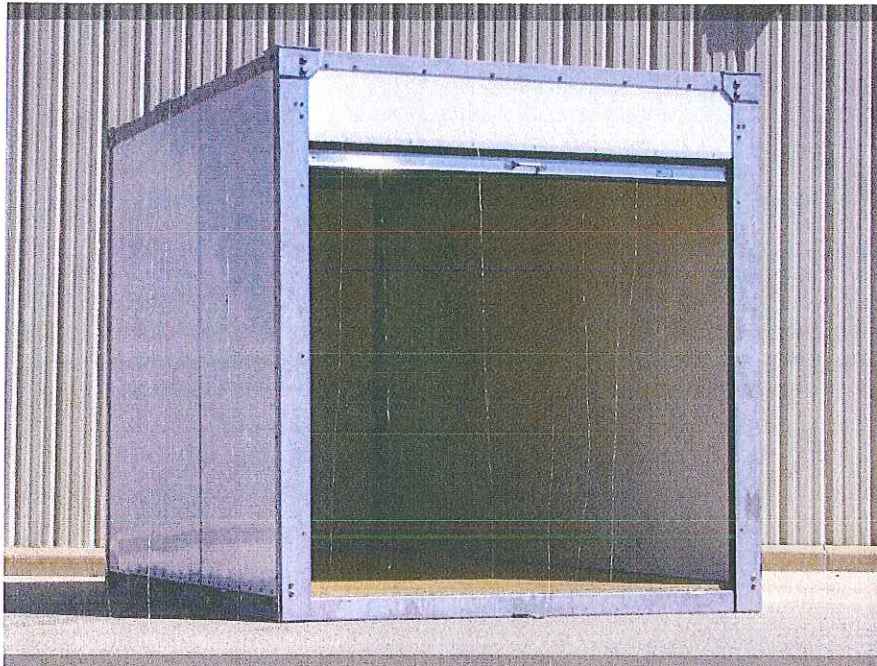
OPTIONS	PRICING
• Galvanized Steel Finish	\$3,275 (Min. order 5 units)
• Swing Doors	Add \$350.00 per unit
• Customize With Your Company Logo	(2) 2'x 4' Decals add \$220.00 per unit
• Wheel Inserts (all four)	Add \$225.00 per unit

Buy them once—Use them for life!



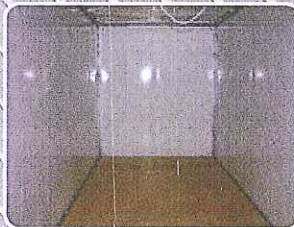
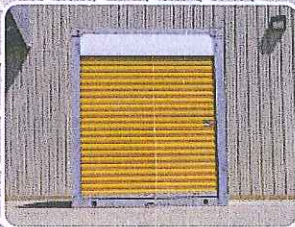
MOBILE CONTAINER SALES

Portable Storage Manufacturer and Supplier



16' MOBILE STORAGE CONTAINER / 16HDXLG

- 7'-2" wide X 8'-4" high X 16' long
- Empty weight: 2,200 lbs.
- Full width forklift tubes 6" X 3" — 48" OC
- Integrated receivers for wheels
- Dura Plate wall panels
- 3/4" flooring over 20" center I beams
- Front and Rear D-Rings (heavy duty)
- One-piece seamed sealed & riveted aluminum roof
- Stackable 3 high fully loaded
- Galvanized steel finish



- The longest lasting, most durable mobile storage container available.
- Many years of engineering, research and testing are incorporated into this container design.
- Versatile enough to be delivered with any type of delivery system and withstand any climate.
- Cost effective to ship anywhere and easy to assemble.
- Built to last a lifetime and strong enough to withstand mobile storage use.
- Build your business with quality containers that last.

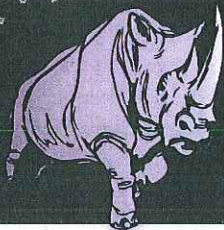
SHIPPING:

15 units shipped per flatbed truck – Modular flat-packs

Standard 16' Container With Roll Up Door
(any color) *Additional shipping charges to be applied*

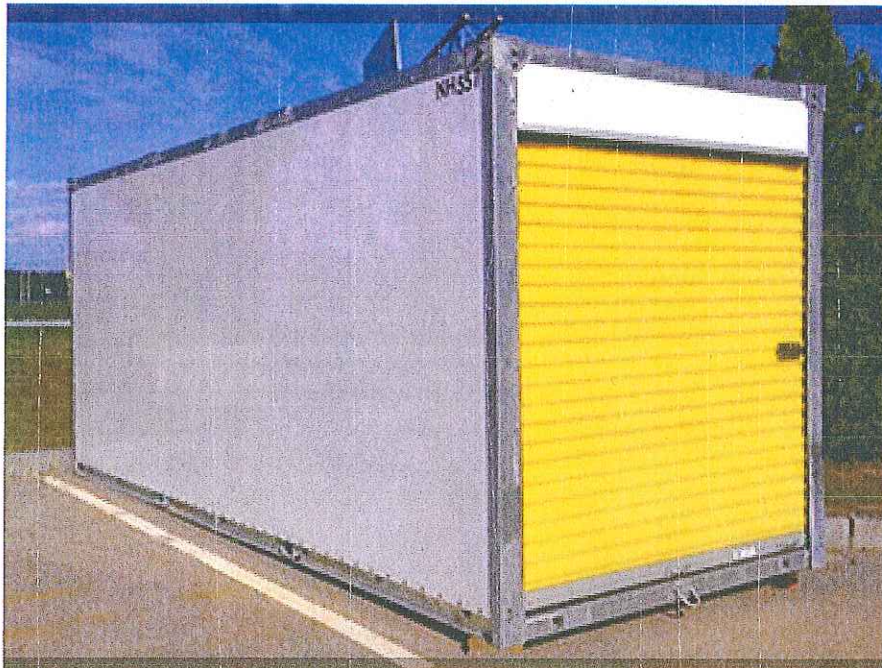
OPTIONS	PRICING
• Galvanized Steel Finish	\$4,390 (Min. order 5 units)
• Swing Doors	Add \$350.00 per unit
• Customize With Your Company Logo	(2) 4' x 8' Decals add \$245.00 per unit
• Wheel Inserts (standard)	No extra charge

Buy them once—Use them for life!



MOBILE CONTAINER SALES

Portable Storage Manufacturer and Supplier



20' MOBILE STORAGE CONTAINER / 20HDXLG

- 7'-2" wide X 8'-4" high X 20' long
- Empty weight: 2,500 lbs.
- Full width forklift tubes 6" X 3" — 80" OC
- Integrated receivers for wheels
- Composite wall panels
- 3/4" flooring over 24" center I beams
- Front and Rear D-Rings (heavy duty)
- One-piece seamed sealed & riveted aluminum roof
- Stackable 3 high fully loaded



• The longest lasting, most durable mobile storage container available.

• Many years of engineering, research and testing are incorporated into this container design.

• Versatile enough to be delivered with any type of delivery system and withstand any climate.

• Cost effective to ship anywhere and easy to assemble.

• Built to last a lifetime and strong enough to withstand mobile storage use.

• Build your business with quality containers that last.

Buy them once—Use them for life!

SHIPPING:

10 units shipped per flatbed truck – Modular flat-packs

Standard 20' Container With Roll Up Door
(any color) *Additional shipping charges to be applied*

OPTIONS	PRICING
• Galvanized Steel Finish	\$5,400 (Min. order 5 units)
• Swing Doors	Add \$350.00 per unit
• Customize With Your Company Logo	(2) 4' x 8' Decals add \$245.00 per unit
• Wheel Inserts (standard)	No extra charge

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:
PL00991-092617
Case Name: M1 Manufacturing Uses,
UDO Text Amendment

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: PO Drawer 192, Boone, NC 28607
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 15

Section(s): 15.07, 15.69

Brief Description of Amendment (Attach Proposed Text):

At the September 2017 joint meeting with the Planning Commission and Town Council, Council authorized Staff and the Town Attorney to draft text which would allow additional compatible commercial uses within the M1 Manufacturing Zoning District.

