Town of Boone
Planning Commission
Regular Meeting
6:00 PM, Jan. 23, 2017
Council Chambers, 1500 Blowing Rock Road

Call to Order

Adoption of Agenda

Approval of Minutes

December 14, 2016 meeting minutes

Case 20160796 King and College - MixedUse Planned Development

20160796 Application Information

20160796 Neighborhood Meeting Minutes

20160796 Deviation Analysis

20160796 Mitigation Analysis

20160796 Affidavit

20160796 Geo-Technical Report

20160796 Site Plans

20160796 Building Elevations

20160796 Staff Report

Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment

PL00145-010417 Application Information

PL00145-010417 Staff Report

Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment

PL00147-010417 Application Information

PL00147 Staff Report

PL00147 Clean Version of Revised Text

Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text Amendment

Case 20160751 Application Information

Case 20160751 Staff Report

Case 20160751 UDO Article 15 District Uses UDO Text Modifications

Case 20160751 UDO Article 16 District Standards UDO Text Modifications

Case 20160751 2009 Density Subcommittee Report

Other Topics by Board Members or Staff

Adjournment

SPECIAL PLANNING COMMISSION
MEETING MINUTES
WEDNESDAY, DECEMBER 14, 2016
5:30 P.M.

PLANNING COMMISSION MEMBERS: Chairperson Eric Woolridge, Vice-Chairperson Connor Boyle, Caroline Catoe, Matthew Vincent, Jeff Templeton, Elizabeth Shay and Kate Hayes

PLANNING STAFF: Jane Shook, Interim Director of Planning and Inspections, Brian Johnson, Urban Design Specialist and Marlene Crosby, Board Secretary

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Call to Order

Chairperson Woolridge called the meeting to order at 5:30 p.m.

Discussion ensued on moving Case 20160566 Farm Bureau Insurance – Conditional District Zoning Map Amendment to after Case 20160735 Beverly Heights/VFW – General Use Zoning Map Amendment.

Adoption of Agenda

Vice-Chairperson Boyle made a motion, seconded by Member Catoe to amend the agenda by moving the Farm Bureau Insurance case to after the Beverly Heights/VFW case.

Vote:

Aye – All
Nay – None

The motion passed.

Approval of Minutes

Ms. Jane Shook, Interim Director of Planning and Inspections noted that the September 19, 2016 Wellness District Workshop meeting minutes were for the review of Planning Commission members and did not need to be voted on for approval.

Member Templeton made a motion, seconded by Vice-Chairperson Boyle to approve the September 26, 2016 Public Hearing minutes with the following changes: Vice-Chairperson Boyle requested a change on page eight in the eighth paragraph to "Vice-Chairperson Boyle said in the Downtown area he would like to promote walkability in the Downtown area". Vice-Chairperson Boyle requested a change on page five in the third paragraph to change the spelling of swell to swale.

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Member Templeton requested the following change on page nine in the sixth paragraph in the last sentence to read "He said we cannot look at Davidson, North Carolina and other Towns that don't have similar topographical issues like Boone to model our parking regulations.

Member Templeton requested the following change on page 11 in the second paragraph to read "Planning Commission Member Templeton said if projects like the Rivers Walk project does not get approved, then where are the 360 students per year going to live? He said if the students cannot live inside the Town, and water and sewer is not approved outside of the Town, they are going to live in our neighborhoods".

Vote:

Aye – All
Nay – None

The motion passed.

Vice-Chairperson Boyle made a motion, seconded by Member Vincent to approve the September 26, 2016 Planning Commission meeting minutes as written.

Vote:

Aye – All
Nay – None

The motion passed.

Case 20160735: Beverly Heights/VFW – General Use Zoning Map Amendment

At the request of neighbors, the Town of Boone has initiated a General Use Zoning Map Amendment to apply a "Neighborhood Conservation Overlay District" to 35 properties in the neighborhood off of Beverly Heights Avenue and VFW Drive. Neighborhood Conservation District requirements are intended to ensure that **rental** property owners, managers, and tenants share responsibilities to obey town codes and ordinances adopted to protect property values and to stabilize and maintain a low-density living environment suitable for family life. The establishment of a Neighborhood Conservation District does not change the existing zoning classification of properties within the District, but would impose additional requirements applicable to **rental property only**. Neighborhood Conservation District requirements can be found in Section 14.09 in the Town's Unified Development Ordinance.

Ms. Jane Shook, Interim Director of Planning and Inspections presented this case.

Member Templeton asked if there was any conflict with this case and the other issue of development at the lower end of this neighborhood. Ms. Shook said this question was asked at the public hearing and there is nothing that prevents a rezoning with the property.

Member Templeton asked if the "Neighborhood Conservation Overlay" were to be approved would it affect future development such as we are seeing at the Farm Bureau Insurance location. Ms. Shook said at any point an application can be made to rezone property.

Chairperson Woolridge asked if everyone that is assigned to this district has agreed to the proposed change. Ms. Shook said noted that there has not always been 100 percent agreement in Neighborhood Conservation Districts. She said it is not unheard of to have a disagreement on the NCD's. Ms. Shook said the NCD's were created to use as a tool to protect the occupancy of the residential neighborhoods.

Discussion ensued on the tenants of rental property being required to have a parking sticker for their cars, if they live in a NCD. Ms. Shook said the parking sticker is a tool that allows two stickers per property. She said this process also requires for property owners who do not live within 50 miles of their property to have a local managing agent to contact for issues with the property. She noted property owners living in their homes in the NCD, are not required to have a parking sticker, only tenants.

Discussion ensued on the enforcement of the NCD requirements. Member Templeton asked if this enforcement is complaint driven. Ms. Shook said it is difficult for the Staff to know which properties are rentals. Ms. Shook explained that letters are sent out to the property owners to inform of the NCD statues and requirements.

Member Vincent noted that the NCD process is to help control the occupancy of the rental properties.

Vice-Chairperson Boyle said he thinks these topics should be reviewed as two separate items the rezoning and the NCD process.

Discussion ensued on the feedback from the property owners who were mailed notification letters of the proposed zoning map amendment change, who live within 150 feet of the proposed NCD. Ms. Shook said there was one property owner that had a general concern with this case;

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but she did not talk with them directly. She noted that a property owner did express their concerns to a Council member.

First Motion and Vote: Vice-Chair Boyle made a motion, seconded by Member Hayes, that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it supports the 2006 Comprehensive Plan Policy 2.3.3 Housing & Neighborhoods in that it will ensure the protection of an existing highly livable community.

Vote:

Aye-All
Nay-None

The motion passed.

Second Motion and Vote: Vice-Chair Boyle made a motion, seconded by Member Vincent, that the Planning Commission recommends approval for the following reasons: the proposed amendment will help maintain the quality of life in an established neighborhood and help ensure that any rental unit within the Neighborhood Conservation District have requirements that help maintain a low-density living environment suitable for family life.

Vote:

Aye-All
Nay-None

The motion passed.

Case 20160566: Farm Bureau Insurance – Conditional District Zoning Map Amendment

Hunter Coffey on behalf of Watauga County Farm Bureau Insurance has filed a Planning Permit Application for a Conditional District Zoning Map Amendment to rezone 135 and 169 State Farm Road from B3 General Business and R1 Single-Family Residential to Conditional District B3 General Business subject a site specific development plan for Use 11.19 Other Business or Professional Office.

Chairperson Woolridge asked if there have been any changes to this case since the public hearing. Ms. Shook said no. Member Hayes asked about the property owner of the residence. Vice-Chairperson Boyle explained that it was the wish of the previous property owner for Farm Bureau to purchase the property, if they were interested in buying it.

Vice-Chairperson Boyle noted Section 2.3.3 of the 2006 Comprehensive Plan states encroachment is strongly discouraged in some areas but it can be encouraged in well planned mixed developments.

It was noted that State Farm Road is becoming a commercial corridor and it is difficult to try to stop growth in this area. Member Templeton and Vice-Chairperson Boyle agreed with this information.

Member Vincent said his concern is what might be developed at this location in the future, if Farm Bureau Insurance was to move their business.

Discussion ensued on the residences that have entrances on State Farm Road. It was noted that there are two or three more residential driveways on State Farm Road.

Chairperson Woolridge talked about past cases that were reviewed by the Planning Commission members like the Marriott and the new Watauga High School that were built next to residential neighborhoods and the impact those developments made on the neighborhoods. He said these developments made drastic changes to historic adjacent neighborhoods.

Chairperson Woolridge said it makes it difficult to not support this proposed project because of the location and design of the structure and the type of business that it is. He asked for other perspectives from the Planning Commission members on this proposed project.

Ms. Shook asked the Planning Commission members if they wanted to vote to open public comment. She said there are people present at this meeting that were not at the public hearing that may want to speak on this proposed case. It was noted that at the public hearing, only the public comment portion of the public hearing was closed on this case. It was the consensus of the Commission to open public comment.

The first speaker was Joey Clawson, Chairman of the Farm Bureau Building Committee. He said that the board takes strong pride in working with the community to try to keep it a quiet neighborhood. He said that Farm Bureau Insurance has to move from their current building. He said if they cannot move forward with the proposed project, they will need to sell the property to the highest bidder. He said the highest bidders are fast food restaurants and the neighbors do not want this type of business in this location.

The second speaker was Mr. Hunter Coffey from Coffey Architecture. He said he understands the concerns of the neighborhood. He said that he would argue approval for this proposed project because it could start to set a precedent on future neighborhoods where a business is proposed next to a neighborhood.

The third speaker was Mr. Phillip Bruch, he showed a concern for the possibility of the Farm Bureau Insurance business moving in the future and a different type of business coming into this same location.

Chairperson Woolridge explained the conditional district zoning process for this case and how a future change to a different business would be required to come back before the Public Hearing review process.

The fourth speaker was Mr. Thad Taylor, past-President of Farm Bureau Insurance. He explained that in the current building they are working on two levels which makes it difficult for them to work with their customers. He said in the proposed building, it would improve their ability to work with their customers on one level. He said if the current Farm Bureau Insurance proposal is not approved, it will force them to look at other locations for this business.

Member Shay talked about the things she likes about the proposed project, she said the proposed project does not have an exit into the neighborhood and it is a small scale business that is well designed.

Vice-Chairperson Boyle said he felt that the Planning Commission members could make a recommendation to approve this proposed project because Farm Bureau Insurance has done everything that they can do to minimize any disruption to the adjacent neighborhood. He said that he believes that State Farm Road will become more of a commercial corridor.

Discussion ensued on the landscape buffer. Chairperson Woolridge asked about the hedge row along the parking lot. It was noted that the landscape comments by Mr. Brian Johnson, Urban Design Specialist were noted to protect the adjacent single-family homes.

Discussion ensued on the lighting of the upper parking lot. Mr. Brian Johnson, Urban Design Specialist reviewed the map in the meeting packet and explained what is required in the ordinance for lighting. Mr. Johnson talked about the possibility of needing shields for poles or improvements over what is required in the ordinance. He suggested smaller pedestrian lights or bollards could be used in the upper parking lot depending on the landscape buffer near the upper parking lot. He noted because this parking lot is small that smaller lights could be used. He noted that the ambient lighting cannot be corrected. He noted there needs to be parking lot lighting for safety.

Chairperson Woolridge said that he would be comfortable with the Staff working with the developer as the project progresses to meet the requirements of the ordinance. Mr. Coffey said that he would take into consideration any suggestions for conditions on this proposed project.

Chairperson Woolridge asked about the fencing along the back of the property. Mr. Coffey said there is a fence there and he will work with the neighbor on the location of the fence to allow Mr. Miller to exit the lower driveway. Mr. Coffey said the type of material for the fence has not been determined but it is required to be architecturally compatible.

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Vice-Chairperson Boyle asked the applicant to think about the possibility of adding solar panels to the proposed building because this property will receive a lot of sun due to its longitudinal position.

Discussion ensued on the Staff recommendations for this case. Ms. Shook talked about other landscape buffer Staff recommendations that were above and beyond the three Staff recommendations noted in the Staff report. She said that typically there is a 25 foot landscape buffer but the ordinance does not allow for a 15 foot buffer with a fence. She said the Staff asks for the applicant to stay as close to the 25 foot buffer to the extent possible.

Ms. Shook also pointed out the elevation change between the proposed project and the adjacent parcel to the east. She talked about the possibility of putting a berm with a fence on top of the berm to help protect the neighboring property.

Discussion ensued on the location of the berm.

Chairperson Woolridge asked the applicant, if they could agree to a fence on top of the berm. Mr. Coffey said they would take the fencing into consideration.

Mr. Johnson said that a berm could compromise the trees in that area that the Staff had recommended to try to preserve.

Mr. Johnson said that the berm should be considered to try to protect the adjoining property owner.

Discussion ensued on the berm and the parking lot. Mr. Johnson said when you reduce down from a 25 foot buffer to a 15 foot buffer; he said the percentage of plant materials is also reduced. The question then becomes not the width of the buffer but what plant materials that you put in the buffer. He explained that at 25' foot buffer might be better considering the type of topography in this area. He said it would take years to grow the plant materials in the buffer. He noted that in the future the older trees will have to be replaced.

Mr. Johnson suggested planting some type of fast growing trees in the landscape buffer that can hold up to colder climates like some type of evergreens located on the eastern property line.

It was noted that the fence being installed would help with the landscape buffer.

Mr. Coffey explained that the adjoining neighbor, Mr. Miller had a general concern about rezoning and not about the proposed business.

Member Catoe referred to page 11 of the Staff report and said that the proposed project fulfills every aspect of the G2 Neighborhood section and what the Town would like to see for long-term growth.

First Motion and Vote: Member Catoe made a motion, seconded by Vice-Chair Boyle, that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive

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plan and other applicable adopted plans of the Town which relate to this application because this property is located in the G2 Urban Neighborhood sector. This property is a neighborhood scaled commercial use. This property would provide an appropriate transition between higher intensity commercial use and existing lower density neighborhoods in alignment with the G2 sector in the Boone 2030 Land Use Plan.

Vote:

Aye-All
Nay-None

The motion passed.

Second Motion and Vote: Chair Woolridge made a motion, seconded by Member Vincent, that the Planning Commission recommend approval including the following conditions for the following reasons: The applicant has demonstrated a site plan in which strong buffers are provided around the property including the preservation of existing tree canopy to the extent possible. The site design moves one of the driveway accesses further up State Farm Road improving traffic at that intersection. The access to the property doesn't interfere with any neighborhood roads and the architecture of the structure is compatible with our area. This special zoning district (conditional district) prevents redevelopment or change-of-use without going back through the public review process and this particular use and the associated hours of operation, we as a Planning Commission deem suitable and appropriate for a transition area between other major commercial uses and corridors and the traditional neighborhoods.

The recommendation of approval includes the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and architectural plans bearing a received date of September 9), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans and permit applications shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The applicant shall install a hedge row of evergreens along the eastern property line.

Vote:

Aye-All
Nay-None

The motion passed.

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Discussion ensued on how many more cases on this agenda to review in this meeting. It was the consensus of the Planning Commission members to stop the meeting by 8:00 p.m.

Case 20160734: Green Street – General Use Zoning Map Amendment

At the request of neighbors, the Town of Boone has initiated a General Use Zoning Map Amendment to rezone 22 properties located along Green Street and Old Bristol Road from "R2 Two-Family Residential" to "R1A Single Family with Accessory Apartment" and "Neighborhood Conservation Overlay District (NCD)".

Note: Neighborhood Conservation District requirements are intended to ensure that **rental** property owners, managers, and tenants share responsibilities to obey town codes and ordinances adopted to protect property values and to stabilize and maintain a low-density living environment suitable for family life. The establishment of a Neighborhood Conservation District does not change the existing zoning classification of properties within the District, but would impose additional requirements applicable to **rental property only**. Neighborhood Conservation District requirements can be found in Section 14.09 in the Town's Unified Development Ordinance. Chairperson Woolridge noted his concern for changing the zoning of the property from R2 to R1A.

Vice-Chairperson Boyle confirmed that R1 and R2 can both be in a NCD. Ms. Shook said that it does not have to be R1 to be subject to a NCD. Ms. Shook explained that eight property owners in this neighborhood signed a petition and gave the petition and requested the R2 properties along Green Street to be rezoned to R1A.

Discussion ensued on the G2 Urban Neighborhood sector and low density residential areas. Member Templeton said the G2 sector is the transitional area between Commercial and Residential areas and this is where duplexes are typically located.

Ms. Shook said there has been some issue with parking and occupancy violations in the said neighborhood. She noted that this area has smaller lots and it is difficult to locate parking spaces. She said therefore the parking is happening in the yards and along the street. Vice-Chairperson Boyle confirmed that the NCD would address the parking and occupancy issues in the neighborhood.

Discussion ensued on the G-2 sector of the Boone 2030 Master Plan. Chairperson Woolridge explained the reason for having zoning districts.

Chairperson Woolridge talked about property owner, Mr. Will Hadaway who owns property with a duplex. Chairperson Woolridge said that he felt we should be very careful, when down zoning someone's property which can change their livelihood and the value of their property in significant ways.

Discussion ensued on the possibility of the duplexes on the smaller lots causing parking issues. It was noted that residential parking is at a minimum. There are some grandfathered uses that may not meet the parking requirements of the ordinance.

Ms. Shook said the concerns of the neighborhood was about fear of more duplexes on the smaller lots in the R1A which would create additional parking and occupancy issues.

Chairperson Woolridge said that if a tenant has been renting a duplex in the R1 zoning district they will be grandfathered and will be allowed to continue to rent there. Ms. Shook said as long as it is a legally created. Chairperson Woolridge said there are non-conforming uses that are operating in this area.

Chairperson Woolridge showed a concern for rezoning one property, he said if the whole neighborhood wants rezoning then so be it.

Discussion ensued on the petition that was signed for this case on the two different zoning districts. Ms. Shook said there were eight property owners that signed the petition for this case.

Member Templeton suggested letting the eight property owners request their own properties to be rezoned.

Member Vincent confirmed that eight out of twenty-two neighbors signed the petition. He asked if the Town heard from the other fourteen or sixteen neighbors. Ms. Shook said she has not heard from anyone other than the neighbors that spoke at the public hearing. She said there were some people that called to ask questions about the rezoning. She said some people thought they could move into this area and it be R1A. Ms. Shook explained that they could not do this. She said one of the people she talked to was at the public hearing for this case and that person supported the proposed change.

Member Vincent asked Ms. Shook if she thought more than half of the neighbors supported the proposed change as far as she knew. He said he didn't know how the zoning could be changed with only half of the neighbors supporting the proposed change. Chairperson Woolridge agreed, when the property is being downzoned.

Ms. Shook confirmed that this is one case but the two different zoning districts can be reviewed individually. She said that you can have one zoning district without the other zoning district because they are different zoning districts.