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

Jane Shook, P&I Director

Applicant (Print)

Jane Shook, P&I Director

Applicant Signature

September 26, 2017

Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
09/26/2017	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting Date: October 23, 2017

PC Meeting Date: October 23, 2017

TC Meeting Date: November 16, 2017

Text Approved: ☐ Yes ☐ No

Notes:

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

Communication: PL00991-092617 M1 Manufacturing Use Expansion, Application Information (Case PL00991-092617 M1Manufacturing Use



**STAFF REPORT
PUBLIC HEARING
OCTOBER 23, 2017**

**CASE PL00981-092617 M1 MANUFACTURING ZONING DISTRICT USE EXPANSION,
UDO TEXT AMENDMENT**

Request

Discussion regarding “uses” allowed within the M1 Manufacturing zoning district has been a topic at the August and September 2017 joint meetings with the Planning Commission and Town Council. At the September 2017 meeting, Council authorized Staff and the Town Attorney to draft text which would allow additional flexibility to the “uses” allowed with the M1 zoning district by allowing “compatible” commercial uses. Council’s instructions included the request for Staff to be cautious with the new “uses” in order to preserve the integrity of the zoning district for manufacturing/warehouse uses.

Recommended changes include modification to the description of the M1 Manufacturing Zoning District and consideration of the following twelve (12) uses:

1. Use 11.06-Restaurant $\leq 2,500 \text{ ft}^2$ open to the public during 10 p.m. - 6 a.m.
2. Use 11.07-Other restaurants $\leq 2,500 \text{ ft}^2$

Restaurant Definition: An establishment which provides prepared food to patrons.

3. Use 11.11-ABC Store

ABC Store Definition: A retail store licensed by the North Carolina Alcoholic Beverage Commission.

4. Use 11.12- Personal service establishment open to the public during 10 p.m. - 6 a.m.
5. Use 11.13- Other personal service establishments

Personal Service Establishment Definition: A business that provides individual services related to personal needs directly to customers at the site of the business, or that receives goods from or returns goods to the customer that have been treated or processed at that location or another location. This includes travel agencies, dry-cleaners, laundries, tailors, hair stylists, cosmeticians, toning or tanning salons, photocopy centers, shoe repair shops, appliance repair shops, interior design studios, and dance and martial arts studios and other similar uses. This does not include gas stations.

6. Use 11.14-Retail store up to $5,000 \text{ ft}^2$

Retail Store Definition: commercial establishment that provides goods, products, or materials directly to the consumer. This includes clothing stores, appliance stores, bakeries, food stores, grocers, caterers, pharmacies, bookstores, florists, furniture stores, hardware stores, pet stores, toy stores, and variety stores. It does not include restaurants, personal service establishments, or gas stations.

7. Use 11.18- Business or professional office open to the public during 10 p.m.-6 a.m.
8. Use 11.19- Other business or professional office

Business or Professional Office Definition: An establishment where business is conducted that does not primarily involve the sale or transfer of goods by the business to the customer at the location. This includes, but is not limited to, general business offices, insurance offices, law offices and real estate sales or management offices.

9. Use 11.34 –Seasonal retail activities and amusements

Seasonal Retail Activities and Amusements Definition: Sales, services and associated attractions such as Christmas tree lots, pumpkin patches, corn mazes and similar holiday-specific commercial activities.

10. Use 12.05-Event Venue, Category 1

Event Venue Category 1 Definition: A facility for meetings and gatherings, such as reunions, weddings, conventions, anniversaries, and other similar ceremonies take place within fully enclosed buildings.

11. Use 12.10-Recreation facility, Category 1

Recreation facility, Category 1 Definition: A facility in which regularly scheduled recreation activities take place within completely enclosed buildings.

12. Use 17.01-Passenger terminals

Passenger terminal Definition: Operating passenger transportation systems using a bus or other motor vehicle, including scenic and sightseeing transportation using buses or other motor vehicles.

Proposed Amendment

The text below in ~~red strikethrough~~ is the text proposed to be deleted and the blue underline is the new text for consideration.

§ 14.04 MANUFACTURING DISTRICT ESTABLISHED.

14.04.01 The M1 Manufacturing District is established primarily to accommodate appropriate, light industrial and warehouse enterprises engaged in the assembly, fabrication, finishing, packaging, ~~or~~ warehousing or distribution of goods and materials, including the storage and processing of raw materials into other products, as well as and (related and/or compatible commercial uses. The intent in allowing related and/or compatible commercial uses is to promote flexible and creative use of the District while still serving the primary intent of accommodating light industrial, warehousing, and distribution uses.

15.07 TABLE OF PRINCIPAL USES.

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
1.0	Household living																		
1.01	Single-family dwelling	P	P	P	P	P	P												
1.02	Manufactured home "Class A"	L			L	L	L	L										15.08	
1.03	Manufactured home "Class B"	L						L										15.08	
1.04	Manufactured home "Class C"																		
1.05	Manufactured home park							L										15.09	
1.06	Duplex (one duplex building per lot)	P				P	P		P										
1.07	Duplex (more than one duplex building per lot)								L									15.10	
1.08	Townhouse (up to 30 bedrooms)						L ^{T50}		L ^{T50}									15.10	
1.09	Townhouse (31-100 bedrooms)						L ^{T50}		L ^{T75}									15.10	
1.10	Townhouse (> 100 bedrooms)						L ^{T75}		L ¹²⁵									15.10	
1.11	Multi-family dwelling (up to 30 bedrooms)								L ^{T125}									15.10	
1.12	Multi-family dwelling (31-100 bedrooms)								L ^{T200}									15.10	
1.13	Multi-family dwelling (> 100 bedrooms)								L ^{T300}									15.10	
1.14	Multi-family dwelling in mixed use (up to 30 bedrooms)										L	L ^{T75}	L					15.11	
1.15	Multi-family dwelling in mixed use (31-100 bedrooms)										L ^{T125}		L ^{T125}						
1.16	Multi-family dwelling in mixed use (up to 30 bedrooms)										L ^{T125}		L ^{T200}						
2.0	Group Living																		
2.01	Family care home	L	L	L	L	L	L		L									15.13	
2.02	Family care institutions									L ^{T125}								15.14	

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
2.03	Halfway house, Category 1									L									15.14
2.04	Halfway house, Category 2									L ^{T125}									15.14
2.05	Nursing care home	L	L	L		L	L		L	L			L						15.14
2.06	Nursing care institution									L ^{T125}			L ^{T125}						15.14
2.07	Skilled nursing facility									L ^{T300}			L ^{T300}						15.14
2.08	Retirement community, Category 1	L				L	L		L	L									15.15
2.09	Retirement community, Category 2								L ^{T200}	L ^{T125}									15.15
2.13	Fraternity or sorority dwelling								S ^{T300}						P ^{T300}				15.16
2.14	Boarding house								L				L						15.17
3.0 Transient Living																			
3.01	Home for survivors of domestic violence	L	L	L		L	L			L		L							15.18
3.02	Shelter for homeless, Category 1								L ^{T50}	L ^{T50}	L ^{T50}		L ^{T50}						15.19
3.03	Shelter for homeless, Category 2								L ^{T300}	L ^{T300}			L ^{T300}						15.19
3.04	Bed and breakfast, Category 1	L	S ^{T50}	S ^{T50}		L ^{T50}	L ^{T50}				L	L							15.20
3.05	Bed and breakfast, Category 2					L	L ^{T125}				L ^{T125}		L ^{T125}						15.20
3.06	Vacation rental	L ^{T75}							L ^{T75}		L ^{T75}	L ^{T75}	L ^{T75}						15.21
3.07	Motel												P ^{T300}						
3.08	Hotel										P ^{T200}		P ^{T200}						
4.0 Institutional Uses																			
4.01	Airport/landing strip	S ^{T300}																	15.22
4.02	Heliport	S ^{T300}																	15.22
4.03	Funeral home establishment									P	P	P	P						
4.04	Cemetery	P	P	P	P	P	P	P	P	P	P	P	P	P					
4.05	Post office									P	P	P	P	P					
4.06	Post office, distribution													P					

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
4.07	Animal sanctuary	S ^{T300}																	
5.0 Government Uses																			
5.01	Government cultural facility									P	P		P						
5.02	Government neighborhood cultural facility, indoor activity only	S	S	S	S	S	S		P	P	P	P	P						
5.03	Government neighborhood cultural facility, includes outdoor activity									P	P		P						
5.04	Recreation facility, Category 1	P							P	P	P	P	P						
5.05	Recreation facility, Category 2	P	P	P	P	P	P	P	P	P	P	P	P						
5.06	Recreation facility, Category 3	P ^{T50}	S	S	S	S	S	S	S	P ^{T50}	P ^{T50}	P ^{T50}	P ^{T50}						
5.07	Event venue, Category 1									P	P	P	P						
5.08	Event venue, Category 2									P	P	P	P						
5.09	Event venue, Category 3									P ^{T50}	P ^{T50}	P ^{T50}	P ^{T50}						
5.10	Landfill													S					
5.11	Solid waste processing													S					
5.12	Police substation	P	P	P	P	P	P	P	P	P	P	P	P	P					
5.13	Utility facility, town	L	L	L	L	L	L	L	L	L	L	L	L	L					15.23
5.14	Utility facility, government, neighborhood		L	L	L	L	L	L	L	L	L	L	L	L		L			
5.15	Utility facility, government, regional	L ^{T300}								L ^{T300}			L ^{T300}	L ^{T300}					15.23
5.16	Government facility	P							P	P	P	P	P	P					
6.0 Non-government Utility Facility																			
6.01	Utility facility, neighborhood	L	L	L	L	L	L	L	L	L	L	L	L	L					15.23
6.02	Utility facility, regional	L ^{T300}								L ^{T300}			L ^{T300}	L ^{T300}					15.23
7.0 Telecommunications																			
7.01	Antenna collocation on existing wireless support structure not																		

Use #	Specific Use	Zoning Districts																Reference	
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial				Education					
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2		E3
	requiring additional accessory equipment	P	P	P	P	P	P	P	P	P	P	P	P	P					
7.02	Antenna collocation on existing wireless support structure requiring additional accessory equipment	L	L	L	L	L	L	L	L	L	L	L	L	L					15.24
7.03	Building mounted antenna not requiring additional accessory equipment	L	L	L	L	L	L	L	L	L	L	L	L	L					15.24
7.04	Building mounted antenna requiring additional accessory equipment	L								L	L	L	L	L					15.24
7.05	Antenna collocation on electrical transmission towers								L										15.24
7.06	Other antenna	L								L	L	L	L	L					15.24
7.07	Wireless support structure which meets district height requirements	S	S	S		S	S		L	L	L	L	L	L					15.24
7.08	Stealth wireless facility which exceeds district height requirements	L	S	S		S	S		S	L	L	L	L	L					15.24
7.09	Wireless support structure which does not meet district height requirements up to and including 120'	S								S				S					15.24
7.10	Other tower that exceeds 120' in height																		15.24
7.11	Emergency response communication antenna	P	P	P	P	P	P	P	P	P	P	P	P	P					
8.0 Assembly																			
8.01	Religious assembly, Category 1	P	P	P	P	P	P	P	P	P	P	P	P						
8.02	Religious assembly, Category 2	P ^{T125}	P ^{T125}	P ^{T125}	P ^{T125}	P ^{T125}	P ^{T125}	P ^{T125}	P ^{T125}	P ^{T75}	P		P						
8.03	Religious assembly, Category 3	P ^{T200}									P ^{T200}		P ^{T200}						
8.04	Club/lodge, Category 1										P ^{T75}		P ^{T75}						
8.05	Club/lodge which does not serve																		

Use #	Specific Use	Zoning Districts																Reference	
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial				Education					
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2		E3
	alcohol	P									P		P						
9.0 Education																			
9.01	Public colleges and universities														P ^{T200}	P ^{T200}	P ^{T200}		
9.02	Private colleges and universities															P ^{T200}	P ^{T200}		
9.03	Trade school																	P ^{T200}	
9.04	High school																	P ^{T200}	
9.05	Elementary school																	P ^{T200}	
9.06	Boarding school																		
10.0 Daycare																			
10.01	Child daycare, large	L					L		L			L	L						15.25
10.02	Child daycare center									L			L						15.25
10.03	Adult daycare, large	L					L		L			L	L						15.25
10.04	Adult daycare center									L			L						15.25
10.05	All other daycare									CD									
11.0 General Sales and Service																			
11.01	Kennel	L ^{T125}											L ^{T125}						15.26
11.02	Veterinary office/hospital with outdoor kennels	L ^{T125}								L ^{T125}			L ^{T125}						15.26
11.03	Veterinary office/hospital without outdoor kennels	P								P	P	P	P						
11.04	Financial institution ≤ 5,000 ft²									P	P	P	P						
11.05	Financial institution > 5,000 ft²									P	P		P						
11.06	Restaurant ≤ 2,500 ft² open to the public during 10 p.m. - 6 a.m.									P ^{T75}	P ^{T75}	P ^{T75}	P ^{T75}	P ^{T75}					
11.07	Other restaurants ≤ 2,500 ft²									P	P	P	P	P					
11.08	Restaurant > 2,500 ft² open to the public during 10 p.m. - 6 a.m.									P ^{T200}	P ^{T125}		P ^{T200}						

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
11.09	Other restaurants > 2,500 ft²									P ^{T125}	P ^{T75}		P ^{T125}						
11.10	Bar																		
11.11	ABC store										P		P	<u>P</u>					
11.12	Personal service establishment open to the public during 10 p.m. - 6 a.m.									P ^{T75}	P ^{T50}		P ^{T75}	<u>P</u>					
11.13	Other personal service establishments									P	P	P	P	<u>P</u>					
11.14	Retail store up to 5,000 ft²									P	P	P	P	<u>P</u>					
11.15	Retail store more than 5,000 but less than 25,000 ft²										P ^{T125}	P ^{T200}	P ^{T200}						
11.16	Retail store 25,000 ft² and greater												L ^{T300}						15.27
11.17	RESERVED																		
11.18	Business or professional office open to the public during 10 p.m.-6 a.m.									P ^{T75}	P ^{T50}		P ^{T75}	<u>P^{T75}</u>					
11.19	Other business or professional office									P	P	P	P	<u>P</u>					
11.20	Medical office, Category 1									P ^{T300}	P ^{T300}		P ^{T300}						
11.21	Medical office, Category 2									P ^{T125}	P ^{T125}		P ^{T125}						
11.22	Medical office, Category 3									P ^{T125}			P ^{T125}						
11.23	Medical office, Category 4									P	P	P	P						
11.24	Hospital									P ^{T300}									
11.25	Medical emergency response									P ^{T300}	P ^{T300}		P ^{T300}						
11.26	Open air market, recurring	L ^{T75}								L ^{T50}			L ^{T75}						15.29
11.27	Vehicle sales and service											L ^{T125}	L ^{T75}						15.30
11.28	Equipment sales and service												L ^{T125}	L ^{T125}					15.31
11.29	Moped sales and service										P	P	P						
11.30	Boat or marine craft sales and service												L ^{T75}	L ^{T75}					15.32
11.31	Impound lot/towing service												L ^{T125}	L ^{T125}					15.33