Discussion ensued on how NCD's are applied and concerns that the NCD could be expanded to include different regulations.

Member Shay asked Ms. Shook what does the rezoning change for the neighborhood. Ms. Shook said the rezoning changes the uses allowed and the intensity as described in the Staff report.

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Chairperson Woolridge said there could be a case to keep the zoning district R2. He said the overlay creates a mechanism for a little more accountability.

Member Shay showed a concern for recommending a re-zoning to Council without knowing the thoughts of the other property owners other than the eight property owners on the petition. It was noted that the rest of the Planning Commission members were in agreement with Member Shay on this subject.

NOTE: The Planning Commission voted on the rezoning of the area from R2 to R1A separately from the application of the Neighborhood Conservation District overlay. Please see the following two (2) sets of motions for this case.

First Motion and Vote (Request to rezone from R2 to R1A): Member Catoe made a motion, seconded by Vice-Chair Boyle, that the proposed amendment to the Town's zoning map of rezoning these properties from R2 to R1A is not consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to the application because the properties are located between B3 and R1A and provide a transition from higher commercial uses to lower density neighborhoods and the Planning Commission is concerned with the change without the express approval and consent of the majority of property owners within the proposed district; furthermore the character of the neighborhood is more intensely used than the R1A zoning district would allow and the Planning Commission would like to be cautious when down-zoning.

Vote:

Aye-All
Nay-None

The motion passed.

Second Motion and Vote: Vice-Chair Boyle made a motion, seconded by Member Shay, that the Planning Commission recommends denial for the reasons stated in the first motion.

Vote:

Aye-All
Nay-None

The motion passed.

First Motion and Vote (Application of Neighborhood Conservation District): Chair Woolridge made a motion, seconded by Vice-Chair Boyle, that the proposed amendment (Neighborhood Conservation District) to the Town's zoning map consistent with the Town's comprehensive plan and other applicable adopted plans of the Town which relate to this application because it provides accountability to both landlords and tenants that either own or live adjacent to a traditional Boone neighborhood.

Vote:

Aye-All

Nay-None

The motion passed.

Second Motion and Vote: Chair Woolridge made a motion, seconded by Vice-Chair Boyle, that the Planning Commission recommend approval of the Neighborhood Conservation for the reason described in the first motion.

Vote:

Aye-All
Nay-None

The motion passes.

Case 20160742: Neighborhood Conservation District – UDO Text Amendment

Request to amend Section 14.09 to change how Neighborhood Conservations Districts are referenced in the UDO. The purpose of the proposed text change would allow Council to create additional NCD's without amending the UDO each time a zoning map amendment occurred.

Ms. Shook presented this case.

First Motion and Vote: Chair Woolridge made a motion, seconded by Member Shay, 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 provides for a more streamlined process to make map amendments associated with Neighborhood Conservation Districts.

Vote:

Aye-All
Nay-None

The motion passed.

Second Motion and Vote: Chair Woolridge made a motion, seconded by Member Hayes, that the Planning Commission recommend approval for the reason described in the first motion.

Vote:

Aye-All
Nay-None

The motion passed.

Case 20160751: Modifications to UDO Articles 15 and 16 – UDO Text Amendment

At the November 15, 2016 Planning Retreat, Council directed that modifications to the UDO be made in regards to intensity and use within UDO Article 15 District Uses and UDO Article 16

District Standards. Amendments may also be made to other Articles to conform them to changes made in these Articles.

Discussion ensued on tabling this case until the next scheduled Planning Commission meeting in January 2017 until more direction and discussion can be done on it. Chairperson Woolridge asked it would be feasible for there to be a meeting with the Town Manager and someone from Council and the Chairperson and Vice-Chairperson of the Planning Commission before the next Planning Commission meeting to discuss the Wellness District. Ms. Shook explained that is may not be feasible to have a meeting of this type because the entire Planning Commission would not be attending the meeting. Ms. Shook said she could talk to the Town Manager about the Planning Commissions' concerns regarding the Wellness District case.

Motion and Vote:
Member Templeton made a motion, seconded by Member Vincent to table this case to the next January 2017 Planning Commission meeting.

Vote:

Aye – All
Nay – None

The motion passed.

Other Topics by Board Members or Staff
There were no other topics discussed at this meeting.

Adjournment
Chairperson Woolridge made a motion, seconded by Member Templeton to adjourn the meeting at 7:35 p.m.

Vote:

Aye – All
Nay – None
The motion passed.

_____ _____

Eric Woolridge, Chairperson Marlene Crosby, Board Secretary

Communication: December 14, 2016 meeting minutes (Approval of Minutes)

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 20160796

A. CONTACT INFORMATION

Applicant: Robert Flanigan Company:

Address: PO Box 3106 Boone, NC 28607

Phone Number: 828-964-3385 Email Address: FLANIGANCPA@gmail.com

Property Owner: King & College, LLC and Woods Mixed Use Properties, LLC Company:

Address: PO Box 3106 Boone, NC 28607

Phone Number: 828-964-3385 Email Address: FLANIGANCPA@gmail.com

B. PROPERTY INFORMATION

Watauga County Parcel Identification Number(s): 2900-98-8588-000 and 2900-98-9402-000

Address/Location: 302 W. King St. Boone, NC

Project Name: King & College

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	*Commerical 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 [PDR]	*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 Mixed Use Building with approximately 4,262 sf of medical/office space, 64 bedrooms, and parking garage.

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: Robert Flanigan
Company: N/A
Address: PO Box 3106 Boone, NC 28607
License #: N/A
Phone Number: 828-964-3385
Email Address: FLANIGANCPA@gmail.com

F. DESIGN PROFESSIONAL INFORMATION

Engineer:

Name: Mike Trew, P.E.
Company: Municipal Engineering
Address: PO Box 349 Boone, NC 28607
License #: 18186
Phone Number: 828-262-1767
Email Address: trewmesco@bellsouth.net

Architect:

Name: Bill Dixon, AIA
Company: Appalachian Architecture, P.A.
Address: PO Box 179 Boone, NC 28607
License #: NC 5579
Phone Number: 828-265-2405
Email Address: Bill@appalarch.com

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.

Applicant[1] (Print)	Applicant Signature	Date
Robert Flanigan		11/28/16

Property Owner (Print)	Property Owner Signature	Date
Ryan Woods (Woods Mixed Use, LLC)		11/28/16

Official Use Only

Project File Name: King + College Mixed-Use Planned Development

Permit Number: 20160796

Project Name/Number:

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
11-28-16	$500.00	799633	# 1082	King + College LLC

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.

Conditional District 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: 20160796

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

A. ADDITIONAL APPLICATION INFORMATION

Application is For: ☒ Conditional District Map Amendment ☐ Conditional District Map Amendment Modification

Hearing Date Requested[1]: PDR 1/23/17 PH/PC Meeting, 2/16/17 TC Meeting

B. DEVELOPMENT INFORMATION

Project Name: King & College

Project Description: Mixed Use Building with approximately 4,262 sf of medical office and 64 total bedrooms

Existing Zoning District(s): B-1 Proposed Zoning District(s): B-1 PDR

Existing Land Use(s): Vacant Lot/ Abandoned Bldgs Proposed Land Use(s)[2]: 1.15, 11.21

Adjacent Land Use(s): N: Wallace Cir. - R-1A E: B-2 and R-1 (non-conforming multi-family)

W: B-1 and B-2 (single family use) S: King St. (parking lot across st.)

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

If yes, describe: N/A

Are any variances being requested with this project?[3] ☐ Yes ☒ No

If yes, describe: N/A - PD

Total Land Area: +/- 1.143 acres Total Disturbed Area: +/- 1.143 acres

Number of Proposed Phases: N/A

Describe Phasing (if proposed): N/A

If requesting vesting greater than 2 years (per UDO Section 4.14), list amount requested (up to 3 additional years). N/A

For modifications, list original case # and date granted: N/A

[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.
[2] Please see UDO Article 15 for specific details on permissible uses
[3] Each request for a Variance must be submitted on a separate Zoning Permit Application along with the appropriate fee.

C. DOCUMENTS REQUIRED FOR SUBMITTAL

- ☐ Completed Application (see UDO Article 4 & Appendix A)
- ☐ Application Fee
- ☐ 7 complete sets of development site plans
- ☐ One (1) reduced copy of development site plans (11X17)
- ☐ Two (2) sets of copies of building elevations
- ☐ Digital copy of plans (if available)
- ☐ 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.

Ryan Woods (Woods Mixed Use, LLC)		11/28/16
Property Owner (Print)	**Property Owner Signature**	**Date**

Official Use Only

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\ConditionalDistrictZoningMapAmendmentProjectDataForm_062015.doc

KING & COLLEGE Planned Development Neighborhood Meeting

Pursuant to the Town of Boone's Planned Development Ordinance, section 9.10.05, the Principals of a potential Planned Development to be located on East King Street near the intersection of King & College Streets held a neighborhood meeting concerning said development. The meeting was held at the Watauga County Administrative Building on November 16, 2016 at 6:00 P.M. Notice was provided to all property owners located within 300 feet of the development site by letter on October 24, 2016.

Seven neighbors attended the meeting. As required by the ordinance, the developers circulated a sign-up sheet so that attendees could provide their names and addresses, which are attached to this report.

To begin the meeting, the petitioner presented to the attendees the names and contact information for the principals and representatives involved in the project, those individuals being: James M. Deal, Jr., Attorney from the Law Firm of Deal, Moseley & Smith, LLP; Bob Flanigan, Annie Pipes, and Ryan Woods, property owners and developers; Mike Trew, Municipal Engineering; and Bill Dixon, Appalachian Architecture. Mr. Deal also began the meeting by providing the attendees with a brief explanation of the PD process.

The petitioner presented preliminary design plans and discussed the expected uses associated with the planned development. The petitioner also provided preliminary engineering and architectural plans illustrating the commercial, residential, and parking garage components of the planned development. Additionally, the petitioner presented previous design plans to illustrate the design process which has been on-ongoing for the last 1.5 years. The following items were also discussed:

1. There was a general (favorable) discussion regarding the overall site planning and design of the two buildings.
2. There was a comment from the audience that they appreciated the property owners' efforts to keep them (the neighbors) informed about the development.
3. There was a comment that the inclusion of a duplex townhouse on Wallace Circle was appreciated (as opposed to commercial use and/or larger structure).
4. There was a discussion regarding the traffic impacts the project would have on Wallace Circle and it was acknowledged that the principal point of ingress and egress for the development would be from King St.
5. Some members of the audience stated that they would like less parking to further promote the walkability of the project.

The attendees did not express any primary concerns with the project as proposed, other than to highlight that they might prefer less parking.

The meeting began at approximately 6:00 PM and ended at approximately 7:00 PM. This concludes the report from the Neighborhood Meeting for the proposed King & College Mixed-Use Development.

This Report was prepared by James M. Deal Jr. pursuant to the Town of Boone UDO Planned Development Ordinance, section 9.10.05

James M. Deal, Jr.

NEIGHBORHOOD MEETING

ATTENDEE LIST:

Marsha Turner & Luke Turner (son)

Residence @ 215 Wallace Circle

Boone, NC 28607

Rick & Vicky Klima

Residence @ 128 Wallace Circle

Boone, NC 28607

Diane Sprague

Residence @ 122 Wallace Circle

Boone, NC 28607

Todd Pearce

Owner: Undeveloped Lot 10 Wallace Circle (Cherrybrook subdivision)

Ned Lyons

Residence @ 110 Wallace Circle

Boone, NC 28607

20160796

King & College Mixed Use – Planned Development

Deviation Analysis & Discussion In Accordance With UDO 9.10.05(B)1(ii)

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1. **UDO 15.11.02(A) COMMERCIAL USE**
   Required: Street level commercial use footprint of 50% on King St and 30% on Wallace Cir.
   Proposed: 38% on King St and 0% on Wallace Cir.

   Discussion: The amount of vacant commercial space in Boone influenced our decision to use part of our primary street level space for attractive parking. Parking is essential to the success of the mixed use development. Therefore we have provided a parking garage on the ground floor to provide as much parking as reasonably possible. This will allow the development to provide the required parking for the commercial space at a location that is adjacent to that use rather than behind the building at an upper level. We feel this will help with the success of the commercial component.
   The secondary street is Wallace Cir and abuts a residential neighborhood zoned R1-A and R1. We felt a more "transitional" use such as the Townhomes shown would be more appropriate than commercial use fronting a residential neighborhood. Commercial use on Wallace Cir would also bring more traffic through the neighborhood which would not be appropriate or appreciated by the neighbors. A point made clear at the "Neighborhood Meeting" to which we are responding.

2. **UDO 15.11.02(B) COMMERCIAL FRONTAGE**
   Required: Street level commercial frontage of 100% of the buildings on King St and Wallace Cir.
   Proposed: 42% on King St and 0% on Wallace Cir.

   Discussion: Our primary King Street building frontage is 42% pre-leased commercial (Marathon Chiropractic) and 58% parking garage that is visually concealed behind a building facade designed to simulate commercial space. We feel this maintains the desired commercial look of a vibrant downtown area and at the same time provides adequate parking for the commercial space (and some residential) so as not to add to the existing parking problems in the downtown area.
   There is no commercial frontage on Wallace Cir for the reasons discussed in item #1 above.

3. **UDO 15.11.02(F) WINDOWS**
   Required: Street level facade window coverage of 60% on King St and 30% on Wallace Cir.
   Proposed: 28% window coverage on commercial portion of King St, 43% simulated windows on concealed parking portion of King St and 0% on Wallace Cir.

   Discussion: The commercial portion of our street level facade on King St is 28% windows. The concealed parking portion is 43% simulated windows. We feel the 28% window coverage on the commercial portion is more appropriate for a professional medical office and the 43% simulated window coverage on the parking portion is more appropriate for the purpose of concealing

parked cars and maintaining the commercial look. Both facades yield to the overall "brownstone/townhouse" design of the entire building facade.
The Townhomes fronting on Wallace Cir do not meet the 30% window coverage of the street level front facade because there is no commercial space for the reasons discussed in item #1 above.

4. **UDO 15.11.02(H) PARKING**
Required: Structured parking to be in the rear of building or below street level floor.
Proposed: Structured parking is located on the street level.

Discussion: Our structured parking is located on the first level. Considering the challenges of having over 65ft of existing elevation change on the subject property we felt that going below grade to provide parking would not be practical. Having the structured parking at street level will contribute to the success of the commercial component.

5. **UDO 15.11.02(J) SITE FOOTPRINT** Note: Lot size is 49,658 SF (1.14 acre)
Required: Building footprint to be 24,829 SF (50% of lot square footage).
Proposed: Combined footprint of both buildings is 12,650 SF (25% of lot square footage).

Discussion: The subject property has 65ft of elevation change between King St and Wallace Cir. It is not feasible to meet this requirement. To mitigate this we have located most of the building footprint along King St to give the appearance of full site coverage. Also, we have intentionally left a small portion as open space/green space in front of Mrs. Turner's house (B2 but current use is residential) so as not to block her view. This is in response to her comments prior to and at the "Neighborhood Meeting". We are also responding to community concerns regarding the scale of downtown buildings and feel that our 25% footprint is more appropriate for this location.

6. **UDO 16.06.01(C)3 SETBACKS**
Required: Building footprint line (including retaining walls in excess of 4ft) to be setback 15ft from property line.
Proposed: An 8ft retaining wall is within the 15ft setback on the East side of the project.

Discussion: Our building meets this requirement, however the retaining wall along the East side of the property rises to a height of 8ft and is located within the 15ft setback. Based upon discussions with the adjoining neighbors we are proposing a new sidewalk and landscaping to be located on the neighbor's property to improve an existing but unsafe dirt and rubble walkway between our properties. This will visually improve the situation and create a safer pedestrian walkway.

7. **UDO 16.08.02 HEIGHT**
   Required: Building height restriction is 40ft.
   Proposed: Building height using the formula contained in the UDO which includes parapet is 54ft. However the height to the top of the building is only 49ft.

   Discussion: UDO 15.11.02(D) requires a three story building as a minimum. Our building is four stories tall. UDO 16.08.02 limits the building height to 40ft. Our building as measured from the mean of the sidewalk elevation to just the top of the building is 49ft. This excludes the parapet that hides the mechanicals on the roof. The building height along the length of King St varies due to the stepped down design of the building and the 15ft elevation change along King St. In some places the building height is below 40ft.

   If our design for this development focused exclusively on the 40ft height restriction as calculated under the UDO we would not have been able to provide ceiling heights in the commercial space of 13ft and 9ft in the residential units that are desired by today's tenants. We would also not be able to provide adequate parking for the commercial space and residential units. This is a key component for the success of this project and a deliberate attempt not to add to the parking problems in the downtown area.
   We have also designed the building with a "brownstone/townhouse" look to simulate a collection of individual buildings and soften the scale of the building. If height measurements were taken at the individual "bays" and with respect to the elevation change along King St the average height would be closer to 40ft.

8. **UDO 16.08.05 HEIGHT**
   Required: Structures located within 100ft of an R1 property may not exceed 35ft in height.
   Proposed: Campus Ridge Apts to the East are zoned R1. Building height exceeds 35ft.

   Discussion: This UDO restricts our building height to 35ft because the adjoining property to the East (Campus Ridge Apts) is zoned R1. However, the current non-conforming use is Multi-Family. We feel the intent of this UDO was to protect a true residential house or neighborhood which in reality does not exist here. Since the property in question is a similar use and non-conforming it doesn't seem reasonable to limit the use of the subject property.

9. **UDO 25.04.02 SITE WALLS**
   Required: No site walls shall exceed 8ft in height.
   Proposed: A section of wall in the surface parking lot requires a height of 10ft for a length of 88ft.

   Discussion: Due to the dramatic change in elevation across the lot, exceeding the maximum wall height is necessary to provide adequate parking for the development. Allowing this small

deviation will help minimize the amount of grading while allowing us to meet the Town's new minimum parking standards for Mixed Use. Please note that this section of wall will be located between the buildings and therefore shielded from the view of the general public.

10. UDO 31.06.04(D) BUFFERYARD REDUCTION

WESTERN PROPERTY LINE

Required: According to the table in section 31.05.01 we are required to provide a Type "B" buffer along the Western property line with Mrs. Turner.

Proposed: Due to site constraints we plan to reduce to a Type "A" buffer by adding a fence option. Section 31.06.04(D) requires the fence to be placed in the middle of the buffer.

Discussion: We have discussed this option with Mrs. Turner who would prefer that the fence be placed on the property line to provide a clear delineation of properties as well as eliminating the need for maintenance personnel to enter her property to maintain landscape. Mrs. Turner further requested that a gate be placed in the fence to allow her access to our sidewalk leading to King St. and we are happy to comply.

EASTERN PROPERTY LINE

Required: Requires a 15ft buffer.

Proposed: On the Eastern property line we are proposing a reduced buffer from 15ft to 10ft but are not planning on installing the fence except along the dumpster enclosure.

Discussion: The buffer will need to be located on the adjoining property and is subject to existing site constraints and the necessary easements. We do plan to add a pedestrian way to replace the rutted out trail to give a safe walkway from the adjacent properties to King St. Our preliminary discussions with the adjoining property owners has received a favorable response.

Since we have an 8ft high retaining wall along the property line we feel this will provide the intent of the Ordinance: "to partially block the view between uses and to create a strong distinction of separation of spaces".

On the last 40ft of Eastern property line we will not be able to provide the full 10ft of buffer due to site constraints and it will decrease from 10ft to 5ft at its minimum.

Due to topography we need to come into the subject property as low as possible to keep the retaining walls at reasonable heights. This necessitates placing the driveway entrance as far down Campus Ridge Drive as possible. Since the area in question is located far away from the structure on the adjoining lot and at a higher elevation we feel the intent of the ordinance will still be met.

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KING & COLLEGE MIXED USE PROJECT

UDO 9.10.05(B)(2) MITIGATION ANALYSIS

Noise Impact Mitigation

1. Commercial Parking is located within structured parking closest to King St., mitigating the noise from come and go commercial traffic.
2. Townhomes are located fronting Wallace Circle residential area providing a quieter transition between mixed use building located on King St. and that residential area.
3. Balconies are decorative elements and will not allow for congregation of residents.

Light Impact Mitigation

1. All exterior lighting utilized in the development will meet current UDO requirements.
2. Streetscape lighting along King St. will improve current conditions for pedestrians.
3. Significant elevation change between Wallace Circle and the mixed use building on King St., along with planned landscaping and vegetation, will mitigate the impact for the residential areas of Wallace Circle.

Traffic Impact Mitigation

1. The development's primary point of ingress and egress shall be located on King St., with longer term parking using access from Wallace Circle.
2. The development is walkable to all points on Campus, the surrounding downtown area, Boone Drug Pharmacy and Earth Fare grocery store. A resident can meet all daily needs within a short walk on established sidewalks.
3. The project will also improve the existing sidewalk fronting the development along King St.
4. The development will supply ample bicycle parking and the central location will encourage alternative transportation, including pedestrian, bicycle, and public transit.

Visual Impact Mitigation

1. The development design has been deeply considered and modified numerous times over the last 1.5 years. The property owners have diligently met and worked with neighbors and staff from the Town of Boone to achieve the property owners' desire to make a positive improvement to Downtown Boone. Additionally, the development will remove two dilapidated structures currently on site and improve a vacant lot.
2. The location of the Townhomes fronting Wallace Cir. mitigates the development's visual impact on the neighborhood by providing a residential transition, whereas strict compliance with the code would require ground floor commercial and a larger building footprint.
3. The design team has diligently tracked proposed building material requirements for the Downtown Overlay District and endeavored to meet those proposed standards. The

development also proposes to reuse stone from the existing on-site structures in an attractive exterior design meant to integrate the project with the surrounding downtown area.

4. The developers are also proposing to improve common areas adjacent to the project with fencing, landscaping and pedestrian walkways (where currently residents of Campus Ridge Apartments utilize an old gulley to access the King St. sidewalk).
5. Parking is concealed between the buildings and within ground floor parking structure.
6. The use of parapets will mitigate the negative visual impact of roof top mechanicals.

Health Impact Mitigation

1. No negative health impacts are anticipated; to the contrary, the developers anticipate the project will have several positive health impacts. Such positive impacts include, but are not limited to:
    a. Improving the King St. sidewalk adjacent to the project and promoting walkability;
    b. Expanding the business of a local health care practitioner (Chiropractic), who is also one of the project's developers;
    c. Building a pedestrian walkway from adjacent student apartments to King St. sidewalk where students currently utilize a dangerously eroded gulley; and
    d. Redeveloping an underutilized site in a central location which will promote alternative transportation and reduce reliance on automobiles.

20160796

STATE OF NORTH CAROLINA

AFFIDAVIT

COUNTY OF WATAUGA

RECEIVED
NOV 28 2016

The undersigned, the Member-Managers of KING & COLLEGE, LLC and WOODS MIXED USE PROPERTIES, LLC, (hereinafter, "Petitioners") being duly sworn, state that:

1. The Petitioners are the owners of those certain parcels of real property having Watauga County tax parcel numbers of 2900-98-8588-000 and 2900-98-9402-000;

2. That the Petitioners have executed and caused to be filed with the Town of Boone Department of Planning & Inspections that certain Zoning Permit Application, requesting that the properties described herein be rezoned in accordance with the Town of Boone's Unified Development Ordinance ("UDO"), Planned Development rezoning process;

3. That in accordance with said UDO, Subsection 9.10.05(B)(5), the undersigned hereby set forth and affirm the following with respect to the Planned Development rezoning described above:

    a. All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the petitioner's independent judgement; and

    b. The petitioners are not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions;

    c. The petitioners understand that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and

    d. The petitioners intend for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning.

This affidavit is made for the purpose of meeting the requirements of the Town of Boone UDO's Planned Development submittal requirements embodied in UDO Section 9.10.05.

[signature page follows]

KING & COLLEGE, LLC

Robert Flanigan, Member-Manager

Subscribed and sworn to before me, this 28 day of November, 2016.

Notary Public

My Commission Expires:

10-19-2019

(NOTARY SEAL)

Martha W. Pate
Notary Public
Watauga County
North Carolina
My Commission Expires 10/19/2019

WOODS MIXED USE PROPERTIES, LLC

Ryan Woods, Member-Manager

Subscribed and sworn to before me, this 28 day of November, 2016.

Notary Public

My Commission Expires:

10-19-2019

(NOTARY SEAL)

Martha W. Pate
Notary Public
Watauga County
North Carolina
My Commission Expires 10/19/2019

Communication: 20160796 Geo-Technical Report (Case 20160796 King and College - MixedUse Planned

Packet Pg. 30

L^2

20160796

L SQUARED ENGINEERING
PO Box 174
Lake Lure, North Carolina 336-977-5212

November 23, 2016

Michael Trew, PE
Municipal Engineering Services Company, PA
PO Box 349
Blowing Rock, NC

RECEIVED
NOV 28 2016

RE: Limited Evaluation
Slope Gradient
King at College
Boone, NC

Dear Mr. Trew:

In accordance with you request and authorization the undersigned geotechnical engineer from L Squared Engineering (LSE) has observed the proposed grading plan for the referenced project. Specifically requested at this time is an evaluation of the slope between two parking areas that are separated approximately 10 feet in elevation.

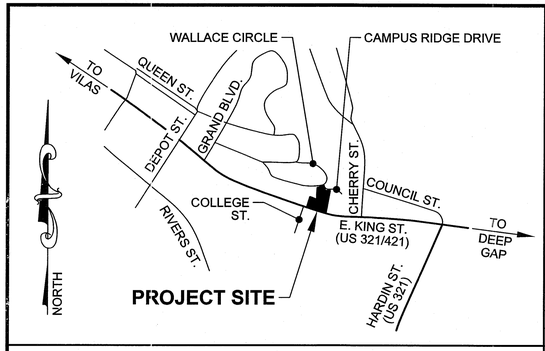
The proposed slope between these two parking area is 1½ Horizontal to one Vertical (1½ H: 1V). This gradient is acceptable but is based on the soils exposed at the slope's surface being residual soil. If it is fill the fill will need to be reinforced with geogrid. Observation of this area will need to be performed by the undersigned at the time of construction to confirm the condition of soils at the slope face.

It is further recommended that a fence or some other kind of barrier be placed along the edge of the upper parking area to help prevent anyone going over the slope.

If you have any questions or comments regarding this report, or require any additional engineering services, it is recommended that you contact me at your earliest opportunity.

Sincerely,
L Squared Engineering

Laurence F. Lindsey, P.E.
Geotechnical Engineer



VICINITY MAP
NOT TO SCALE

INDEX OF DRAWINGS

DWG. NO.	DESCRIPTION	SHEET NO.
C-1	COVER SHEET	1 OF 5
C-2	PROJECT NOTES	2 OF 5
C-3	EXISTING CONDITIONS	3 OF 5
C-4	PRELIMINARY SITE PLAN	4 OF 5
C-5	PRELIMINARY GRADING & DRAINAGE PLAN	5 OF 5
A-A	CONCEPTUAL DESIGN (BY APPALACHIAN ARCHITECTURE)	1 OF 1

Town of Boone
Planning & Inspections
Date Received
January 13, 2017

OWNER/APPLICANT:
ROBERT FLANIGAN, MANAGER
KING & COLLEGE, LLC
PO BOX 3106
BOONE, NC 28607
(828) 964-3385

CIVIL ENGINEER:
MUNICIPAL ENGINEERING SERVICES COMPANY, P.A.
PO BOX 349
671 WEST KING STREET
BOONE, NC 28607
(828) 262-1767

ARCHITECT:
APPALACHIAN ARCHITECTURE
703 WEST KING STREET
BOONE, NC 28607
(828) 265-2405

SURVEYOR:
NEW RIVER SURVEYORS
1651 HIGHWAY 194 N
BOONE, NC 28607
(828) 268-9779

GEOTECHNICAL ENGINEER:
L SQUARED ENGINEERING
174 BUZZARDS WAY
LAKE LURE, NC 28746
(828) 335-2878

TRAFFIC ENGINEER:
DAVENPORT ENGINEERING
305 WEST FOURTH ST., SUITE 2A
WINSTON-SALEM, NC 27101
(336) 744-1636

KING & COLLEGE MIXED-USE PLANNED DEVELOPMENT

KING STREET
BOONE, NC

PROJECT NO. B15012.3

Municipal Engineering Services Company, P.A.
Boone, N.C. Garner, N.C.

PRELIMINARY
FOR REGULATORY REVIEW ONLY

By: _____
Professional Engineer

LEGEND

- EX. POWER POLE
- EX. SS MANHOLE
- EX. SS CLEANOUT
- EX. GATE VALVE
- EX. FIRE HYDRANT
- EX. LIGHT POLE
- EX. CATCH BASIN
- EX. DROP INLET
- EX. WATER METER
- EX. GUY WIRE
- EX. TEST PIT
- EX. DRAINAGE MANHOLE
- EX. GAS MARKER
- EX. WELL
- EX. TREE
- EX. BUSH
- EX. SIGN
- EX. TELEPHONE PEDESTAL
- EX. FIBER OPTIC MARKER
- PROPOSED POWER POLE
- PROPOSED SS MANHOLE
- PROPOSED SS VAULT
- PROPOSED SS CLEANOUT
- PROPOSED GATE VALVE
- PROPOSED FIRE HYDRANT
- PROPOSED LIGHT POLE
- PROPOSED DRAINAGE STRUCTURE
- PROPOSED YARD DRAINAGE INLET
- PROPOSED WATER METER
- TEMPORARY WATTLE
- TEMPORARY ROCK PIPE INLET PROTECTION
- TEMPORARY INLET PROTECTION

LINETYPES

- PROPOSED WATERMAIN
- PROPOSED CONTOURS
- EXISTING CONTOURS
- STREAM OR CREEK
- DITCH OR SWALE
- STREAM OR CREEK TOP OF BANK
- STREAM BUFFER
- TROUT BUFFER
- EXISTING WETLANDS
- PROPOSED DRAINAGE PIPE
- EXISTING STORM DRAINAGE
- PROPOSED S.S. MAIN
- CENTERLINE
- FENCES
- EXISTING WATERLINE
- RIGHT-OF-WAY LINE
- EASEMENTS
- EXISTING WATERSHED
- EXISTING FLOOD ZONE AE LIMIT
- EXISTING SANITARY SEWER
- PERMANENT DIVERSION
- TEMPORARY BERM DITCH
- SILT FENCE
- TEMPORARY SLOPE DRAIN
- EXISTING WOODS LINE
- EXISTING OVERHEAD POWERLINE
- UNDERGROUND GAS LINE
- UNDERGROUND FIBER OPTIC LINE
- UNDERGROUND POWERLINE
- UNDERGROUND TELEPHONE LINE
- UNDERGROUND CABLE LINE

LUI RATIOS

SITE IS ZONED B-1 (CENTRAL BUSINESS DISTRICT)

		PROVIDED:				ALLOWED:
LOT AREA	=	49,789 FT²	>	MIN	=	5,000 FT²
LOT WIDTH (KING STREET)	=	304 FT	>	MIN	=	15 FT
FLOOR AREA	=	N/A				
OPEN SPACE	=	N/A				
LIVABILITY SPACE	=	N/A				
RECREATION SPACE	=	N/A				
BUILDING HEIGHT	=	49'-0" - 54'-0"		MAX	=	40'
BUILDING FOOTPRINT	=	11,200 FT²		MIN	=	24,895 FT²

Municipal Engineering Services Company, P.A.
P.O. BOX 97 GARNER, N.C. 27529 (919) 772-5393
Engineering Company, P.A.
P.O. BOX 349 BOONE, N.C. 28607 (828) 262-1767
LICENSE NUMBER: C-0281

KING & COLLEGE
MIXED-USE PLANNED DEVELOPMENT
KING STREET
BOONE, NORTH CAROLINA

DATE	BY	REV.	DESCRIPTION

COVER SHEET

SCALE: AS SHOWN
DATE: 11-28-16
DRWN. BY: EGT
CHKD. BY: MPT
PROJECT NUMBER: B15012.3
DRAWING NO. C-1
SHEET NO. 1 OF 5

Communication: 20160796 Site Plans (Case 20160796 King and College - MixedUse Planned Development)

EROSION & SEDIMENTATION CONTROL NARRATIVE:

KING & COLLEGE IS A PROPOSED MIXED-USE PLANNED DEVELOPMENT LOCATED ON THE NORTH SIDE OF KING STREET (US HIGHWAY 321/421) IN THE TOWN OF BOONE. THE EROSION & SEDIMENTATION CONTROL PLAN FOR THIS SITE WILL CONSIST OF 3 PHASES; THE WORK REQUIRED FOR EACH PHASE IS AS FOLLOWS:

PHASE 1

THE STORMWATER RUNOFF DISCHARGING INTO THE SITE FROM THE EXISTING 15" PIPE UNDER WALLACE CIRCLE AND THE EXISTING PAVED FLUME ADJACENT TO THE PIPE OUTLET WILL BE CHANNELED USING A TEMPORARY BERM DITCH ON THE SOUTH SIDE OF THE PAVEMENT INTO A TEMPORARY SLOPE DRAIN. THE TEMPORARY SLOPE DRAIN WILL RUN ALONG THE WESTERN PROPERTY LINES OF THE SITE DOWN TO THE EXISTING CURB AND GUTTER ON THE NORTH SIDE OF KING STREET. THE TEMPORARY SLOPE DRAIN WILL OUTLET INTO A TEMPORARY JUNCTION BOX NORTH OF THE EXISTING SIDEWALK AT THE SOUTHWEST CORNER OF THE SITE AND THEN INTO THE EXISTING CURB AND GUTTER BY A TEMPORARY CONCRETE FLUME TO BE INSTALLED UNDER THE SIDEWALK.

TEMPORARY SILT FENCE WILL BE INSTALLED AT THE PERIMETER OF THE SITE AND TEMPORARY GRAVEL CONSTRUCTION ENTRANCES WILL BE INSTALLED AT THE TWO EXISTING DRIVEWAYS INTO THE SITE FROM KING STREET. A TEMPORARY SKIMMER SEDIMENT BASIN WILL BE INSTALLED AT THE SOUTHEAST CORNER OF THE SITE JUST EAST OF THE EXISTING DRIVEWAY. TEMPORARY BERM DITCHES WILL BE INSTALLED ALONG THE SOUTH AND EAST PROPERTY LINES OF THE SITE TO CHANNEL RUNOFF FROM DISTURBED AREAS INTO THE SKIMMER SEDIMENT BASIN. A TEMPORARY RISER BARREL WILL BE INSTALLED ON THE SOUTH SIDE OF THE SKIMMER SEDIMENT BASIN AND A PERMANENT JUNCTION BOX WILL BE INSTALLED BETWEEN THE BERM OF THE SEDIMENT BASIN AND THE EXISTING SIDEWALK ALONG KING STREET. THE SKIMMER DEWATERING DEVICE WILL CONNECT TO THE TEMPORARY RISER BARREL AND A PIPE WILL BE INSTALLED BETWEEN THE RISER BARREL AND THE PERMANENT JUNCTION BOX TO SERVE AS THE EMERGENCY SPILLWAY. THE DISCHARGE FROM THE SEDIMENT BASIN WILL PASS THROUGH THE JUNCTION BOX TO THE EXISTING CURB & GUTTER ON KING STREET VIA A PERMANENT CONCRETE FLUME TO BE INSTALLED UNDER THE SIDEWALK. IT IS ANTICIPATED THE GRADING WORK FOR THE SITE DURING PHASE 1 WILL START AT THE UPPER PART OF THE SITE AND THE GRADING WILL WORK DOWN THE SLOPE. THE GRADING WORK FOR THE PROPOSED DRIVEWAY INTO THE SITE FROM KING STREET ALONG THE EASTERN PROPERTY LINE SHOULD ALSO BE COMPLETED DURING PHASE 1. THE APPROXIMATE DISTURBED AREA FOR PHASE 1 SHALL BE 1.3 ACRES.

INSPECT ALL EROSION & SEDIMENTATION CONTROL MEASURES WEEKLY AND AFTER EVERY RAIN STORM. ALL MEASURES SHALL BE MAINTAINED UNTIL DISTURBED AREAS HAVE BEEN STABILIZED AND PERMANENT GROUND COVER ESTABLISHED. IMMEDIATELY REPAIR ANY DAMAGE TO EROSION & SEDIMENTATION CONTROL MEASURES. REMOVE SEDIMENT FROM TEMPORARY SILT FENCE WHEN SEDIMENT LEVEL REACHES ONE-HALF FENCE HEIGHT. CLEAR THE INLET PROTECTION HARDWARE CLOTH OF ANY DEBRIS TO PROVIDE ADEQUATE FLOW AND REPLACE WASHED STONE AS REQUIRED. REMOVE SEDIMENT FROM THE SKIMMER SEDIMENT BASIN WHEN SEDIMENT LEVEL REACHES ONE-HALF BASIN DEPTH. REMOVE SEDIMENT FROM FLEXSTORM CATCH-IT SEDIMENT BAGS WHEN THEY ARE ONE-HALF FULL. TAKE CARE NOT TO DAMAGE OR UNDERCUT THE TEMPORARY SILT FENCE OR INLET PROTECTION HARDWARE CLOTH DURING SEDIMENT REMOVAL. REPLACE STONE FOR TEMPORARY GRAVEL CONSTRUCTION ENTRANCES AS NECESSARY.