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
11.32	Gas station	P ^{T125}										P ^{T125}	P ^{T125}	P ^{T125}					
11.33	Car wash											P ^{T125}	P ^{T125}	P ^{T125}					
11.34	Seasonal retail activities and amusements	P								P	P	P	P	<u>P</u>					
12.0 Recreation and Entertainment Uses																			
12.01	Indoor shooting range	L ^{T75}											L ^{T75}						15.34
12.02	Outdoor shooting range																		
12.03	Indoor theater										P		P						
12.04	Outdoor theater	P ^{T200}									P ^{T125}		P ^{T125}						
12.05	Event venue, Category 1										P	P ^{T75}	P	<u>P</u>					
12.06	Event venue, Category 2										P ^{T50}	P ^{T125}	P ^{T125}						
12.07	Event venue, Category 3										P ^{T200}		P ^{T200}						
12.08	Campground and recreational vehicle park	L ^{T200}											L ^{T200}						15.35
12.09	Coliseum												S ^{T300}						
12.10	Recreation facility, Category 1	P ^{T125}								P	P	P	P	<u>P</u>					
12.11	Recreation facility, Category 2	P ^{T125}								P ^{T50}			P ^{T50}						
12.12	Recreation facility, Category 3	P ^{T200}											P ^{T200}						
12.13	Racetrack																		
13.0 Agriculture																			
13.01	Garden, community	L	L	L	L	L	L	L	L	L	L	L	L						15.36
13.02	Garden, residential	L	L	L	L	L	L	L	L	L	L	L	L						15.37
13.03	Agricultural operation excluding livestock	P																	
13.04	Agricultural operation including livestock	P																	
13.05	Swine farm																		

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
13.06	Confined animal feeding operation (CAFO)																		
13.07	Custom slaughterhouse	P																	
13.08	Other slaughterhouse																		
13.09	Forestry	L	L	L	L	L	L	L	L	L	L	L	L	L				15.38	
14.0 Manufacturing																			
14.01	Microbrewery										L ^{T75}		L ^{T125}	L ^{T125}				15.39	
14.02	Brewpub										L ^{T75}		L ^{T125}	L ^{T125}				15.39	
14.03	Brewery/distillery												L ^{T125}	L ^{T125}				15.40	
14.04	Brewery/distillery, other																	15.41	
14.05	Winery associated with a vineyard	L ^{T125}												L ^{T125}				15.42	
14.06	Winery												L ^{T125}	L ^{T125}				15.42	
14.07	Winery, other																		
14.08	Extraction of earth materials																		
14.09	Machine/welding shop												L ^{T200}	L ^{T200}				15.44	
14.10	Manufacturing, other													L ^{T300}				15.45	
15.0 Parking																			
15.01	Parking lot								L ^{T125}	L	L		L					15.46	
15.02	Parking structure									L	L		L	L				15.47	
15.03	Park and ride lots	L								L			L	L				15.46	
16.0 Storage																			
16.01	Mini-storage	L ^{T125}											L ^{T75}	L ^{T75}				15.48	
16.02	Outdoor storage													L ^{T75}				15.49	
16.03	Warehouse													P ^{T75}					
16.04	Fuel storage facility												P ^{T300}	P ^{T300}					
16.05	Chemical storage facility																		

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
17.0 Transportation																			
17.01	Passenger terminals												P ^{T200}	P					
17.02	Trucking or freight terminal ☐☐ 10,000 ft²												P ^{T125}	P ^{T125}					
17.03	Trucking or freight terminal > 10,000 ft²													P ^{T300}					
18.0 Waste Related Uses																			
18.01	Recycling drop-off station	L ^{T300}												L ^{T200}					15.49
18.02	Recycling and salvage													L ^{T300}					15.49
18.03	Junkyard																		
18.04	Private landfill																		
19.0 Particular activities which pose particular concerns about public health																			
19.01	Electronic and internet gaming												S						15.50
19.02	Adult establishments												S						15.51

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.

2.1.2 Commercial Development

Narrative Page 23: *Encourage a diversity of mixed uses in large scale commercial developments.*

The separation of land and building uses into single purpose office parks, shopping centers, light industrial parks, etc. contributes to unnecessary automobile traffic between uses. This can be no more evident than during the typical lunch hour when workers in isolated employment complexes must get into their cars to get to a restaurant or do mid-day shopping errands. As a result, many communities (including Boone) now have three rush hours during a typical day, instead of two-morning, evening and mid-day. Small assembly operations, offices, retail shops, personal services, restaurants, post offices, and other uses should therefore be encouraged to be located in mixed use developments whenever possible.

2.1.3 Industrial Development

- A. The Town shall encourage a public service and regulatory environment conducive to light industrial development, provided that long term environmental quality considerations shall not be compromised.1.
- B. Industrial development shall be located on land which is physically suitable and has unique locational advantages for industry. Advanced planning for the identification of such land shall be encouraged.
- C. Industrial development shall not be located in areas which would diminish the desirability of existing and planned non-industrial uses, nor shall non-industrial uses be allowed to encroach upon existing or planned industrial sites.
- D. Heavy industrial uses shall not be permitted within the zoning jurisdiction of the Town of Boone.

- E. Light industrial uses may be located in or near existing built up areas to take advantage of available services and to minimize home to work distances. Careful design and or buffering may be required to ensure compatibility with surrounding areas.
- F. Warehousing, storage and distribution facilities shall have a direct access to appropriate thoroughfares, and shall be visually buffered according to their location.
- G. New industrial developments shall be encouraged to locate in planned industrial parks.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial for the following reasons:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: I move to ☐approve OR ☐deny the proposed amendment to the Town's zoning ordinance and believe ☐approval OR ☐denial is reasonable and in the public interest because:

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:
PL01019-092917
Case Name: Temp. Use 9.01,
UDO Text Amendment

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: PO Drawer 192, Boone, NC 28607
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 15

Section(s): 15.07, 15.69

Brief Description of Amendment (Attach Proposed Text):

At the September 2017 joint meeting with the Planning Commission and Town Council, Council authorized Staff and the Town Attorney to draft text which would allow Use 9.01 Public Colleges and Universities as a temporary use in the M1 Manufacturing, B3 General Business and O/I Office Institutional zoning districts. Appalachian State University has expressed a need for what is referred to as "swing space" -- temporary space to house University functions that must be temporarily re-located due to remodeling or construction and cannot be accommodated on campus due to space constraints. The University also experiences the need for temporary space when University faculty receive time limited grants for programs that cannot be accommodated on campus due to limited space.

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, P&I Director
Applicant (Print)

Jane Shook, P&I Director
Applicant Signature

September 29, 2017
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
09/29/2017	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting Date: October 23, 2017
PC Meeting Date: October 23, 2017
TC Meeting Date: November 16, 2017
Text Approved: ☐ Yes ☐ No
Notes:

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

**STAFF REPORT
PUBLIC HEARING
OCTOBER 23, 2017**

**CASE PL001019-092917 TEMPORARY USE 9.01 PUBLIC COLLEGES AND UNIVERSITY USE,
UDO TEXT AMENDMENT**



Request

At the September 2017 joint meeting with the Planning Commission and Town Council, Council authorized Staff and the Town Attorney to draft text which would allow Use 9.01 Public Colleges and Universities as a temporary use in the M1 Manufacturing, B3 General Business and O/I Office Institutional zoning districts. Appalachian State University has expressed a need for what is referred to as “swing space” -- temporary space to house University functions that must be temporarily re-located due to remodeling or construction and cannot be accommodated on campus due to space constraints. The University also experiences the need for temporary space when University faculty receive time-limited grants for programs that cannot be accommodated on campus due to limited space.