PHASE 2

THE TEMPORARY SILT FENCE, SLOPE DRAIN AND SKIMMER SEDIMENT BASIN INSTALLED DURING PHASE 1 SHALL REMAIN IN PLACE FOR PHASE 2. THE TEMPORARY GRAVEL CONSTRUCTION ENTRANCE SHALL BE RELOCATED FROM THE EXISTING DRIVEWAYS INTO THE SITE TO THE PROPOSED DRIVEWAY LOCATION ALONG THE EASTERN PROPERTY LINE AS SOON AS POSSIBLE DURING PHASE 2. GRADING WORK SHALL CONTINUE DURING PHASE 2; THE SKIMMER SEDIMENT BASIN CAN BE REDUCED IN SIZE DURING PHASE 2 AS GRADING WORK ABOVE THE BASIN IS COMPLETED AND THE GRADED SLOPES ARE STABILIZED WITH GROUND COVER ESTABLISHED. THE SEDIMENT BASIN SHALL BE REDUCED IN SIZE STARTING ON THE WESTERN SIDE OF THE BASIN TO FACILITATE CONSTRUCTION OF THE BUILDING FOUNDATION. TEMPORARY INLET PROTECTION SHALL BE INSTALLED AT EACH NEW DRAINAGE STRUCTURE AS THEY ARE INSTALLED AND SHALL REMAIN IN PLACE UNTIL ALL GRADED AREA DRAINING TO EACH STRUCTURE ARE STABILIZED WITH GROUND COVER ESTABLISHED. THE TEMPORARY SLOPE DRAIN AND THE TEMPORARY JUNCTION BOX/CONCRETE FLUME ON THE WEST SIDE OF THE SITE CAN BE REMOVED WHEN THE NEW STORMWATER COLLECTION SYSTEM FOR THE RUNOFF FROM WALLACE CIRCLE HAS BEEN INSTALLED AND CONNECTED TO THE PERMANENT JUNCTION BOX AND CONCRETE FLUME UNDER THE SIDEWALK. THE NEW STORMWATER COLLECTION SYSTEM FOR THE RUNOFF FROM THE SITE SHALL NOT BE CONNECTED TO THE PERMANENT JUNCTION BOX AND CONCRETE FLUME UNDER THE SIDEWALK ON KING STREET UNTIL ALL GRADED AREAS DRAINING TO THIS SYSTEM ARE STABILIZED WITH GROUND COVER ESTABLISHED. THE APPROXIMATE DISTURBED AREA FOR PHASE 2 SHALL BE THE SAME AS PHASE 1.

PHASE 3

THE TEMPORARY SILT FENCE, SKIMMER SEDIMENT BASIN AND INLET PROTECTION INSTALLED DURING PHASE 2 SHALL REMAIN IN PLACE FOR PHASE 3. THE NEW STORMWATER DETENTION SYSTEM FOR THE SITE SHALL BE INSTALLED WHEN ALL GRADED AREAS DRAINING TO THE NEW STORMWATER COLLECTION SYSTEM ARE STABILIZED WITH GROUND COVER ESTABLISHED. ONCE THE STORMWATER DETENTION SYSTEM HAS BEEN INSTALLED THE OUTLET FOR THE COLLECTION SYSTEM CAN BE CONNECTED TO THE PERMANENT JUNCTION BOX AND CONCRETE FLUME UNDER THE SIDEWALK. THE SKIMMER SEDIMENT BASIN CAN BE REMOVED WHEN ALL GRADED AREAS ON THE SITE HAVE BEEN STABILIZED WITH GROUND COVER ESTABLISHED. THE APPROXIMATE DISTURBED AREA FOR PHASE 3 SHALL REMAIN THE SAME AS PHASE 2.

ONCE STABLE PERMANENT GROUND COVER IS ESTABLISHED ON ALL GRADED AREAS ON THE SITE, THE REMAINING EROSION & SEDIMENTATION CONTROL MEASURES MAY BE REMOVED. BARE SOIL AREAS REMAINING AFTER THE REMOVAL OF THE EROSION & SEDIMENTATION CONTROL MEASURES SHALL BE IMMEDIATELY SEEDED AND MULCHED.

APPLY TOP DRESSING 6 MONTHS AFTER INITIAL SEEDING.

STORMWATER DRAINAGE NOTES:

1. EXISTING STORMWATER RUNOFF FROM WALLACE CIRCLE WILL BE COLLECTED AND PIPED THROUGH THE SITE AND WILL BYPASS THE STORMWATER DETENTION SYSTEM.

2. ALL STORMWATER COLLECTION SYSTEM PIPES SHALL BE HIGH DENSITY POLYETHYLENE (HDPE) CORRUGATED PIPE WITH SMOOTH INTERIOR UNLESS OTHERWISE SPECIFIED. HDPE PIPE SHALL MEET THE PROJECT SPECIFICATION OF AASHTO M294.

3. ALL STORMWATER COLLECTION SYSTEM PIPES PASSING UNDER A RETAINING WALL SHALL BE REINFORCED CONCRETE PIPE.

4. ALL ROOF DRAINS SHALL TIE TO THE STORMWATER COLLECTION SYSTEM OR PARKING LOTS.

5. STORMWATER DETENTION SYSTEM SHALL BE DESIGNED TO INSURE THE RATE OF DISCHARGE FROM THE SITE DOES NOT EXCEED THE PRE-DEVELOPMENT RATE OF DISCHARGE.

6. ALL STORMWATER DRAINAGE PIPES SHALL HAVE 1' MINIMUM COVER.

7. STORMWATER RUNOFF FROM WALLACE CIRCLE AND THE STORMWATER DETENTION SYSTEM WILL DISCHARGE INTO THE EXISTING CURB AND GUTTER ALONG KING STREET VIA A CONCRETE FLUME UNDER THE SIDEWALK.

8. CONTRACTOR SHALL PLACE CONCRETE INVERTS TO THE LEVEL OF OUTLET PIPE IN ALL DRAINAGE STRUCTURES SO THAT THERE IS NO PONDING.

CONSTRUCTION NOTES

1. ALL EROSION & SEDIMENTATION CONTROL FABRIC SHALL BE INSTALLED IN STRICT ACCORDANCE WITH MANUFACTURER'S GUIDELINES.

2. IF CONTRACTOR WISHES TO USE AN EROSION & SEDIMENTATION CONTROL FABRIC OTHER THAN WHAT IS SPECIFIED, PRIOR APPROVAL MUST BE GRANTED BY THE ENGINEER.

SEWER SERVICE NOTES:

1. CONTRACTOR SHALL LOCATE ALL UNDERGROUND UTILITIES PRIOR TO EXCAVATION.

2. ALL NEW SANITARY SEWER SERVICES SHALL BE 6" CLASS 350 DUCTILE IRON PIPE, CONSTRUCTED ACCORDING TO NC BUILDING CODE. PLACE 2-DIRECTIONAL CLEANOUTS ON S.S. SERVICE WITHIN 10' OF BUILDING.

3. PLUMBING ENGINEER SHALL CONFIRM SIZE, MATERIAL, AND LOCATION OF ALL SEWER SERVICES.

4. THE CONTRACTOR/PROPERTY OWNER IS RESPONSIBLE FOR ANY DAMAGE TO THE NEW SEWER SERVICES IN THE CONSTRUCTION AREA UNTIL CONSTRUCTION IS COMPLETE.

FIRE PROTECTION NOTES:

1. CONTRACTOR IS RESPONSIBLE FOR CONFIRMING LOCATION, SIZE & TYPE OF ALL EXISTING PIPES AT TIE-IN POINTS, PRIOR TO ORDERING NEW PIPE OR FITTINGS.

2. SPRINKLER CONTRACTOR SHALL NOT CALCULATE FOR SPRINKLER SUBMITTAL ABOVE 90% AVAILABLE WATER. NO VALVE PITS OR BUILDING ENTRY FOR SHUT OFF. PROVIDE KNOX BOX SECURITY SYSTEM FOR FIRE DEPARTMENT ENTRY. COORDINATE LOCATION OF KNOX BOX, FDCs AND PIVs WITH FIRE MARSHALL.

3. SPRINKLER CONTRACTOR SHALL CONFIRM SIZE, MATERIAL, AND LOCATION OF ALL FIRE AND FDC LINES.

4. RPZ DETECTORS SHALL BE LOCATED ON THE FIRE LINE IN EACH OF THE SPRINKLER ROOMS OR OUTSIDE IN A HOT BOX. A DRAIN MUST BE INSTALLED TO HANDLE CATASTROPHIC FAILURE OF THE RELIEF VALVES AND OUTLET TO THE ATMOSPHERE IF INSTALLED IN SPRINKLER ROOMS. SPRINKLER CONTRACTOR TO PROVIDE MIKE TRIVETT, TOWN OF BOONE'S BACK FLOW PREVENTION COORDINATOR, WITH SPECIFICATIONS FOR RPZ DETECTOR AND CALCULATIONS FOR DRAIN.

5. FIRE DEPARTMENT CONNECTIONS (FDCs) SHALL BE LOCATED A MAXIMUM OF 100' FROM FIRE HYDRANTS. FDCs SHALL BE PROPERLY MARKED.

6. STANDPIPES SHALL BE ARE REQUIRED DUE TO BUILDING ELEVATIONS. THEY SHALL BE A DRY TYPE SYSTEMS WITH CONNECTIONS LOCATED ON THE INTERVENING STAIR LANDINGS. THE CONNECTIONS SHALL BE LOCATED AT THE SAME LOCATION AS THE FDCs. WALL MOUNTED OR FREE STANDING PIVs ARE APPROVED TYPES.

7. THE MAIN STRUCTURE ADDRESS NUMBER HEIGHT SHALL BE 8" OF CONTRASTING COLOR TO THE BUILDING WITH THE LOCATION TO BE DETERMINED BY THE BOONE FIRE DEPARTMENT. UNIT NUMBERS SHALL BE SUBMITTED TO THE TOWN GIS DEPARTMENT FOR APPROVAL. ADDITIONAL REQUIREMENTS ARE POSSIBLE UPON REVIEW OF BUILDING PLANS.

8. DRY STANDPIPE CONNECTION SHALL BE LOCATED NEXT TO FDC.

9. COORDINATE RELOCATION OF EXISTING FIRE HYDRANT WITH FIRE MARSHAL (828-268-6180).

BICYCLE PARKING NOTES

ALL BICYCLE PARKING FACILITIES SHALL MEET THE REQUIREMENTS OF THE TOWN OF BOONE'S UNIFIED DEVELOPMENT ORDINANCE. IN PARTICULAR, BICYCLE PARKING FACILITIES SHALL BE CONSTRUCTED OF MATERIALS OF SUFFICIENT STRENGTH TO SIGNIFICANTLY RESIST THEIR DISPLACEMENT OR REMOVAL, AND THEY SHALL BE SECURELY ANCHORED IN CONCRETE OR OTHER EQUIVALENT MATERIAL OR SYSTEM OF SUFFICIENT STRENGTH TO SIGNIFICANTLY RESIST REMOVAL. BICYCLE PARKING FACILITIES SHALL SUPPORT BICYCLES IN A STABLE POSITION WITHOUT DAMAGE TO WHEELS, FRAME OR OTHER COMPONENTS AND ALLOW FOR THE USE OF EITHER A CABLE, U-SHAPED, OR SIMILAR LOCK TO SECURE BOTH WHEELS OF THE BICYCLE. NO LESS THAN 4' SHALL BE PROVIDED BETWEEN PARALLEL RACKS.

EXAMPLES OF ACCEPTABLE FACILITIES:

WALL MOUNTED BIKE RACKS ARE PROPOSED IN THE PARKING GARAGE FOR MAXIMUM UTILIZATION OF AVAILABLE SPACE.

WATER MAIN & SERVICE NOTES:

1. ALL UNDERGROUND UTILITIES SHALL BE FIELD LOCATED BY CONTRACTOR PRIOR TO EXCAVATION.

2. CONTRACTOR IS RESPONSIBLE FOR CONFIRMING LOCATION, SIZE & TYPE OF ALL EXISTING PIPES AT TIE-IN POINTS, PRIOR TO ORDERING NEW PIPE OR FITTINGS.

3. ANY NEW WATER MAINS SHALL BE CLASS 350 DUCTILE IRON OR C-900 PVC PIPE.

4. ALL WATER SERVICE LINES SHALL BE SDR 13.5 PVC UNLESS OTHERWISE SPECIFIED.

5. ALL WATER MAINS AND SERVICES SHALL HAVE A MINIMUM 3' COVER UNLESS SPECIFIED OTHERWISE.

6. ALL VALVES SHALL BE RESILIENT-SEAT DUCTILE IRON GATE VALVES.

7. COORDINATE LOCATION OF ALL NEW TAPS & METERS WITH TOWN OF BOONE UTILITY DEPARTMENT (828-268-6250).

8. CONCRETE THRUST BLOCKING SHALL BE PROVIDED AT ALL BENDS AND FITTINGS FOR MAINS AND SERVICES OVER 4" IN DIAMETER.

9. ALL BENDS AND TEES SHALL BE RESTRAINED JOINT AND HAVE THRUST BLOCKING. SEE DETAIL SHEET FOR SCHEDULE OF THRUST BLOCKING.

10. ALL HYDRANTS MUST BE KENNEDY K-81 HYDRANTS OR APPROVED EQUAL. COORDINATE WITH TOWN OF BOONE UTILITY DEPARTMENT.

11. HYDRANT LOCATORS SHALL BE ADDED TO ALL FIRE HYDRANTS IN THE PROJECT AREA FOR IDENTIFICATION DURING INCLEMENT WEATHER.

12. PLUMBING ENGINEER SHALL CONFIRM SIZE, MATERIAL, AND LOCATION OF ALL WATER SERVICES. SPRINKLER CONTRACTOR SHALL CONFIRM SIZE, MATERIAL, AND LOCATION OF ALL FIRE AND FDC LINES.

13. PLUMBING CONTRACTOR & SPRINKLER CONTRACTOR SHALL COORDINATE WITH MIKE TRIVETT AT TOWN OF BOONE UTILITY DEPARTMENT REGARDING BACKFLOW PREVENTION REQUIREMENT PRIOR TO CONSTRUCTION (828-268-6250).

14. THE CONTRACTOR/PROPERTY OWNER IS RESPONSIBLE FOR ANY DAMAGE TO THE WATER MAINS IN THE CONSTRUCTION AREA UNTIL CONSTRUCTION IS COMPLETE.

WATER METER NOTES:

1. WATER METERS FOR THE BUILDING MAY BE LOCATED INSIDE THE BUILDING IN METER ROOMS. IF INSIDE, THE METERS SHALL BE SENSUS RADIO READ OR APPROVED EQUAL WITH DUEL CHECK SETTERS OR DUEL CHECK VALVES.

2. METERS MAY BE LOCATE OUTSIDE THE BUILDING IN INDIVIDUAL METER BOXES. OUTSIDE METERS SHALL BE SENSUS TOUCH READ OR APPROVED EQUAL WITH DUAL CHECK SETTERS.

3. COORDINATE TAPS AND METERS WITH TOWN OF BOONE UTILITY DEPARTMENT (828-268-6250).

BACKFLOW PREVENTION NOTES:

1. RPZ DETECTORS ARE REQUIRED FOR EACH FIRE LINE INTO THE BUILDING. RPZ DETECTORS MAY BE LOCATED IN A SPRINKLER ROOM INSIDE THE GARAGE OR IN AN ABOVE GROUND HOT BOX OUTSIDE THE BUILDING.

2. A REDUCED PRESSURE PRINCIPAL ASSEMBLY (RP) IS REQUIRED ON ALL DOMESTIC WATER SERVICE LINES ENTERING THE BUILDING IF DOMESTIC METERS ARE LOCATED INSIDE THE BUILDING. IN ADDITION, ALL COMMERCIAL USES IN THE US HWY 321 BUILDING SHALL HAVE RPs ON THEIR INDIVIDUAL SERVICE LINES. THESE RPs MAY BE LOCATED IN BACKFLOW ROOMS IN THE PARKING GARAGE.

3. ALL RPZ DETECTORS AND RPs LOCATED IN SPRINKLER OR BACKFLOW ROOMS SHALL HAVE A DRAIN INSTALLED TO HANDLE CATASTROPHIC FAILURE OF THE RELIEF VALVES AND OUTLET TO THE ATMOSPHERE.

4. SPRINKLER CONTRACTOR AND PLUMBING ENGINEER SHALL PROVIDE MIKE TRIVETT, TOWN OF BOONE'S BACK FLOW PREVENTION COORDINATOR, WITH SPECIFICATIONS FOR RPZ DETECTOR AND RPs ALONG WITH CALCULATIONS FOR DRAIN.

GENERAL NOTES:

1. BOUNDARY SURVEY AND TOPOGRAPHIC SURVEY PREPARED BY NEW RIVER SURVEYORS, RUSSELL C. SHAW, L-2829, JOB NO. 15041, DATED 5-21-15.

2. PROPERTIES TO BE RECOMBINED PRIOR TO CERTIFICATE OF OCCUPANCY.

3. BEARINGS ARE RELATIVE TO BOOK OF RECORDS 1757 AT PAGE 380 AND ARE ROUNDED TO THE NEAREST FIVE SECONDS. ALL MEASUREMENTS ARE HORIZONTAL.

4. ELEVATIONS ARE BASED UPON ASSUMED DATUM.

5. CONTOUR INTERVAL = 1 FOOT.

6. SITE IS ZONED B-1, CENTRAL BUSINESS DISTRICT.

7. TOTAL PROPERTY AREA = 1.143 ACRES.

8. PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA ACCORDING TO FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 3700290000J, DATED 12-03-2009.

9. REFERENCE IS ALSO MADE TO PLAT BOOK 02 AT PAGE 103 AND PLAT BOOK 3 AT PAGE 135.

10. THERE IS A 10 FEET WIDE RIGHT-OF-WAY AS ORIGINALLY DESCRIBED IN DEED BOOK 079 AT PAGE 239. DUE TO VAGUENESS OF DESCRIPTION, THE SURVEYOR WAS UNABLE TO ASCERTAIN THE EXACT LOCATION OF SAID RIGHT-OF-WAY. THE RIGHT-OF-WAY REFERRED TO SERVES THE ADJOINING PROPERTY TO THE EAST, FORMERLY THE A.L. COOK LANDS AND MAY RUN ALONG EASTERN BOUNDARY LINE.

11. CONCRETE WALKWAY DEEDED TO MARSHALL WALTERS BY DEED BOOK 80 AT PAGE 489 BUT WAS NOT OMITTED FROM CONVEYANCE TO MARSHA TURNER BY DEED BOOK 123 AT PAGE 888.

12. PRIOR TO ANY EXCAVATION, CONTRACTOR SHALL LOCATE ALL UNDERGROUND UTILITIES. CALL 1-800-632-4949.

13. ALL UTILITIES SHALL BE UNDERGROUND.

14. CONTACT NEW RIVER LIGHT & POWER FOR LOCATION OF POWER (828-264-3671).

15. CONTACT AT&T FOR PHONE SERVICE (828-262-4908).

16. CONTACT CHARTER COMMUNICATIONS FOR CABLE SERVICE (828-733-1510).

17. ALL SIDEWALKS WITHIN THE TOWN OF BOONE RIGHT OF WAY SHALL CONFORM TO ALL REQUIREMENTS OF SECTION 23.08 OF THE TOWN OF BOONE'S UNIFIED DEVELOPMENT ORDINANCE.

18. 24" CONCRETE CURB & GUTTER (NC DOT STD. 846.01) SHALL BE USED AS SHOWN ON PLAN. 30" CURB & GUTTER SHALL BE USED IN THE RIGHT-OF-WAY.

19. PARKING SPACE DIMENSIONS ARE TO FACE OF CURB (TYP). RADII ARE TO BACK OF CURB (TYP).

20. THE CONTRACTOR/PROPERTY OWNER IS RESPONSIBLE FOR ANY DAMAGE TO THE WATER & SEWER MAINS IN THE CONSTRUCTION AREA UNTIL CONSTRUCTION IS COMPLETE.

21. ALL ROOFTOP EQUIPMENT SHALL BE SCREENED OR OTHERWISE PLACED OUT OF VIEW FROM ADJACENT STREETS.

22. ALL UTILITIES INCLUDING BUT NOT LIMITED TO HVAC UNITS AND METERS SHALL BE SCREENED FROM ADJACENT PROPERTIES AND PUBLIC STREETS PER SECTION 25.02 OF THE TOWN OF BOONE'S UNIFIED DEVELOPMENT ORDINANCE.

23. HANDICAP SPACES SHALL BE MARKED BOTH ON PAVEMENT & WITH SIGNS IN COMPLIANCE WITH THE LATEST EDITION OF THE NORTH CAROLINA ACCESSIBILITY CODE.

24. COMPACT AUTOMOBILE AND MOTORCYCLE SPACES SHALL BE MARKED ON PAVEMENT ONLY.

25. MOTORCYCLE AND SCOOTER SPACES SHALL HAVE MINIMUM DIMENSIONS OF 4'x8' AND PROVIDED WITH A FIXED FEATURE FOR SECURING THE MOTORCYCLES AND SCOOTERS. IN ADDITION, SPACES SHALL CONFORM TO ALL OTHER REQUIREMENTS OF SECTION 24.10 OF THE TOWN OF BOONE'S UNIFIED DEVELOPMENT ORDINANCE.

26. LONG TERM AND SHORT TERM BICYCLE RACKS AND SPACES SHALL CONFORM TO ALL REQUIREMENTS OF SECTION 24.09 OF THE TOWN OF BOONE'S UNIFIED DEVELOPMENT ORDINANCE.

27. ALL RECOMMENDATIONS SPECIFIED IN THE TRANSPORTATION IMPACT ANALYSIS PREPARED BY DAVENPORT ENGINEERING SHALL BE FOLLOWED IF APPROVED IN PLANNED DEVELOPMENT PROCESS.

SIGNAGE NOTES:

1. ALL SIGNAGE SHALL BE PERMITTED SEPARATELY.

PRELIMINARY
FOR REGULATORY REVIEW ONLY

Municipal Engineering Services Company, P.A.
P.O. BOX 97 GARNER, N.C. 27529 (919) 772-5393
P.O. BOX 349 BOONE, N.C. 28607 (828) 262-1767
LICENSE NUMBER: C-0281

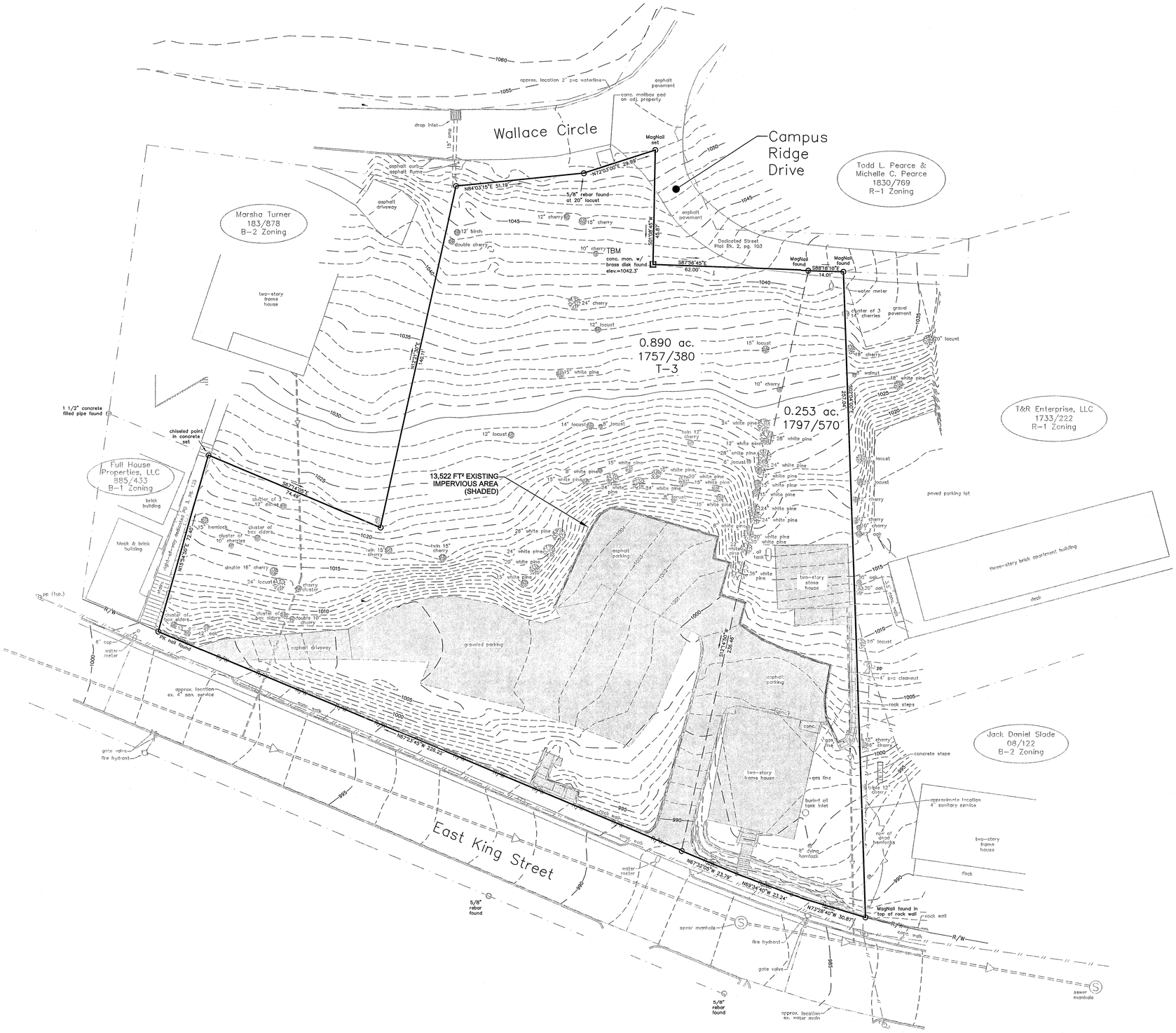
KING AND COLLEGE
MIXED-USE PLANNED DEVELOPMENT
KING STREET
BOONE, NORTH CAROLINA

DATE	BY	REV.	DESCRIPTION

PROJECT NOTES

SCALE: N.T.S.
DATE: 11-28-16
DRWN. BY: EGT
CHKD. BY: MPT
PROJECT NUMBER: B15012.1
DRAWING NO.: C-2
SHEET NO.: 2 OF 5

Communication: 20160796 Site Plans (Case 20160796 King and College - MixedUse Planned Development)



NORTH

PRELIMINARY
FOR REGULATORY REVIEW ONLY

Municipal Services Engineering Company, P.A.
P.O. BOX 97 GARNER, N.C. 27529 (919) 772-5393
P.O. BOX 349 BOONE, N.C. 28607 (828) 262-1767
LICENSE NUMBER: C-0281

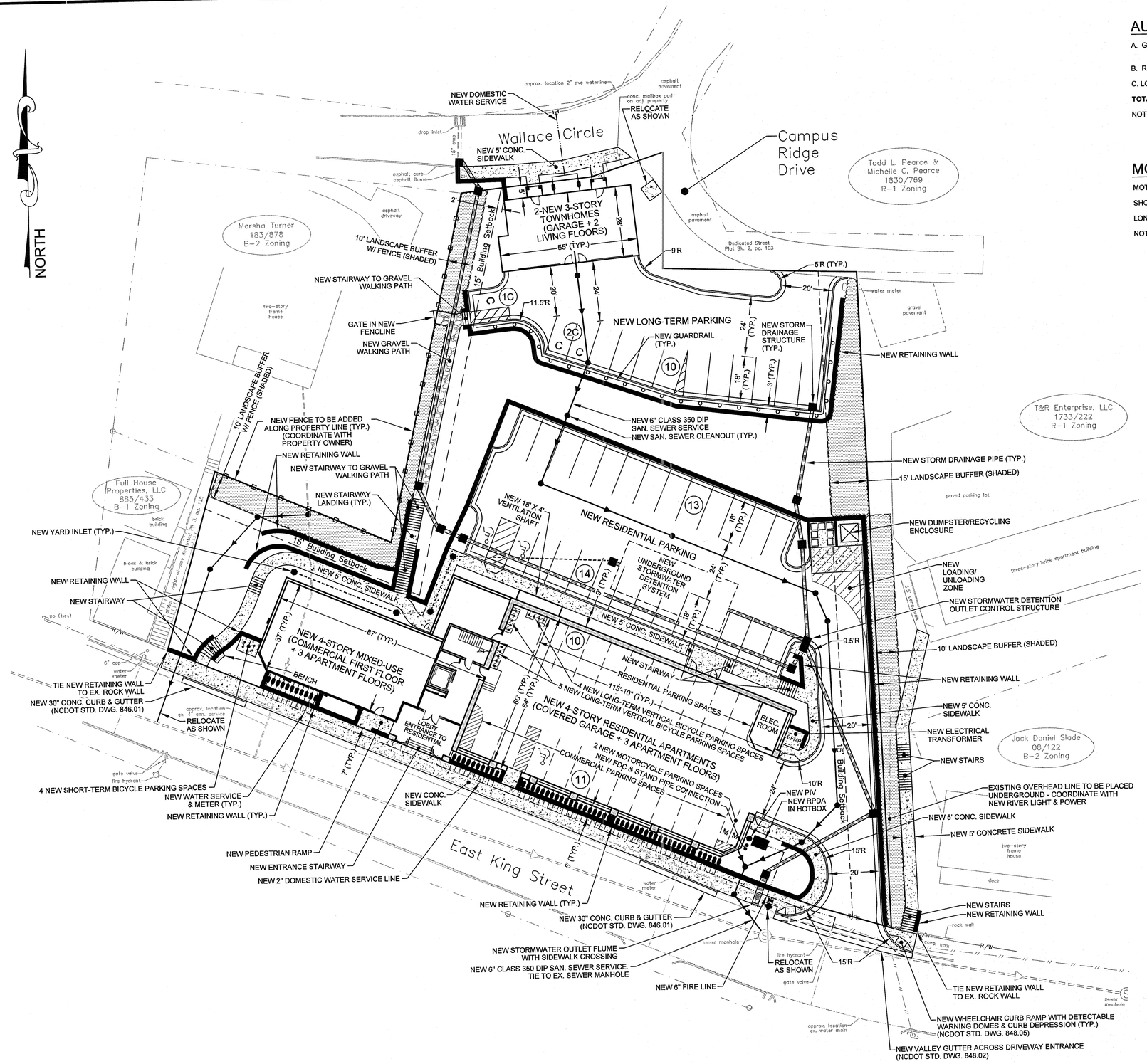
KING AND COLLEGE
MIXED-USE PLANNED DEVELOPMENT
KING STREET
BOONE, NORTH CAROLINA

DATE	BY	REV.	DESCRIPTION

EXISTING CONDITIONS

SCALE: 1" = 20'
DATE: 11-28-16
DRWN. BY: EGT
CHKD. BY: MPT
PROJECT NUMBER: B15012.1
DRAWING NO.: C-3
SHEET NO.: 3 OF 5

Communication: 20160796 Site Plans (Case 20160796 King and College - MixedUse Planned Development)



AUTOMOBILE PARKING SPACE CALCULATION

A. GARAGE:	11 COMMERCIAL SPACES (10 STANDARD SPACES, 1 HANDICAP SPACE) =	11 SPACES
	10 RESIDENTIAL SPACES (10 STANDARD SPACES) =	10 SPACES
B. RESIDENTIAL PARKING (SURFACE 1):	27 STANDARD SPACES =	27 SPACES
C. LONG-TERM PARKING (SURFACE 2):	10 STANDARD SPACES, 3 COMPACT SPACES =	13 SPACES
TOTAL PARKING SPACES =		**61 SPACES**

NOTE: TOWNHOMES TO PROVIDE 2 SPACES PER UNIT IN GARAGES ACCESSED FROM LONG-TERM PARKING LOT

MOTORCYCLE & BICYCLE PARKING SPACES

MOTORCYCLE PARKING SPACES PROVIDED =	2 SPACES
SHORT-TERM BICYCLE PARKING SPACES PROVIDED =	15 SPACES
LONG-TERM BICYCLE PARKING SPACES PROVIDED =	4 SPACES

NOTE: MOTORCYCLE AND BICYCLE PARKING ARE NOT REQUIRED IN B-1 ZONING.

GRAPHIC SCALE

20 0 10 20 40

(IN FEET)
1 INCH = 20 FEET

PRELIMINARY
FOR REGULATORY REVIEW ONLY

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P.O. BOX 97 GARNER, N.C. 27529 (919) 772-5393
P.O. BOX 349 BOONE, N.C. 28607 (828) 262-1767
LICENSE NUMBER: C-0281

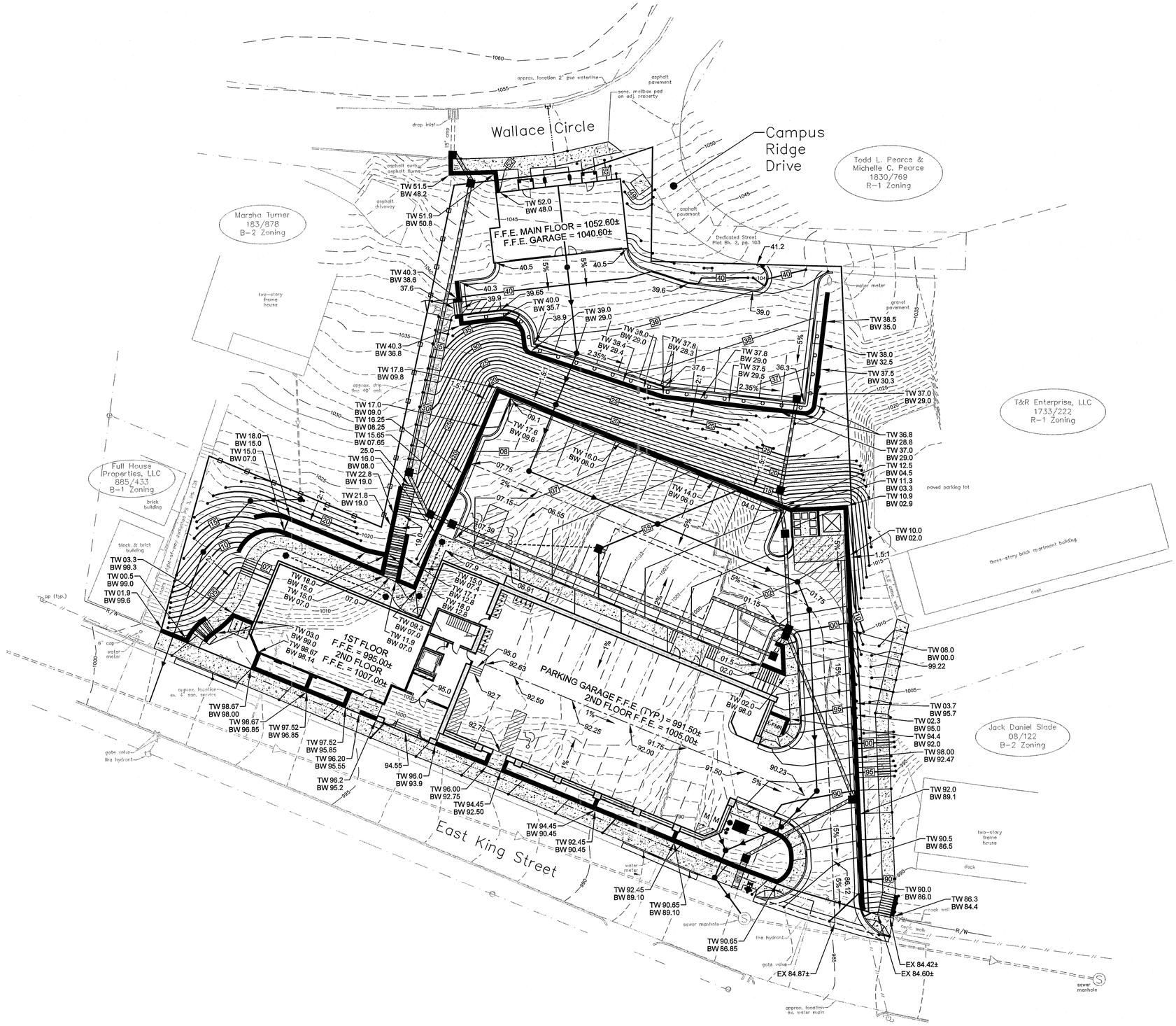
KING AND COLLEGE MIXED-USE PLANNED DEVELOPMENT
KING STREET
BOONE, NORTH CAROLINA

DATE	BY	REV.	DESCRIPTION

PRELIMINARY SITE PLAN

SCALE:	1" = 20'
DATE:	11-28-16
DRWN. BY:	EGT
CHKD. BY:	MPT
PROJECT NUMBER	B15012.1
DRAWING NO.	C-4
SHEET NO.	4 OF 5

Communication: 20160796 Site Plans (Case 20160796 King and College - MixedUse Planned Development)



PRELIMINARY EARTHWORK CALCULATION

CUT (EXCAVATION)	9,500 CUBIC YARDS
FILL (EMBANKMENT)	1,500 CUBIC YARDS
NET (CUT)	8,000 CUBIC YARDS

NOTES:

1. CUT AND FILL VOLUMES SHOWN ABOVE ARE BASED UPON THE COMPARISON OF THE EXISTING SITE TOPOGRAPHY VS. THE FINISHED GRADE ELEVATIONS FOR THE SITE.