Proposed Amendment

The text below in ~~red strikethrough~~ is the text proposed to be deleted and the blue underline is the new text for consideration.

§ 15.69 TEMPORARY USES.

15.69.01 General regulations.

- A. Unless otherwise provided here in, all listed temporary uses are required to obtain a permit in compliance with the regulations of this section.
- B. Unless expressly permitted no sign may be erected in conjunction with a temporary use.
- C. Only those improvements and modifications minimally necessary for the temporary use to function are permitted.
- D. In the event the property owner fails to remove a temporary structure within the described time frames after the permit authorizing its use has been terminated, the town may remove the said temporary structure at the expense of the owner, and may seek to recover through collection efforts or a civil action against the owner, the costs of removal, court costs and attorney fees.
- E. A sight triangle ten feet by 70 feet must be observed at all intersections of driveways or streets with adjacent streets.
- F. Temporary uses shall not be subject to the requirements of Article 25 Community Appearance Standards unless provided in this section.
- G. No required existing landscape buffer may be disturbed for any temporary use.
- H. All temporary uses shall meet all applicable North Carolina building codes.
- I. Unless otherwise provided herein, the land use intensity ratios of Section 16.01 shall apply.
- J. Unless otherwise provided herein, landscaping is not required for temporary uses.

...

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

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

1. The particular activity for which a temporary permit is sought must be compatible with other uses allowed within the base zoning district (O/I, B3, M1) and must meet all requirements of the UDO; provided that in no event are residential uses allowed.
2. The applicant must demonstrate sufficient parking and/or transit to serve the planned use. Without limiting the generality of the foregoing, academic classes shall only be approved if the applicant can demonstrate that sufficient parking or transit is provided to the site to accommodate the number of students using the facility.
3. The temporary activity must be conducted pursuant to a lease between the applicant and a private property owner. The lease term may not exceed the duration of the temporary use permit.
4. Signage is allowed subject to the zoning district requirements of UDO Article 26.
5. The applicant must submit documentation clearly demonstrating that it has in place a plan to provide permanent space for the use within the time allotted for the temporary use permit.
6. The permit shall be valid for three (3) years from the date of issuance. Upon a showing of unanticipated and extraordinary circumstances delaying plans to permanently accommodate the temporary use, the permit may be extended one (1) time for an additional three (3) years provided the applicant requests the extension within 90 days prior to the expiration of the permit.
7. The applicant is permitted to lease the same property for a different temporary use subsequent to the termination of a temporary use permit for another use.

Note: Through counsel, Appalachian State University has requested that the Town consider the following language in lieu of #6 above:

The permit shall be valid for ~~three-five~~ (35) years from the date of issuance. Upon a showing ~~of unanticipated and extraordinary circumstances delaying plans~~ good faith efforts to permanently accommodate the temporary use, the permit ~~may~~ shall be extended one (1) time for an additional ~~threetwo~~ (32) years provided the applicant requests the extension within 90 days prior to the expiration of the permit. An additional extension may be granted upon a showing of unanticipated and extraordinary circumstances delaying plans to permanently accommodate the temporary use. For the purposes of this provision, inclusion of a facility for the same use on the applicant’s capital plan or submission of a request for such a facility to the applicant’s governing authorities or other agencies having jurisdiction over approvals of capitals project shall constitute good faith efforts.

ASU requests this modification on grounds that it often takes the University 5-7 years to get a capital project approved, funded, designed and built. In addition, they can sometimes achieve better economic terms on leases if they commit to a longer time period on the front end.

15.07.03 Table of temporary uses.

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

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.

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.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial for the following reasons:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's Comprehensive plan and other applicable adopted plans of the Town which relate to this application because:

Second Motion and Vote: I move to ☐approve OR ☐deny the proposed amendment to the Town's zoning ordinance and believe ☐approval OR ☐denial is reasonable and in the public interest because:

Coates' Canons Blog: A Statutory Modification for Plan Consistency Statements

By David Owens

Article: <https://canons.sog.unc.edu/a-statutory-modification-for-plan-consistency-statements/>

This entry was posted on June 20, 2017 and is filed under Land Use & Code Enforcement, Legislative Decisions, Ordinances & Police Powers, Planning, Zoning

Cities and counties routinely consider proposals to amend their zoning ordinances. Amendments vary from the rezoning of a single parcel of land to major rewrites of the whole ordinance. The decision of whether or not to make a particular amendment is a legislative policy choice left to the good judgment and discretion of the elected governing board.

A variety of factors are considered by the governing board in making these decisions. For the past decade in North Carolina, one of the factors that must be considered is how the proposal relates to previously adopted plans. Under the General Statutes a zoning amendment is not required to be consistent with the plan, but both the planning board and governing board are required to consider the plan and to document that consideration with a written statement approved by the board. For the most part this has become a routine and noncontroversial step in the zoning amendment process. But there has been enough confusion about this requirement that the General Assembly has amended the plan consistency statement requirement, with the changes to take effect for zoning amendments made on or after October 1, 2017.

When a local government adopts development regulations, there must be a rational basis for determining what those regulations should be. Zoning regulates where various land uses can be located and at what density and intensity of use. To make rational and informed choices in adopting and later amending these regulations, there should be careful consideration of many factors, including what infrastructure is needed to support development, how the land uses relate to one another, what the community's goals, objectives, and vision for the future are, and so forth.

Plan Consistency Statement Requirement

It has always been presumed that a comprehensive plan or land use plan is an essential tool to produce the data analysis, community engagement, and policy direction needed to allow rational choices in applying zoning. From the earliest days of zoning, statutes across the country have required that zoning be undertaken "in accordance with a comprehensive plan." Some states, by statute or case-law, require zoning regulations to be in substantial compliance with an adopted plan.

That is not the case in North Carolina. Our courts have not mandated that zoning be consistent with a comprehensive plan. However, in 2005 the North Carolina planning statutes were amended to require that planning boards and the governing board review and consider any adopted plan when a zoning amendment is proposed. That plan consistency statement requirement is discussed in more detail in this 2011 [blog post](#).

The statute only requires that the plan be considered, not that it be followed. Some zoning ordinances make plan compliance a mandatory factor for individual permit decisions, typically for a special use permit. But when a legislative decision is being made on a proposed zoning amendment, the statutes are clear that the plan is advisory in nature. A zoning amendment that is inconsistent with an adopted plan is legal, so long as the governing board was aware of what advice and guidance the plan offers. The statutory requirement is that the governing board's awareness must be documented by a statement describing plan consistency that is approved at the time the zoning amendment is adopted.

Subsequent Litigation

One might think that a simple statutory requirement that planning boards and governing boards pull out their adopted plans and think about what, if any, useful guidance the plan provides before making a decision on a pending zoning amendment would be straight-forward and non-controversial. After all, the boards are not required to take action

consistent with the plan, only to know and consider what it says. In most instances that has indeed proven to be the case. But there has been confusion and controversy about plan consideration in a few high profile zoning disputes that led to litigation.

In the first case addressing the plan consistency statement requirement, the City of Kannapolis was considering a proposal to rezone a large recently annexed parcel from low-density residential to a district that would allow retail, office, and light industrial uses. The staff prepared an analysis of the compatibility of the proposed uses with the adjacent area and concluded the rezoning was consistent with the long-range goals of the city. The staff report was presented to the city council and the rezoning was approved.

Opposing neighbors challenged the rezoning. The court in Wally v. City of Kannapolis, 365 N.C. 449 (2012), sided with the neighbors. The court held the statutory requirement for the council to approve a statement addressing plan consistency is clear and mandatory. The fact that a staff analysis was available for the board's review is not the same as the governing board itself approving a statement on plan consistency. This case is discussed in more detail by my colleague Rich Ducker in this [blog post](#).