2. EARTHWORKS ARE ESTIMATED FROM COMPUTER PROGRAM. CONTRACTOR SHALL PERFORM THEIR OWN EARTHWORK CALCULATION TO VERIFY AND NOTIFY ENGINEER IF DISCREPANCY EXISTS.

GRAPHIC SCALE

20 0 10 20 40

(IN FEET)
1 INCH = 20 FEET

PRELIMINARY
FOR REGULATORY REVIEW ONLY

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P.O. BOX 97, GARNER, N.C. 27529 (919) 772-5393
P.O. BOX 349 BOONE, N.C. 28607 (828) 262-1767
LICENSE NUMBER: C-0281

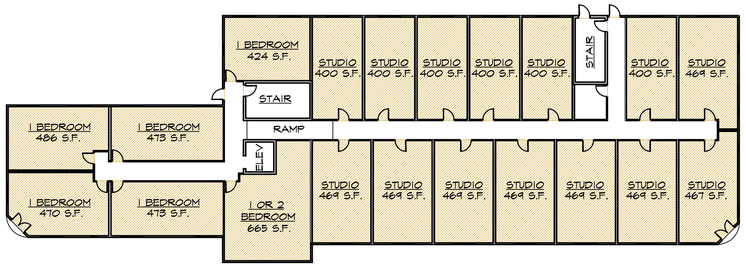
KING AND COLLEGE
MIXED-USE PLANNED DEVELOPMENT
KING STREET
BOONE, NORTH CAROLINA

DATE	BY	REV.	DESCRIPTION

PRELIMINARY GRADING & DRAINAGE PLAN

SCALE: 1" = 20'
DATE: 11-28-16
DRWN. BY: EGT
CHKD. BY: MPT
PROJECT NUMBER: B15012.1
DRAWING NO.: C-5
SHEET NO.: 5 OF 5

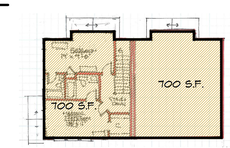
Communication: 20160796 Site Plans (Case 20160796 King and College - MixedUse Planned Development)



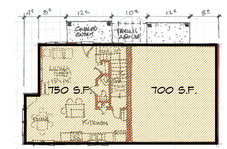
2 AA KING & COLLEGE 2ND - 4TH FLOORS
1"=20'-0"

3 AA KING & COLLEGE
N.T.S.

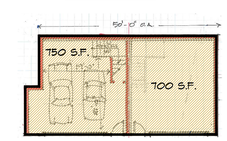
1 AA KING & COLLEGE SITE PLAN
1"=20'-0"



UPPER FLOOR



MAIN FLOOR



BASEMENT

FRONT

REAR

3 AA TOWNHOMES
N.T.S.

PROJECT DATA:
ZONING: B-1
SITE AREA: 49,796 S.F. (1.13 ACRE)
BUILDING AREA:

MAIN BUILDING:

First Floor =	11,200 S.F.
Second Floor =	11,567 S.F.
Third Floor =	11,567 S.F.
Fourth Floor =	11,567 S.F.
TOTAL =	45,901 S.F.

TOWNHOMES: LEFT / RIGHT

Basement =	750 S.F. / 700 S.F.
Main Floor =	750 S.F. / 700 S.F.
Upper Floor =	750 S.F. / 700 S.F.
TOTAL =	2,200 S.F. / 2,100 S.F.

FIRST FLOOR:

COMMERCIAL =	2,258 S.F.
LOBBY, SERVICE, UTILITY =	2,004 S.F.
PARKING =	6,938 S.F.

DWELLING UNITS PROVIDED:

MAIN BUILDING:
(20) 1 BEDROOM UNITS / FLOOR x (3) FLOORS = 60 BEDROOMS

TOWNHOMES:
(2) 2 BEDROOM UNITS = 4 BEDROOMS

TOTAL BEDS = 64

PARKING PROVIDED:

First level covered =	22 (includes 10 commercial)
Second level surface =	27
Long-term =	13
Townhomes =	4
TOTAL =	66

RESIDENTIAL PARKING RATIO:
56 spaces / 64 bedrooms = 87.5%

PROJECT BENEFITS:

- Removal of two (non-conforming) derelict buildings + utilization of a vacant lot in B-1 zoning area of Downtown Boone that was identified as "ripe for development" in the 2030 Land Use Plan.
- A "Transitional" design at a scale that respects neighbors and neighborhood via a mixed use commercial / residential building on King St. and townhomes on Wallace Circle.
- Designed to visually hide parking but provide enough spaces for residential + commercial tenants so as not to add to downtown Boone's parking problems.
- Designed to improve areas common to adjacent neighbors with fencing, landscaping + walkways to facilitate pedestrian traffic.
- Building materials (including re-use of existing on site stone) to be consistent with the Overlay District standards currently under consideration for Downtown Boone.

APPALACHIAN
ARCHITECTURE, PA

APPALACHIAN
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BILL DIXON, NCARB
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SUITE 201
BOONE, NC 28607
828 265 2405
FAX: 828 265 2406
WEBSITE: WWW.APPALARCH.COM

DATE: 11/28/16

REVISIONS:
DATE: REV#: BY:

CONCEPTUAL DESIGN
KING & COLLEGE
BOONE
NORTH CAROLINA

DRAWN BY: LB
CHECKED BY: BD
SHEET TITLE
AA
OF

Communication: 20160796 Site Plans (Case 20160796 King and College - MixedUse Planned Development)

Town of Boone
Planning & Inspections
Date Received
January 13, 2017

FRONT ELEVATION:

TABLE A

LINEAR DIMENSION	MIN. FEATURE TYPES	MIN. TOTAL FEATURES
120'+	5	16

TABLE B

LINEAR DIMENSION	MIN. TOTAL FEATURES
48'+	5

FEATURES PROVIDED:
1. WINDOWS = 60
2. CHANGE IN MATERIAL = 1
3. COVERED ENTRY = 1
4. CHANGE IN PARAPET HEIGHT = 2
5. OFFSET IN BUILDING WALL = 1
6. JULIET BALCONIES = 9
7. AWNINGS = 51

(7) FEATURE TYPES, (125) TOTAL FEATURES PROVIDED

LEFT END ELEVATION:

TABLE A

LINEAR DIMENSION	MIN. FEATURE TYPES	MIN. TOTAL FEATURES
10' TO 40'	2	4

TABLE B

LINEAR DIMENSION	MIN. TOTAL FEATURES
32' TO 48'	4

FEATURES PROVIDED:
1. WINDOWS = 9
2. CORNICE = 2
3. AWNINGS = 9

(3) FEATURE TYPES, (20) TOTAL FEATURES PROVIDED

RIGHT END ELEVATION:

TABLE A

LINEAR DIMENSION	MIN. FEATURE TYPES	MIN. TOTAL FEATURES
40' TO 80'	3	8

TABLE B

LINEAR DIMENSION	MIN. TOTAL FEATURES
48'+	5

FEATURES PROVIDED:
1. WINDOWS = 12
2. CORNICE = 2
3. DRIVE ENTRY = 1

(3) FEATURE TYPES, (15) TOTAL FEATURES PROVIDED

REAR ELEVATION:

TABLE A

LINEAR DIMENSION	MIN. FEATURE TYPES	MIN. TOTAL FEATURES
120'+	5	16

TABLE B

LINEAR DIMENSION	MIN. TOTAL FEATURES
32' TO 48'	4

FEATURES PROVIDED:
1. WINDOWS = 67
2. CORNICE = 1
3. DOWNSPOUTS = 8
4. CHANGE IN PARAPET HEIGHT = 2
5. OFFSET IN BUILDING WALL = 1
6. JULIET BALCONIES = 13
7. AWNING = 1

(7) FEATURE TYPES, (93) TOTAL FEATURES PROVIDED

1 / A-1 FRONT ELEVATION
3/32"=1'-0"

2 / A-1 LEFT END ELEVATION
3/32"=1'-0"

3 / A-1 RIGHT END ELEVATION
3/32"=1'-0"

4 / A-1 REAR ELEVATION
3/32"=1'-0"

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WEBSITE: WWW.APPALARCH.COM

DATE: 11/28/16

REVISIONS:
DATE: REV#: BY:

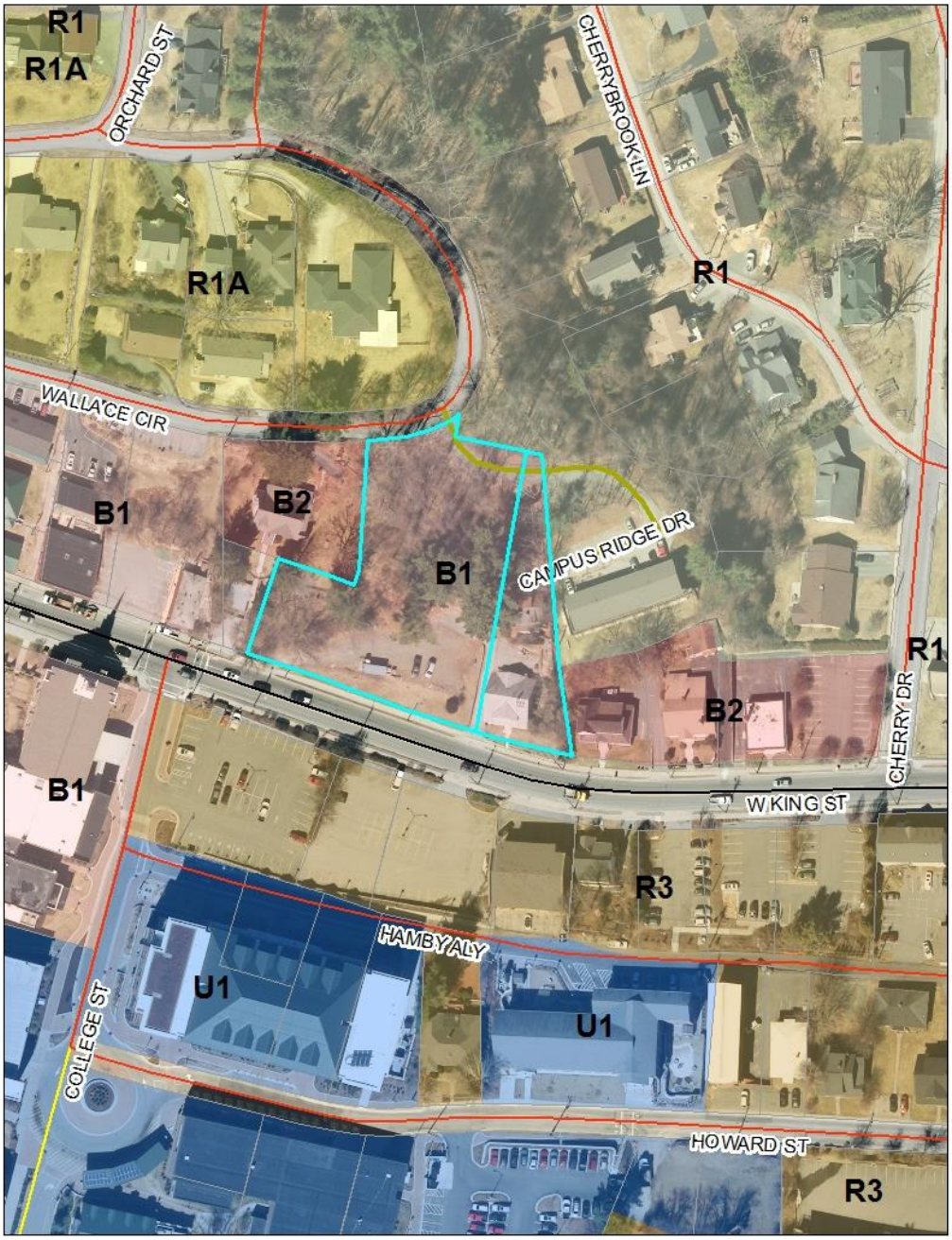
EXTERIOR ELEVATIONS

KING & COLLEGE
BOONE
NORTH CAROLINA

DRAWN BY: LB
CHECKED BY:
SHEET TITLE
A-1
OF

Communication: 20160796 Building Elevations (Case 20160796 King and College - Mixed Use Planned Development)

STAFF REPORT
PUBLIC HEARING
CASE 20160796 KING & COLLEGE PLANNED DEVELOPMENT ZONING MAP AMENDMENT



Request

Robert Flannigan has filed a Zoning Map Amendment Petition for a planned development consisting of a mixed-use building containing both residential and commercial uses, along with a separate a townhouse building for properties located at and near 302 W. King Street (Watauga County PINs: 2900988588000 and 2900988402000). The mixed-use building will contain 60 dwelling units with 60 bedrooms; with the following uses proposed to be allowed for the commercial portion of the building: Use 11.21 Medical Office Category 2. The Townhouse building will contain 2 dwelling units with a total of 4 bedrooms.

Applicant Information

Applicant Name/Position:	Robert Flannigan
Applicant Organization:	NA
Applicant Address:	PO Box 3106, Boone, NC 28607
Applicant Contact Phone:	(828) 964-3385
Applicant Email:	flanigancpa@gmail.com

Parcel Information

Addresses:	302 W. West King Street
Watauga County PINs:	2900-98-8588-000; 2900-98-9402-000
Property Owner:	King & College LLC, Woods Mixed-Use Properties LLC
Total Lot size:	1.146 acres
Jurisdiction:	Corporate limits
Access:	King Street (State maintained) and Wallace Circle (Town of Boone maintained)
Topography:	Approximate 67' change in elevation from Wallace Circle to King Street; Slope from NW to SE
SFHA:	No
Watershed District:	No
Corridor District:	No
NCD:	No
Viewshed:	No
Transit Route:	Yes; development has access to 6 AppalCart Routes at the ASU College St. Station; approximately 500' from development
Utilities:	Town water and sewer are available.
Current Zoning:	B1
Vesting:	2 years
2030 Plan Designations:	G-4 Downtown Boone
Current Uses:	Dwelling Unit; Vacant

Zoning & Use of Adjacent Properties

	Adjacent Zoning	Adjacent Land Use
North	R1 Single-Family; R1A Single Family with Accessory Apt.	Single-family dwelling; Multi-family dwellings
East	R1 Single-Family; B2 Neighborhood Business	Multi-family dwellings;
South	R3 Multi-family;	Parking lots; Multi-family dwellings
West	B1 Central Business; B2 Neighborhood Business	Commercial retail/mixed-use; single-family dwelling

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Impact Analysis

Existing Zoning: B1 Central Business. The B1 Central Business District is intended to provide for the development of the commercial and service center for the town while maintaining its character, and to encourage appropriate residential uses in the central area of town, 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.

Proposed Zoning: King and College Planned Development (King and College PD)

Comparison of current standards to this request:

<table>
<tr><th colspan="2">Comparison Chart (See Applicant's Deviation Analysis)</th></tr>
<tr><th>Standard</th><th>Marketplace Development</th></tr>
<tr><td>UDO Section 16.08 Building Height Limitations
(UDO Subsections 16.08.02, 16.08.04, 16.08.05)
Maximum Building Height = 40'
16.08.05: In all nonresidential zones and the R3 zone, all structures located within 100 feet of an R1 zoned property shall not exceed 35 feet in height.</td><td>Deviating from standards as follows:
Proposed: 49' – 54'"; (9-14') over maximum building height

See applicant's description in the "Deviation Analysis" for more information on height</td></tr>
<tr><td>UDO Section 16.06 Building Setback Requirements
(UDO Subsections 16.06.02, 16.06.03 & 16.06.07)
Interior Building Setbacks (abutting B1 or U1) =0'
Interior Building Setback (abutting other district)=15'</td><td>Deviating from standards as follows:
The development overall is in compliance with the setback requirements for the B1 with the exception of an 8' retaining wall within the 15' setback on the east side of the project.
See applicant's description in the "Deviation Analysis"</td></tr>
<tr><td>UDO ARTICLE 15, SUBSECTION 15.11.02 Multi-Family in Mixed Use:
A. Each project shall provide primary street level commercial land uses (i.e. retail, office, restaurant) of at least fifty percent (50%) of the square footage of the footprint of each building on the primary street level. For developments located on lots which abut more than one public street in the Central Business District, each additional street level floor shall provide commercial uses of at least 30% of that level's square footage. For purposes of this Subsection, the "primary street" shall be determined according to the following order: King Street, Howard Street, Depot Street, all other streets. For example, if a project is located on a lot that abuts both King Street and Howard Street, King Street shall be considered the "primary street" while for a project which abuts Howard Street and Depot Street, Howard Street shall be considered the "primary street" and so on.</td><td>Deviating from standard as follows:
Building Footprint: 11,200 square feet
<table>
<tr><th colspan="2">Street Level Commercial Uses*</th></tr>
<tr><th>King Street</th><th>Wallace Circle</th></tr>
<tr><td>50%</td><td>30%</td></tr>
<tr><td>Required:
5,600 ft^2</td><td>Required:
3,360 ft^2</td></tr>
<tr><td>Proposed:
4,256 ft^2 (38%)</td><td>Proposed:
0 ft^2</td></tr>
<tr><td>Deviation:
1,344 ft^2 (12%)</td><td>Deviation:
ft^2 (30%)</td></tr>
</table>
*Calculations not including parking provided in the structure on King Street.

See applicant's description in the "Deviation Analysis"</td></tr>
</table>

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

<table>
<tr><th colspan="2">Comparison Chart (See Applicant's Deviation Analysis)</th></tr>
<tr><th>Standard</th><th>Marketplace Development</th></tr>
<tr><td>B. The entire frontage of the primary street level of the building abutting the street shall provide commercial uses. Required entrances for ingress and egress to secondary uses are permitted along said frontage so long as they are no larger than necessary to meet building code and safety requirements for ingress and egress. Commercial uses on the non-primary street level(s) shall front on the non-primary street.</td><td>Deviating from standard as follows:
<table>
<tr><th colspan="2">Commercial Frontages*</th></tr>
<tr><th>King Street</th><th>Wallace Circle</th></tr>
<tr><td>Required: 100%</td><td>Required: 30%</td></tr>
<tr><td>Proposed: 42%*</td><td>Proposed: 0%</td></tr>
<tr><td>Deviation: 58%*</td><td>Deviation: ft^2 (30%)</td></tr>
</table>
*42% for the commercial medical office and 58% to for the parking garage.