The Wally case makes the fairly simple point that when the statute says the board must approve a statement, it means the board must really approve a statement, not just have a staff report in its meeting packet. While the substance of the statement is not subject to judicial review, whether it was formally approved by the governing board is subject to review. If the statement did not exist or was not clearly approved by the board, the statute is violated and the zoning amendment is invalid.

The second case addressing the plan consistency statement requirement arose when Queens University in Charlotte sought a zoning amendment to facilitate construction of a parking deck. Adjacent residents in the Meyers Park neighborhood objected. The city's zoning commission found the proposed amendment to be consistent with city plans and recommended approval. The city council agreed and adopted a statement that "this petition is found to be consistent with adopted policies."

In Atkinson v. City of Charlotte, 235 N.C. App. 1 (2014), the court found this conclusory statement failed to meet the requirement of the statute that the governing board statement describe how the action is consistent with adopted plans and explain why it is reasonable and in the public interest. The case is discussed in more detail by my colleague Adam Lovelady in this [blog post](#).

These two cases confirm that the governing board must actually approve a statement when it amends a zoning ordinance and that statement must be more than a checklist conclusion – it must include some modest discussion and explanation.

New Statutory Requirements

In 2017 the General Assembly amended G.S. 153A-341 and 160A-383 to add more specificity to the law regarding the mandated plan consistency statements.

Section 2.4 of **S.L. 2017-10** amends the statutes and makes these new requirements applicable to all zoning amendment applications filed on or after October 1, 2017. This bill also made amendments to the subdivision statute, discussed by my colleague Adam Lovelady in this [blog post](#).

The amended statute still requires approval of a statement and the statement still must describe plan consistency and explain why the proposed action is reasonable and in the public interest. So the Wally and Atkinson cases noted above are still good law.

However, the form of the required statement is changing. As of October, the statement must take one of three forms:

1. A statement approving the proposed zoning amendment and describing its consistency with the plan;
2. A statement rejecting the proposed zoning amendment and describing its inconsistency with the plan; or
3. A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

With each of these alternatives, the statement is also to include an explanation of why the governing board deems the action reasonable and in the public interest.

The statutory amendment also includes a rather curious provision that for the purposes of plan consistency, the “plan” includes a unified development ordinance as well as any other officially adopted plan that is applicable. A comprehensive or land use plan is rarely a part of a unified development ordinance. If a unified development ordinance exists, the zoning ordinance is a part of that ordinance. In that situation amending the zoning ordinance is an amendment in and of itself of the “unified development ordinance.” Given this near universal practice, this provision seems superfluous.

Implications

In some respects this amendment heightens the tie between the plan and zoning ordinances. If a proposed zoning amendment is consistent with the plan it may be approved and if it is inconsistent with the plan it may be rejected. But if the zoning amendment is inconsistent with the plan and the governing board wants to approve the amendment anyway, the plan is deemed amended and the governing board must set forth the “change in conditions” that led it to take that action.

The statute does not address a fourth possibility – that the board finds the amendment consistent with the plan but decides to reject the amendment anyway. Prior case law allows this to happen and given the advisory nature of the plan, that is likely still permissible. But the fact that it is not listed as an option in the new statute does give some pause to consider whether it is implied that this is no longer permissible. After all, the amended statutes uses mandatory language, saying the governing board “shall adopt one of the following statements.” To avoid a potential problem in this situation, it would be prudent for a governing board rejecting a zoning amendment that is consistent with its plan to concurrently amend the plan.

Presumably the discretion of the governing board is not substantially limited when it decides to approve a zoning amendment that is inconsistent with the plan. The board can decide which “changing conditions” to consider and whether they are sufficient. For example, there may have been changes in physical conditions on the site, on the infrastructure available, on the demand for new development, on the policies or priorities of the board, on the board’s assessment of neighborhood needs, or on a host of other potential “conditions.”

In any event, the lessons of the *Wally* and *Atkinson* cases noted above should continue to be carefully observed. The statutory requirement for consideration of plan consistency is not a legislative suggestion. A statement on plan consistency must be explicitly approved by the governing board at the time a zoning amendment decision is made. The statement must be more than a one-sentence conclusion. It must both describe plan consistency or inconsistency and it must explain the rationale of the decision. The statement is to take the form of one of the three options noted above.

That said, the statement does not need to be a long, complicated, legalistic document. The statement does not have to be supported by evidence in the record, as would be the case for a quasi-judicial decision. But it must be real, it must be approved by the board, and it must have a brief description of why the action is or is not consistent with the plan. Anything less risks judicial invalidation of the zoning amendment.

Links

- canons.sog.unc.edu/what-if-a-proposed-rezoning-is-inconsistent-with-our-plan/
- canons.sog.unc.edu/zoning-ordinance-amendments-and-plan-consistency-statements/
- canons.sog.unc.edu/consistently-inconsistent-considering-consistency-statements-for-zoning-amendments/
- canons.sog.unc.edu/subdivision-legislation-old-exemption-new-expedited-review/

Coates' Canons Blog: Consistently Inconsistent? Considering Consistency Statements for Zoning Amendments

By Adam Lovelady

Article: <https://canons.sog.unc.edu/consistently-inconsistent-considering-consistency-statements-for-zoning-amendments/>

This entry was posted on September 15, 2014 and is filed under Land Use & Code Enforcement, Legislative Decisions, Planning, Zoning

When the city council or county commission considers a rezoning or zoning ordinance amendment the board must approve a statement about the amendment's consistency with adopted plans and public interest. According to the statute "[t]hat statement is not subject to judicial review." And yet we have two recent examples of North Carolina courts reviewing consistency statements. What gives? This blog reviews the statutory requirements, the recent cases, and some guidance for moving forward.

In North Carolina "[z]oning regulations shall be made in accordance with a comprehensive plan" (160A-383; 153A-341). Our courts have interpreted that mandate to require a comprehensive approach, but not necessarily a formal document called a "Comprehensive Plan." As part of the statutory procedures for zoning, though, the planning board and governing board must consider consistency with applicable plans and adopt a statement concerning that consistency. As my colleague David Owens wrote [here](#), plans are not binding, but governing boards must procedurally consider and acknowledge them.

Under 160A-387 and 153A-344, when a local government first seeks to adopt a zoning ordinance or adopt comprehensive revision, the planning board must prepare or review and comment on the proposed ordinance or revision, including a written recommendation on adoption.

Amendments to the ordinance must be referred to the planning board for review and comment as to "whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable." The planning board is tasked with providing a "written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board." The planning board must provide that recommendation within 30 days of referral. After that the governing board may take action on the ordinance amendment without planning board recommendation. To be sure, this is a procedural step; it is not determinative. Even if the planning board finds that the zoning amendment is inconsistent with the comprehensive plan, the governing board may still consider and approve the amendment (160A-383 & 387; 153A-341 & 344).

The governing board, too, has a procedural requirement to consider consistency and public interest. For municipalities, General Statute 160A-383 requires that "[w]hen adopting or rejecting any zoning amendment, the governing board shall also approve a statement *describing* whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and *briefly explaining* why the board considers the action taken to be reasonable and in the public interest." The county version of the statute, at GS 153A-341, is substantially the same, but with one procedural difference: the commission must adopt the consistency statement prior to adopting or rejecting the amendment.

The statute specifies that the consistency statement "is not subject to judicial review." As our courts have considered the requirement and the scope of review, they have interpreted this to mean that the decision content of the statement ("Yes, this amendment is consistent with the comprehensive plan." Or, "No, this rezoning is not in the public interest.") is not reviewable. Courts can, however, review whether a local government acted properly when adopting (or failing to adopt) the required statement, including the presence of necessary elements of the statement.