See applicant's description in the "Deviation Analysis"</td></tr>
<tr><td>C. The entire primary street level floor of the building shall be constructed to commercial standards in accordance with NC Building Code Group A, B, E or M.</td><td>In compliance.</td></tr>
<tr><td>D. New projects shall be at least two floors above the primary street level.</td><td>In compliance. The building is two stories above King Street.</td></tr>
<tr><td>E. Buildings facades shall be oriented to each public street and shall have a primary entrance door facing each abutting public sidewalk.</td><td>In compliance. There is either a lobby entrance or a direct entrance into the buildings from both streets.</td></tr>
<tr><td>F. A minimum of 60% of primary public street level facing building facade shall be comprised of transparent, non-reflective windows and 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.</td><td>Deviating from standard as follows:

See applicant's description in the "Deviation Analysis"</td></tr>
<tr><td>G. Surface parking shall be located away from each public street to the extent possible, and if practical, to the rear of the principal building.</td><td>In compliance. The surface parking is located within the middle of the building off of Water Street and behind and below the commercial uses on Howard Street.</td></tr>
<tr><td>H. Structured parking is permitted to the rear of the building or below the street level floor.</td><td>Deviating from standard as follows:

See applicant's description in the "Deviation Analysis"</td></tr>
</table>

Comparison Chart (See Applicant's Deviation Analysis)	
Standard	**Marketplace Development**
I. Building facades may be no further than 0'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.	In compliance. Building sits on the established street setback line except where building deviates to keep a straight line along an elevation. Sidewalks are provided along each public street.
J. The minimum building footprint shall be 50% of the total gross square feet of the lot.	Deviating from standard as follows: Required Building Footprint: 24,895 ft^2 (50%) Proposed: 12,650 ft^2 (25%) Deviation: 25% See applicant's description in the "Deviation Analysis"
K. Pedestrian weather protection such as awnings or canopies are encouraged along the public street but may be placed only in accordance with an encroachment agreement authorized by the Town Council.	Noted.
UDO Section 24.01 Parking Spaces Required MF45 Parking Spaces=.7 space per bedroom min. Commercial Spaces (Medical Office)=20 max	In compliance. Multi-Family Required (64x.17)=45 Multi-Family Provided = 51 Commercial Provided = 11
UDO Section 24.09 Bicycle Parking Required Short-Term Spaces = 0 Required Long-Term Spaces = 0	In Compliance. Provided Short-Term Spaces = 15 spaces Provided Long-Term Spaces=4
UDO Article 25 Community Appearance Standards **Site Wall as regulated in 25.04**	Deviating from standard as follows: Required: No site wall shall exceed 8' Proposed: 10' wall for a length of 88' See applicant's description in the "Deviation Analysis"
UDO Article 31 Landscape Standards	Deviating from standard as follows: Buffer reduction in various places along the eastern and western property lines. See applicant's description in the "Deviation Analysis"

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

TRAFFIC IMPACT ANALYSIS:

Excerpt from Traffic Impact Analysis provided below. Full copies of the Traffic Impact Analysis can be viewed at the Planning and Inspections Department or emailed upon request.

8.0 Summary and Conclusion

The proposed King and College Mixed-Use Site is located in downtown Boone, NC on the northeast quadrant of the intersection of King Street and College Street. As currently planned, the site will consist of apartment housing with 64 units, all single bedroom, with a mix of young professionals and students, and 4,262 square feet of commercial space.

The site will be accessed by a proposed full access on King Street and a full access on Campus Ridge Drive. The access on King Street will serve the proposed parking garage with 22 vehicular parking spaces, 14 bicycle spaces, and 2 motorcycle spaces. In addition, this access will serve the 27-space parking lot located behind the mixed-use building. The access on Campus Ridge Drive will serve a smaller 13-space parking lot. Since the majority of tenants, including the townhome tenants, and mixed use trips will utilize the King Street access, this access was considered to be the primary access to the site.

The trip generation indicates that based on the current site plan the proposed project is projected to generate a net total of 156 trips per day, with 22 trips in the AM peak hour and 22 trips in the PM peak hour.

The analysis indicates that there is no change in level of service at the study intersections after the addition of project traffic.

Table 8.0 on the following page summarizes the recommended improvements for the 2018 future build scenario.

In conclusion, this analysis has been conducted based on NCDOT and Town of Boone guidelines and has determined the potential traffic impacts of this development. With the build-out of the site, the analysis indicates there will be adequate capacity to accommodate future traffic. Note that the site accesses should to be designed according to NCDOT standards, as appropriate.

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Table 8.0 - Recommended Improvement Summary	
King Street at College Street	No improvements recommended
Wallace Circle at Campus Ridge Drive	• Install speed hump/s along Wallace Circle to provide for traffic calming • Install guardrails along Campus Ridge Drive if permission can be obtained
Wallace Circle at Orchard Street	• Install speed hump/s along Wallace Circle to provide for traffic calming
King Street at Proposed Site Access 1	No improvements recommended
Campus Ridge Drive at Proposed Site Access 2	Install guardrails along Campus Ridge Drive if permission can be obtained
Pedestrian and Bicycle Accommodations	• Sidewalks will be constructed along the street frontage of the property: a new 7-foot sidewalk will replace the existing 5-foot sidewalk along King Street, and a new 5-foot sidewalk will be provided along Wallace Circle. • The development proposes pedestrian-oriented building/s for easy access by foot with main entrance/s and sidewalks directly on King Street. • Sidewalks, walkways, and paths will be provided onsite to facilitate pedestrian traffic. • A new offsite sidewalk just east of the property to connect King Street to an existing apartment building on Campus Ridge Drive. • In order to accommodate bicycling activities to and from the site, there will be 14 covered bicycle spaces in the proposed garage, as well as 4 spaces adjacent to the commercial building.
Transit Accommodations	There are multiple existing *AppalCart* stops in proximity of proposed development. Residents in this proposed development will be able to use this transit service to reach their destinations.

Additional Comments from P & I Staff

Community Appearance and Landscape Standards (Urban Design Specialist)

1. I have reviewed the tree survey and there are no healthy, historic trees on the site.
2. In general, plant material is not recommended for slopes greater that 2H:1V where several areas of the landscape buffers are proposed. Per UDO Section 19.02.09, staff can give flexibility with plantings on a 2H:1V slope, however plant material and design must be carefully chosen. Staff does not recommend planting on 1.5H:1V slopes where some plantings may be required for buffers or parking area landscaping.
3. Any landscaping proposed on adjacent properties must have property owner authorization and a recorded maintenance easement. (East Property Line)
4. No lighting plan has been submitted for staff review.

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Grading, Erosion Control and Stormwater Standards (Urban Design Specialist)

1. The project is proposing to outlet all stormwater under the sidewalk and onto East King Street. East King Street has no stormwater infrastructure until the area near Coffey Street which is 800' +/- away. Staff and NCDOT has concerns with this additional concentrated amount of stormwater flowing into East King Street.

Comments from Other Departments & Outside Agencies

Public Works:

Services Division (Facilities Maintenance Superintendent)

The Public Services Department has reviewed the above referenced plan and has the following comments.

1. New stormwater outlet flume should be constructed to withstand exposure to rock salt and be flush with concrete to not interfere with snow removal operations.
2. The Public Works Department will not maintain the new sidewalk on Wallace Circle until it is connected to existing sidewalk infrastructure.
3. Please provide specific locations for speed humps on Wallace Circle. The contractor must coordinate with the Public Works Department for specifications on signs and traffic markings for the speed humps.
4. Please show turning movements for solid waste removal truck on plans.

Utilities Division (Utility Services Technician)

The Public Works Department has conducted a plan review for the proposed project located on W. King St and Wallace Circle. The materials reviewed by this department are dated 11/28/16 and are approved with the following conditions to be met on future utility plans.

1. The water service lines and appurtenances (including meter boxes) and fire system connections will require easements recorded to the point of private responsibility. Please show this on the plans.
2. The Water mains 2" and greater that are of non-ferrous materials and are the Town's responsibility to maintain must have tracer wire attached to the piping and appurtenances. Please note on the plans.
3. The proposed domestic water meters must be located outside in 12 gang and or 6 gang meter boxes, the waterline shown must be reconfigured to accommodate these boxes. Please note on the plans.

Fire Department (Assistant Fire Chief/Fire Marshal)

A review of the submitted site plan drawings was conducted. Following is the results of this review:

1. Overhead utility lines in front of the building will be required to be placed underground or relocated from the front of the building to provide aerial access.

Planned Development Compliance

Applicant's Compliance with Planned Development Requirements	
UDO Subsection	**Compliance**
UDO Subsection 9.10.03: a PD may be only be proposed for either a development site containing 3 or more acres or a proposed development which includes both commercial and residential uses.	In compliance. The project as contains both commercial and residential uses.
UDO Subsection 9.10.04: The authorization of a PD shall preclude any requirement for obtaining a variance from the Board of Adjustment unless it is a variance to Article 29 Watershed Protection and Article 30 Flood Damage Prevention. Any such variances must be obtained before a public hearing is held on the proposed PD.	In compliance. The applicant has not requested any variances to environmental standards.

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Applicant's Compliance with Planned Development Requirements	
UDO Subsection	**Compliance**
UDO Subsection 9.10.05(A)(1): One or more pre-petition consultations with the Administrator, in which the petitioner identifies the development site, its natural features, and the nature of the proposed development.	In compliance. The applicant has had several consultations with Town staff.
UDO Subsection 9.10.05(A): Before submitting the petition, the petitioner must schedule a meeting with owners of property located within 150' of the development site. a. The petitioner must provide notice at least 21 days prior to the meeting in accordance with Subsection 1.13.02 herein. b. The meeting must be held at an accessible and convenient location in light of available options. c. The petitioner must record the names and addresses of all attendees at the meeting. d. At the meeting, the petitioner, at a minimum, shall present all the following information: i. Contact information of the parties involved in the ownership, design, and development of the property; ii. The location of the property and general information on the current conditions of the site; iii. Proposed use(s) and site development; iv. Any preliminary plans or renderings, if available; and v. Any other information deemed pertinent by the Administrator. e. The petitioner shall provide the Administrator with a report which details the meeting including any concerns expressed by attendees and any commitments made by the petitioner. This report shall be included in the staff report.	In compliance. Please see applicant's "Neighborhood Meeting Minutes".
UDO Subsection 9.10.05(B)(1): A site specific development plan addressing plan aspects identified in Appendix A, identifying all development specifics which deviate from the standards of this Ordinance.	In compliance. The applicant has submitted a site specific development plan and a separate narrative identifying all development specifics which deviate from the standards of this Ordinance. Please see applicant's "Deviation Analysis in Accordance with UDO 9.10.05(B)(1)"
UDO Subsection 9.10.05(B)(2): Written analysis, tailored to specifically address the characteristics of the particular location, addressing how the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development on the surrounding area, including but not limited to:	Yes. Please see applicant's "Mitigation Analysis in Accordance with UDO 9.10.05(B)(2)".

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Applicant's Compliance with Planned Development Requirements	
UDO Subsection	**Compliance**
a. noise impacts; b. light impacts; and c. any other predictable negative effect, including but not limited to: i. negative visual effects; ii. negative traffic effects; and iii. negative health effects.	
UDO Subsection 9.10.05(B)(3): Information to demonstrate compliance with all mandatory requirements of this Ordinance, including: a. Article 5 Subdivisions (for purposes of this Section the Town Council is the approval authority for major subdivision preliminary plats); b. Article 8 Historic Preservation; b. Article 19 Grading; c. Article 20 Soil Erosion and Sediment Control; d. Article 21 Stormwater Management; e. Article 22 Utilities; f. Article 29 Watershed Protection; g. Article 30 Flood Damage Prevention;	In compliance. If approved, additional technical details will be required to determine full compliance with the requirements of these Articles (as applicable).
UDO Subsection 9.10.05(B)(4): Other information which may be required by the Administrator to fully evaluate the proposed development and its potential impacts on the surround area. Such information may include but is not limited to: traffic impact analysis, community impact analysis, additional engineering and legal information.	In compliance. The applicant was requested to provide a traffic impact analysis (see Staff Report for more information).
UDO Subsection 9.10.05(B)(5): The petition shall also include an affidavit stating that: a. All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the petitioner's independent judgment; and b. The petitioner is not relying upon any statement by the town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and c. The petitioner understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and d. The petitioner intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning.	In compliance. Please see Affidavit attached to the applicant's information.

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

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

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

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.

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

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 Board 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.

2.1 THE ECONOMY

2.1.1 Economic Development

A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.

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

F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.

2.1.2 Commercial Development

B. Commercial and office development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development.

C. Community/Commercial Centers shall be located adjacent to a major street and contain or be adjacent to other appropriate community facilities.

D. Automobile Orientated Neighborhood and Convenience Commercial Centers shall be encouraged to locate on a collector street or secondary street at its intersection with a major street.

F. Commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property, only when such consolidation and expansion does not encroach upon a viable residential area.

G. Effective buffering and/or landscaping shall be provided where a large scale or automobile-orientated commercial or office use adjoins an existing or planned residential use.

J. Highway Oriented Commercial uses shall be clustered along segments of major streets and contain land uses which are mutually compatible and reinforcing in use and design. Businesses shall be encouraged to coordinate their site designs with other nearby businesses. Design factors shall include, at a minimum, shared parking and street access, convenient pedestrian and vehicular movement, and consistent sign standards.

2.1.5 Downtown

A. A compatible design character for the downtown area, drawing upon the locality's original High Country small town features, shall be identified, reinforced and supported to put forth a quality image and sense of place.

B. The Town, in concert with the downtown property owners and merchants, shall encourage public and private efforts to develop and publicize adequate and appropriately designed off-street parking lots in the downtown area.

C. A variety of mutually compatible and supportive mixed uses shall be encouraged in the downtown area.

E. Public and private development decisions in the downtown area shall exhibit a special concern for maintaining the intensive, pedestrian oriented character of the district.

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

F. The maintenance and revitalization of downtown Boone, as well as planning for its future development, will reflect the realities and qualities befitting its geographical setting and function as a center of (1) commercial and service activities, (2) educational and cultural activities, events and (3) public services.

2.2 THE INFRASTRUCTURE

2.2.1 Transportation

I. Driveway cuts along major streets and roads shall be limited to allow these streets to serve primarily as safe traffic movement corridors or, alternatively, to maximize curb frontage for on-street parking.

2.2.2 Utilities

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.

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

2.2.4 Public Safety

D. The Town shall place renewed emphasis on enforcement of the state building code and flood prevention regulations to avert or minimize loss of life and property during natural disasters.

2.2.5 Environmental Quality

C. Development activities in the 100 year floodplain or near lakes or streams shall be carefully controlled. If development must occur, low intensity uses such as open space, recreation and adequately buffered agricultural or forestry activities shall be preferred.

E. Development which preserves the natural features of the site, including existing topography, streams and significant trees and vegetation, shall be reflected in the Town's Development Standards.

2.3 THE COMMUNITY

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

B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.

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.

2.3.3 Housing and Neighborhoods

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

C. Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.

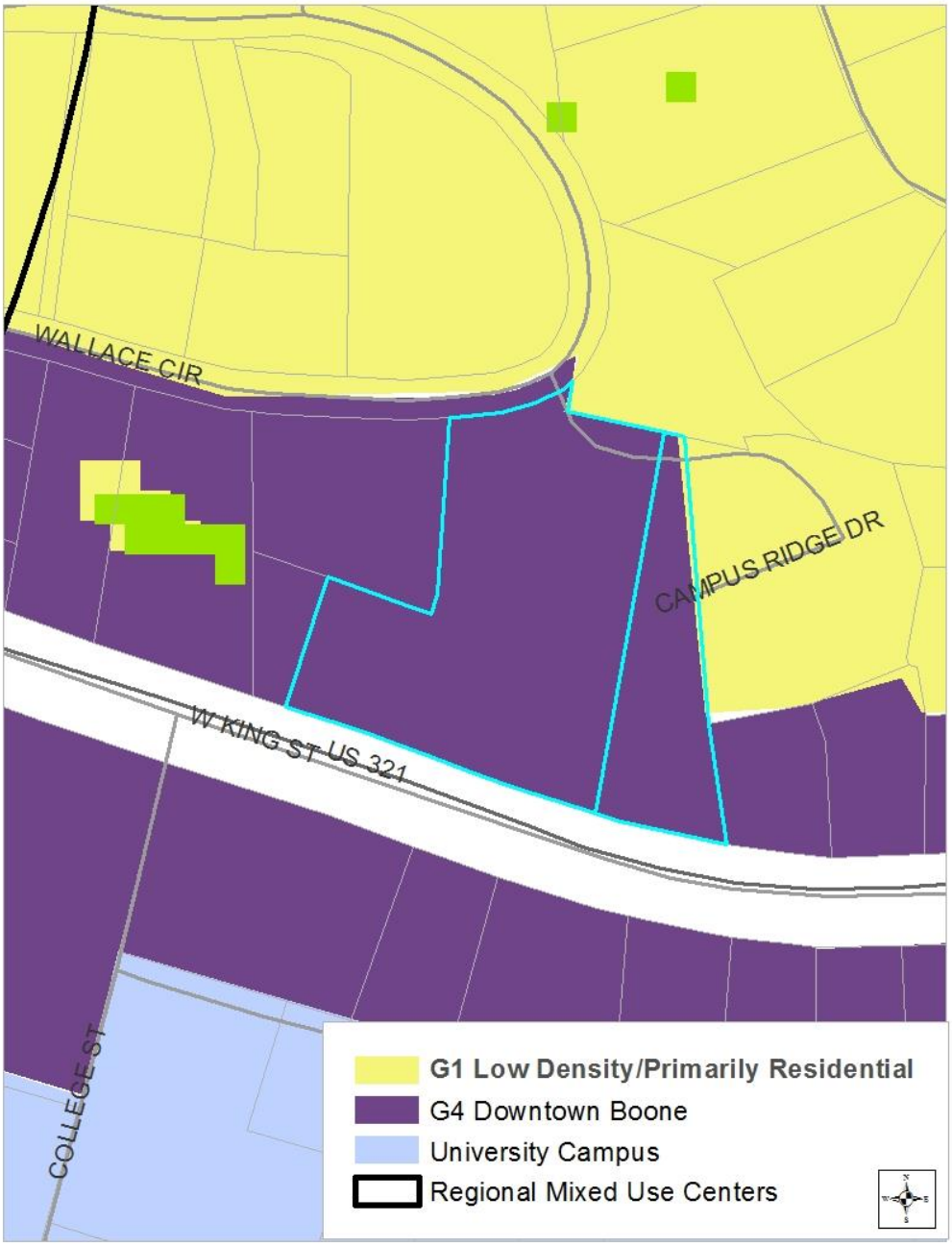
Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

C. Innovative and flexible land planning and development practices shall be encouraged to create livable developments which better safeguard land, water, energy and historic resources.