The Board Must Take Action

In *Wally v. City of Kannapolis*, 365 N.C. 449, 722 S.E.2d 481 (2012), the North Carolina Supreme provided some

guidance into what is—and what is not—sufficient for a consistency statement.

In *Wally*, a property owner applied for rezoning. The city council, as part of the public hearing for the rezoning, received a staff report that included analysis of the proposed rezoning, including compatibility with the surrounding area and safety issues. Staff concluded that the rezoning was “consistent with the long range goals of the City, and reasonable in light of existing and approved infrastructure.” The council approved the rezoning. Neighbors challenged the rezoning, claiming among other things that city council failed to adopt a consistency statement as required by the statutes.

The case was appealed up to the North Carolina Supreme Court. The city argued that it met the statutory requirements for a consistency statement. When city council approved the rezoning, the city claimed, it impliedly approved the staff statement of consistency and reasonableness. And the council adopted a statement that “Council’s final vote conforms to the guidelines under which they are granted final authority to act upon a rezoning petition.” And in any event, the city argued, the consistency statement is not subject to judicial review. The court was not persuaded.

The court emphasized that although an approved consistency statement is not subject to judicial review, “the statute does not prohibit review of *whether* the City Council approved a statement, which is the issue here.”

The court noted that “the statute requires that defendant take two actions in this situation: first, adopt or reject the zoning amendment, and second, approve a proper statement.” In this case, council failed to take the second step. It is not enough to have a staff report with some consistency analysis. The council must take action to approve the statement. Moreover, council’s adoption of a generic statement about conforming to guidelines for zoning authority is insufficient. There must be some explanation and description regarding the specific zoning matter at issue, as required by the statute for consistency statements.

For more on the *Wally* decision and elements of plan consistency, check out my colleague Rich Ducker’s blog [here](#).

More Than Cut and Paste

The North Carolina Court of Appeals has offered additional guidance into what is—and what is not—sufficient for a consistency statement in *Atkinson v. City of Charlotte*, 760 S.E.2d 395, 396 (N.C. Ct. App. 2014).

In *Atkinson*, a property owner initiated a zoning text amendment to exempt certain parking decks from floor area ratio requirements. The zoning committee of the planning commission reviewed the proposed amendment and voted unanimously to recommend approval. As part of the recommendation, the zoning committee included a statement finding that the amendment was consistent with adopted plans and reasonable and in the public interest. At the city council hearing the mayor informed council members that the zoning committee “found this petition to be consistent with the adopted policies and reasonable and in the public interest.” City council approved this “statement of consistency” and the zoning amendment. Neighbors challenged the amendment as failing to comply with the statutory requirement for consistency statements.

This case had notably different facts from *Wally*. In *Wally*, no consistency statement was adopted. In *Atkinson*, the council formally adopted and approved a statement from the zoning committee titled “Statement of Consistency.” The city, understandably, pointed to that adopted statement, arguing that they met the statutory requirement and that the content of the statement is not subject to review. Once again, the court was not persuaded.

For the *Atkinson* decision, the NC Court of Appeals drew guidance from the NC Supreme Court’s language in *Wally*. In *Wally* the court said that the statute “requires more than a general declaration that the action comports with relevant law.” The consistency statement must “*must describe whether the zoning amendment is consistent with any controlling land use plan and explain why it is reasonable and in the public interest.*” Thus, court review of adequacy of a consistency statement will consider:

1. *Did the council take action to adopt a consistency statement?*
2. *Did the statement include a description of whether the amendment is consistent with any controlling land use plan?*
3. *Did the statement include an explanation as to why the amendment is reasonable and in the public interest?*

“Once it is determined that a proper statement, which includes a description and explanation, has been adopted, the

content of the statement 'is not subject to judicial review.'" In *Atkinson*, the city adopted a statement, but that statement lacked the necessary description and explanation. A mere conclusory statement (e.g., "This amendment is consistent. Period.") is insufficient.

As an aside, the neighbors also challenged the role of a zoning committee of the planning commission—they argued that the full planning board must review and make recommendation on zoning amendments. Because the court found the consistency statement lacking, it did not address the question about the planning commission structure and requirements.

Now what?

So where does that leave us? Here are some practical considerations for compliant zoning amendments.

Each case needs a unique consistency statement. The governing board can't just cut and paste the generic statement from the last rezoning case. Nor can the board merely check a box on a checklist. The statement must reflect the unique character of the particular amendment through description and explanation. The basic format may be the same for all consistency statements, but each one should reflect the particular amendment. As a guide, you might start with this:

- The amendment is/is not consistent with applicable plans because ____ *[Describe elements of controlling land use plans and how the amendment is or is not consistent]*_____.
- And the amendment is/is not reasonable and in the public interest because _____ *[Briefly explain why. Factors may include public health and safety, character of the area and relationship of uses, applicable plans, or balancing benefits and detriments.]*

Can staff or the planning board draft the statement for governing board approval? Yes. The statutory requirement is that the governing board shall *approve* or *adopt* the statement. A draft statement provided by the planning board or staff should be sufficient, so long as the governing board has the statement and takes formal action to approve it. The planning board already has to comment on consistency of amendments for rezonings and zoning text amendments. For continuity of review, the planning board could apply the same standards as the governing board, including a description of how the amendment is consistent and an explanation as to why it is reasonable and in the public interest. Recall that the governing board is not bound by the planning board's findings.

How much detail do you need in a statement? A brief statement such as above with some description and explanation is legally sufficient. Courts will not review the substance of the content (even if they disagree with the finding), but courts will review whether the description and explanation is there in the statement. Just how much detail to include is a policy decision for the local government and the particular ordinance amendment. Some local governments will choose to craft a few simple sentences to meet the legal standard. Others may opt to provide an exhaustive 10 page consistency analysis, identifying all applicable comp plan elements. Either should be acceptable, so long as the governing board has the statement in front of them and formally adopts it. If your community does have a long consistency analysis, you may consider a shorter summary statement for explicit adoption by the governing board. The statement should serve as a useful tool for plan implementation and protection from court challenges (especially for claims of spot zoning), but the statement need not be overly-complicated or lengthy.

Regardless of who drafts the statement, the governing board must take formal action to adopt the statement. A passing reference to the staff report or the planning board statement is insufficient. For municipalities, it appears that the governing board action to adopt the statement may be part of the motion to approve or deny the amendment. The county statute, though, requires that the consistency statement be adopted "*prior to* adopting or rejecting any zoning amendment."

If a statement is formally approved and it includes a description of consistency and an explanation of reasonableness and public interest, then the substantive content of the statement will not be subject to judicial review.

**PLANNING COMMISSION MINUTES
MONDAY, JUNE 26, 2017 AT 5:30 P.M.**

PLANNING COMMISSION MEMBERS: Chairperson Connor Boyle, Adrian Thompson, Elizabeth Shay, Eric Woolridge and Becky Gosky

STAFF PRESENT: Jane Shook, Director of Planning and Inspections, Christy Turner, Senior Planner, Marty Little, Planner, and Marlene Crosby, Board Secretary

OTHERS PRESENT: Allison Meade, Town Attorney

CALL TO ORDER

Chairperson Connor Boyle called the meeting to order at 5:50 p.m. in the Council Chambers located at 1500 Blowing Rock Rd.

APPROVAL OF MINUTES

Member Gosky made a motion, seconded by Member Thompson, to approve the May 22, 2017 Planning Commission meeting minutes as written.

Vote: Aye – All
Nay – None

The motion passed.

CASE PL00479-050817 EDUCATIONAL DISTRICTS AND USES – UDO TEXT AMENDMENT

Request to modify UDO Article 14, 15, 16, 17, and 34 in regards to educational districts and uses. Amendment may also be made to other Articles to conform them to changes made in these Articles.

Ms. Jane Shook, Director of Planning and Inspections said the Staff are not proposing any changes at this time. Ms. Shook said this proposed change will simplify the uses in the U-1 zoning district which will help the university and Town Staff to know which uses are permissible and which ones are not permissible.

Discussion ensued on future interpretations of this case. Ms. Allison Meade, Town Attorney talked about the Council's concern of the university encroaching into the B-1 zoning district. She said that the university is aware of this and she thinks they have no intention of doing it. She confirmed that college or university uses have to remain in the U-1 zoning district.

FIRST MOTION AND VOTE: Chairperson Boyle made a motion, seconded by Member Woolridge, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because per the Comprehensive Plan policy 2.1.1.E.1, which is to continue to look at ways to allow 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.

Vote: Aye – All
Nay – None

The motion passed.

Communication: June 26, 2017 Planning Commission Minutes (Planning Commission Approval of Meeting Minutes)

SECOND MOTION AND VOTE: Chairperson Boyle made a motion, seconded by Member Woolridge that the Planning Commission recommends approval of the proposed amendment to the Town's zoning ordinance and believe the approval is reasonable and in the public interest because it is keeping with the intent of the Comprehensive Plan policy 2.1.1.E.1.

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

CASE PL00558-061217 USE 14.04 MICROBREWERY – UDO TEXT AMENDMENT

Request to modify UDO Article 15 to allow Use 14.01 Microbrewery in the M1 Manufacturing District. While recently reviewing a request, Staff discovered that Use 14.04 Microbrewery, a manufacturing use, are not permissible in the M-1 Manufacturing District.

Upon review of the description for the M1 Manufacturing District and definitions for each of the brewery related uses, Staff feels that not including Use 14.01 Microbrewery as a principal use in the Manufacturing District was an error when the Table was revised to allow three uses in 2013. The report includes the description of the M1 Manufacturing District, the definitions for brewery related uses and excerpt of the Table of Principal Uses modified to allow Use Microbrewery in the M1 Manufacturing District.

There was no discussion on this case.

FIRST MOTION AND VOTE: Member Woolridge made a motion, seconded by Member Thompson, that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable adopted plans of the Town which relate to this application because it appears that it is a mistake that the Microbrewery was not included in this section of the zoning code and this particular proposed amendment allows the Staff to clean up the language and allow a use that seems to be consistent with the original intent of the M1 Manufacturing District.

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

SECOND MOTION AND VOTE: Member Woolridge made a motion, seconded by Member Thompson to approve the proposed amendment to the Town's zoning ordinance and believe the approval is reasonable and in the public interest because of the reasons stated in the first motion.

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

Discussion ensued on the Planning Commission having a short discussion at this meeting on opening up potential uses in the industrial park.

Member Woolridge began discussion on this topic. He talked about his firm needing to expand, he said at this time his firm has 10 to 12 people and they are looking to expand to a 20-person firm in the next three to five years. He said that his firm has had a difficult time trying to locate a larger space that fits his business model. He said he would like to keep his firm in the Downtown area but he has not been able to find a space. He said he would like to have a certain type of atmosphere or social environment with public activities that would attract architects and landscape artists but it does not exist in Boone.

Member Woolridge said the Town of Boone does not have a lot of already built vacant manufacturing facilities like Lenoir, North Carolina and other cities that have large vacant manufacturing space that could create opportunities for the re-use of existing buildings. Member Woolridge said he has been exploring the possibility of his firm moving to the industrial park. He is looking at about 3,000 to 5,000 square feet of the US Steel building. He said if Stickboy Bakery, Microbrewery and recreation type uses were allowed there, it would create a great social environment that would be conducive to his business and he feels this is the key to his business being successful.

Discussion ensued on Staff concerns for certain potential uses in the industrial park. Ms. Shook said some of the locations have good parking but in the other locations parking can be more challenging. She talked about the concern for the possibility of one business complaining about another business for example the coming and going of delivery trucks and loading and unloading at businesses daily.

Member Thompson said he thought it would be more logical for manufacturing facilities to want to be located in larger cities with other manufacturing facilities where there is more accessibility without having to drive through the mountains to get to and from their manufacturing facility. Ms. Meade said that businesses do not always start in the place where it is the cheapest for transit.

Ms. Shook said the Staff can do an assessment on how many M1 properties that are located outside the industrial park.

Chairperson Boyle asked Ms. Shook, if she thought that vacancy rates would keep increasing in the industrial park. Ms. Shook indicated she was unsure but noted it may depend on whether the uses allowed change.

Member Thompson asked Ms. Shook if the Economic Development Commission deals with the vacant space. Ms. Shook they are aware and they work with the property owners to help tenants find a building that suits their needs.

Ms. Shook said when she talked to Mr. Furman and he agreed to opening up the M1 zoning district to other uses and he cautioned to be careful with the potential new uses because there is not a lot of available space for smaller manufacturing or warehouse uses.

Discussion ensued on the cost to the business owner to move into a vacant space. Ms. Shook mentioned the building code requirements for each space to be up fitted as well as the zoning requirements.

Discussion ensued on the possibility of creating job opportunities. Member Woolridge talked about drawing office professionals to this area to work in our community.

Discussion ensued on the need to discuss opening up the uses beyond the industrial park. Ms. Shook said most uses are captured in the B-3 zoning district. She said we have always been conservative with the M1 zoning district because of the potential uses that could go within the M1.

Ms. Meade said after hearing this discussion on opening up the uses, she feels that there is a certain attraction to a mix of uses in the M1.

Ms. Shook talked about doing an analysis of the current infrastructure of the industrial park. She said the Staff would also have to evaluate things like sidewalks and increased traffic.

Ms. Shook noted that the industrial park is fully built out with the exception of certain business owners may have some room for expansion.

Discussion ensued on using the industrial park as a possible test center to test potential uses before opening up the potential uses to the public. Member Gosky and Member Shay agreed the industrial park would be a great location to use for a test center.

Ms. Shook explained that currently almost any manufacturing use that goes into the industrial park is by right and there are no requirements for transitional zones because the industrial park has already been vetted for the industrial site. She further explained that the Staff were getting approached about the vacant spaces in the industrial park with businesses that were not allowed in the M1 zoning district. She said this is the reason she brought this topic forward to the Council and Planning Commission. She said that Staff had suggested that the property owners come in and speak with the Staff to learn about the Staff's concerns regarding the permissible uses.

Member Woolridge noted that it is his preference to keep his firm in the Downtown area. Chairperson Boyle said he loves to see areas getting re-developed that have a mix of different activities going on in it.

Discussion ensued on the Deal Moseley and Smith office building being the newest of office buildings in the Downtown area. It was noted that building is still not built out and vacant space is available in it that is not being used. Ms. Shook noted that a lot of the existing buildings are designed in a way that it is not conducive to what certain businesses need to set up their offices.

Ms. Shook noted that she can work with the feedback that she has received from the Planning Commission on the potential uses.

RECOMMENDATION FOR AN AFFORDABLE HOUSING TASK FORCE MEMBER

Ms. Shook explained that the Affordable Housing Task Force meets on the first Monday of each month at 5:30 p.m. in the Planning and Inspections Department-Upstairs Conference Room located at 680 W. King Street. She noted that the July 3, 2017 meeting has been cancelled and the next scheduled meeting will be held on August 7, 2017.

Member Woolridge nominated Chairperson Boyle, seconded by Member Thompson, as a Planning Commission representative to the Affordable Housing Task Force. Chairperson Boyle accepted the nomination on an interim basis. Ms. Shook told Chairperson Boyle that she would meet with him in July to review the charge of the Affordable Housing Task Force.

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

ADJOURNMENT

Member Woolridge made a motion, seconded by Member Thompson to adjourn the meeting at 6:45 p.m.

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

Chairperson, Connor Boyle

Board Secretary, Marlene Crosby