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

G. Compact, full service neighborhoods, offering opportunities for living, working, shopping, and gathering places, shall be encouraged in newly planned developments, as well as for redeveloping areas.

BOONE 2030 LAND USE PLAN



Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

The 2030 Land Use Plan works together with the Town's Comprehensive Plan and other plans and programs to provide for the Town's long range growth. The Land Use Plan is a three-dimensional framework for the comprehensive plan and serves as the basis for all the facility and service needs of the Town. The Land Use Plan serves as the guiding vision and policy basis for determining the appropriateness of any development or redevelopment that is proposed for the Town's planning jurisdiction.

These properties are located within the G-4 Downtown Boone sector and are just outside a regional mixed use center. The G-4 sector is comprised of areas with existing development, with a relatively dense street grid, and which are appropriate for redevelopment or additional development. These areas are shown in the purple color on the Framework Map. This includes the historic downtown and the King Street corridor as far east as Hardin Street. This area is, in large respect, appropriate for redevelopment and new infill development and well served with infrastructure (roads, utilities, etc.), and access to services and amenities. Because this area is already well provided for in terms of urban services, it is one of the most efficient and most attractive area for redevelopment of underutilized land or development of vacant parcels. It is also one of the best areas for development in terms of minimizing new environmental impacts to natural areas since the area has been built upon since Boone's founding. In-depth discussion of concepts for downtown development, redevelopment and infill neighborhood development is included in the Downtown Boone section of the Land Use Plan. In general, however, the following development types and uses are appropriate in the G-4 sector, continuing in the historic pattern of mixed-use downtown development in Boone. Appropriate land uses/development types include: single-family and multi-family residential, commercial uses (retail and office), mixed-use development, civic uses, light industrial uses

Regional Centers are mixed-use activity centers with employment and commercial uses that attract people from beyond the immediate neighborhoods and from surrounding communities. These centers are appropriate for commercial and employment development as well as the area's highest density housing. The area of these centers is based on a 1/2 mile radius (a typical 10-minute walk)—the larger black circles on the map. Regional centers are envisioned for downtown Boone and the historic university core; around the hospital and the current high school site; and at the intersection of US 321 and NC 105; and around the intersection of US321 and Shadowline Drive. These centers will provide the highest concentrations of residential and employment in the Plan area.

Certification of Notification by Mail

I, Jane Shook, certify that individual notices meeting the requirements of Article 9, Subsection 9.03.03(B)(2) of the Town of Boone UDO were placed in the mail (first class) on January 6, 2017.

_____

Jane Shook, Interim Director of Planning and Inspections

Certification of Posting

I, Brian Johnson, 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 January 6, 2017.

_____

Brian Johnson, Urban Design Specialist

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

Staff Analysis and Recommendations

This project is located in the downtown area, and is near Appalachian State University and a major AppalCart hub.

If Council approves the request, Staff recommends the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and architectural plans bearing a received date of January 13, 2017), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.

Planned Development Procedural Information

Per UDO Subsection 14.05.01(B):

> A PD creates a sui generis (unique) zoning district not limited to the authorized uses and the development standards of a specific existing zoning district and may be subjected to conditions that make the development plan more desirable. A PD is intended to permit the establishment of areas in which diverse uses may be combined and integrated through careful planning to provide a unified and compatible development which is consistent with adopted plans, and which may reasonably be expected to result in a quality of living environment which is more closely in keeping with the purposes of zoning than would otherwise likely be obtained. It is not the intent of the Town Council that the PD district become a "loophole" designed to permit otherwise illegal contract, conditional or spot zoning, or clandestine institution of an unlawful use variance. Rather the PD district is intended to permit further refinement and more detailed expression of adopted plans in situations where the owners of the property present a development plan which is found to be in the public interest and consistent with adopted plans.
>
> 1. A PD should only be approved upon the following findings:
>
> a. That the proposed PD will produce a development of equal or higher quality than otherwise required by the strict application of district regulations that would otherwise govern;
>
> b. That the proposed PD will encourage innovative arrangement of buildings and open spaces to provide efficient, attractive, flexible, and environmentally sensitive design;
>
> c. That the proposed PD will produce a development functioning as a cohesive, unified project; and
>
> d. That the proposed PD will not substantially injure or damage the use, value, and enjoyment of surrounding property nor hinder or prevent the development of surrounding property in accordance with the adopted plans and policies of the Town.

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

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:

_____

Communication: 20160796 Staff Report (Case 20160796 King and College - MixedUse Planned Development)

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: Town of Boone Company:

Address: PO Drawer 192, Boone, North Carolina 28607

Phone Number: 828-268-6200 Email Address:

Property Owner: Brown of Boone LLC Company:

Address:

Phone Number: Email Address:

B. PROPERTY INFORMATION

Watauga County Parcel Identification Number(s): Portion of 2921-30-3920-0000

Address/Location: Hwy 421

Project Name: Brown of Boone III, LLC General Use Zoning Map Amendment

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	*Commerical 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

Communication: PL00145-010417 Application Information (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map

D. DETAILED DESCRIPTION OF PROJECT

The Town of Boone has initiated the zoning of a portion of property (Watauga County PIN: 2921303920000) owned by Brown of Boone III, LLC to B3 General Business and Corridor District Overlay to coincide with the voluntary annexation of the property which is scheduled to be completed on January 19, 2017 with an effective date of February 16, 2017. Zoning is necessary due to the recent NC Supreme Court decision which upheld Senate Bill 865 which removed the Town of Boone's ability to exercise any extra-territorial jurisdiction (ETJ) related powers (Effective January 10, 2017).

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: NA Company:

Address: License #:

Phone Number: Email Address:

F. DESIGN PROFESSIONAL INFORMATION

Engineer:

Name: NA Company:

Address: License #:

Phone Number: Email Address:

Architect:

Name: NA 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.

Town of Boone	Jane Shook	January 4, 2017
Applicant[1] (Print)	**Applicant Signature**	**Date**
NA	**NA**	**NA**
Property Owner (Print)	**Property Owner Signature**	**Date**

Official Use Only

Project File Name:

Brown of Boone III, LLC – General Use Zoning Map Amendment

Permit Number:

PL00145-0101417

Project Name/Number:

NA

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
January 4, 2017	NA	NA	NA	NA

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[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.

Communication: PL00145-010417 Application Information (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map

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: Brown of Boone III, LLC – General Use Zoning Map Amend.
Permit Name/Number: PL00145-010417

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

A. ADDITIONAL APPLICATION INFORMATION

Hearing Date Requested[1]: January 23, 2017

B. DEVELOPMENT INFORMATION

Existing Zoning District(s): NA (Watauga Co. jurisdiction) Proposed Zoning District(s): B3; Corridor District Overlay

Existing Land Use(s): Vacant/Vehicle Storage

Adjacent Land Use(s): N: Vehicle Sales and Service E: Vacant

W: Vacant S: Landfill

Are there are any existing variances granted to the property? ❒ Yes ☑ No ❒ Unknown

If yes, describe:

Total Land Area: 4.6 acres

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.

NA	NA	NA
Property Owner (Print)	**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.

Communication: PL00145-010417 Application Information (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map

Official Use Only

Public Hearing Meeting Date: January 23, 2016

PC Meeting Date: January 23, 2016

TC Meeting Date: February 16, 2017

Date of APO Mailed Notification: January 6, 2017

Date of Posted Notification: January 6, 2017

Project Approved: ☐ Yes ☐ No

Date Order Recorded: NA

Order Recordation Information: Book: NA Page: NA

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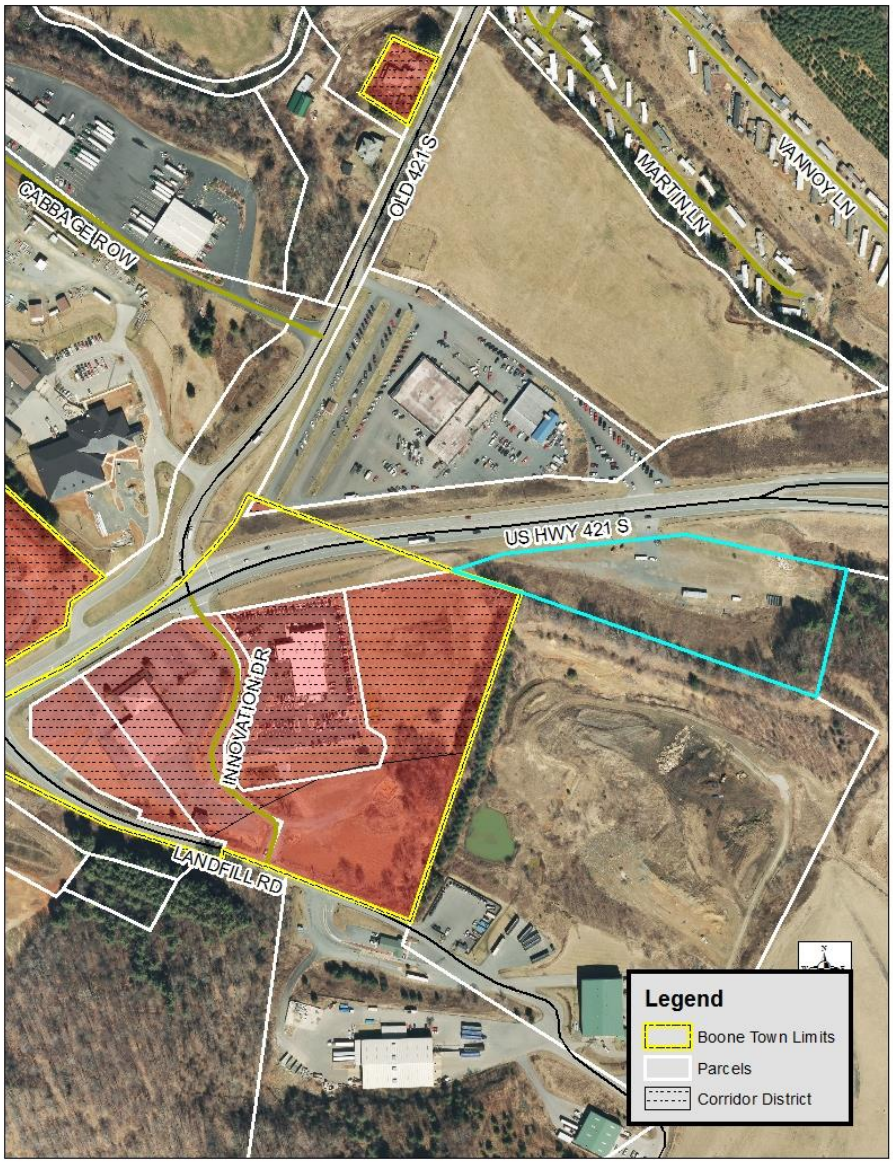
Communication: PL00145-010417 Application Information (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map

STAFF REPORT
PUBLIC HEARING
CASE PL00145-010417 BROWN OF BOONE III, LLC-GENERAL USE ZONING MAP AMENDMENT



Request

The Town of Boone has initiated the zoning of a portion of property (Watauga County PIN: 2921303920000) owned by Brown of Boone III, LLC to B3 General Business and Corridor District Overlay to coincide with the voluntary annexation of the property which is scheduled to be completed on January 19, 2017 with an effective date of February 16, 2017.

Zoning is necessary due to the recent NC Supreme Court decision in December 2016 which upheld Senate Bill 865 which removed the Town of Boone's ability to exercise any extra-territorial jurisdiction (ETJ) related powers (Effective January 10, 2017). Prior to January 10th, this property was zoned B3 General Business and Corridor District overlay.

History

07-21-2016: Council approved Brown of Boone III, LLC's request for water and sewer service to this property with the requirement that annexation of the property be completed prior to the issuance of a Certificate of Occupancy.

09-09-2016: Kent Brown with Brown of Boone III LLC submitted a petition for voluntary non-contiguous annexation for this property. The property at that time was in the Town of Boone's ETJ and was zoned B3 General Business and Corridor District overlay.

11-17-2016: Council completed the first step of the voluntary annexation process with the adoption of the resolution directing the clerk to investigate the sufficiency of the annexation petition.

11-21-2016: Brown of Boone submitted Zoning Permit Applications for a phased commercial project.

12-16-2016: Council completed the second step of the voluntary annexation process with the presentation of the Certificate of Sufficiency and the adoption of the resolution fixing the date of the public hearing for annexation.

12-21-2016: NC Supreme Court decision published which upheld Senate Bill 865 which removed the Town of Boone's ability to exercise any extra-territorial jurisdiction (ETJ) related powers (Effective January 10, 2017).

01-10-2017: Area within ETJ now within Watauga County jurisdiction (Town of Boone zoning no longer applicable).

01-19-2017: Public Hearing and adoption of annexation ordinance scheduled- effective date of ordinance is February 16, 2017.

01-23-2017: Public Hearing and Planning Commission meeting to hear case to "zone" property located in the former ETJ.

02-16-2017: Council meeting to make a decision on the proposed zoning. Effective date of annexation for the property.

Area Information

Zoning District Descriptions:

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.

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Corridor District: The corridor districts are established overlay districts intended to protect the main thoroughfares through town.

Permissible Uses

UDO Article 15, Section 15.07 contains the Table of Principal Uses for the B3 General Use District, 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	B3	Reference
1.0 Household Living			
1.01	Single-Family Dwelling		
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^{T200}	15.11
2.01	Family Care Home		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	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
2.10	Residence Hall, Category 1	L	15.15
2.11	Residence Hall, Category 2	L^{T200}	15.15
2.12	Residence Hall, Category 3	L^{T300}	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		15.18
3.02	Shelter for Homeless, Category 1	L^{T50}	15.19
3.03	Shelter for Homeless, Category 2	L^{T300}	15.19
3.04	Bed and Breakfast, Category 1		15.20

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Use #	Specific Use	B3	Reference
3.05	Bed and Breakfast, Category 2	L[T125]	15.20
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	
4.05	Post Office	P	
4.06	Post Office, Distribution		
4.07	Animal Sanctuary		
5.0 Government Uses			
5.01	Government Cultural Facility	P	
5.02	Government Neighborhood Cultural Facility, Indoor Activity Only	P	
5.03	Government Neighborhood Cultural Facility, Includes Outdoor Activity	P	
5.04	Recreation Facility, Category 1	P	
5.05	Recreation Facility, Category 2	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	
5.13	Utility Facility, Town	L	15.23
5.14	Utility Facility, Government, Neighborhood	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	15.23
6.02	Utility Facility, Regional	L[T300]	15.23
7.01	Antenna Collocation on Existing Wireless Support Structure not requiring additional accessory equipment	P	
7.02	Antenna Collocation on Existing Wireless Support Structure requiring additional accessory equipment	L	15.24
7.03	Building Mounted Antenna not requiring additional accessory equipment	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	L	15.24

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Use #	Specific Use	B3	Reference
7.08	Stealth Wireless Facility which exceeds district height requirements	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	
8.0 Assembly			
8.01	Religious Assembly, Category 1	P	
8.02	Religious Assembly, Category 2	P	
8.03	Religious Assembly, Category 3	P^{T200}	
8.04	Club/Lodge, Category 1	P^{T75}	
8.05	Club/Lodge Which Does Not Serve Alcohol	P	
9.0 Education			
9.01	Appalachian State University		
9.02	Caldwell Community College and Technical Institute		
9.03	Other Public Colleges and Universities		
9.04	Private Colleges and Universities	P^{T300}	
9.05	Trade School	P^{T200}	
9.06	High School		
9.07	Elementary School		
9.08	Boarding School	P^{T300}	
9.09	All other Educational Facilities		
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	P^{T75}	
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	P^{T200}	
11.09	Other Restaurants > 2,500 ft^2	P^{T125}	
11.10	Bar		
11.11	ABC Store	P	
11.12	Personal Service Establishment open to the public during 10 pm – 6 am	P^{T75}	

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Use #	Specific Use	B3	Reference
11.13	Other Personal Service Establishments	P	
11.14	Retail Store up to 5,000 ft^2	P	
11.15	Retail Store more than 5,000 but less than 25,000 ft^2	P^{T200}	
11.16	Retail Store 25,000 ft^2 and greater	L^{T300}	15.27
11.17	Shopping Center/Mall	S^{T300}	15.28
11.18	Business or Professional Office open to the public during 10 pm–6 am	P^{T75}	
11.19	Other Business or Professional Office	P	
11.20	Medical Office, Category 1	P^{T300}	
11.21	Medical Office, Category 2	P^{T125}	
11.22	Medical Office, Category 3	P^{T125}	
11.23	Medical Office, Category 4	P	
11.24	Hospital		
11.25	Medical Emergency Response	P^{T300}	
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
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	
11.35	Therapy Farm		
12.0 Recreation and Entertainment Uses			
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}	
12.13	Racetrack		
13.0 Agriculture			
13.01	Garden, Community	L	15.36
13.02	Garden, Residential	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		

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Use #	Specific Use	B3	Reference
13.09	Forestry	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		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^{T75}	15.48
16.02	Outdoor Storage		15.49
16.03	Warehouse		
16.04	Fuel Storage Facility	P^{T300}	
16.05	Chemical Storage Facility		
17.0 Transportation			
17.01	Passenger Terminals	P^{T200}	
17.02	Trucking or freight terminal ≤ 10,000 ft^2	P^{T125}	
17.03	Trucking or freight terminal > 10,000 ft^2		
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	B3	Reference
A-1	Secondary Suite	L	15.52
A-2	Home Occupation	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	

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Use #	Accessory Uses	B3	Reference
A-9	Automated Teller Machine (ATM), Freestanding	L	15.59
A-10	Produce Stand		15.60
A-11	Poultry	L	15.61
A-12	Livestock, Small	L	15.62
A-13	Livestock, Large		15.63
A-14	Bees	L	15.64
A-15	Garden, Residential	L	15.65
A-16	Satellite receiving antennas less than 1 meter in diameter	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	15.66
A-21	Caretaker's residence	L	15.67
A-22	Vehicular Gate	L	15.68
A-23	Vehicle Washing Station	P	
A-24	Chemical Storage Facility	P[T125]	
A-25	Open Air Market, Accessory	L	15.29
A-26	Daycare, Small	P	

15.07.03 Table of Temporary Uses

Use #	Temporary Uses	B3	Reference
T-1	Temporary Care Provider Dwelling	L	15.69
T-2	Temporary Construction or Repair Dwelling	L	15.69
T-3	Temporary Construction Trailer	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	15.69
T-10	Yard Sales	L	15.69
T-11	Itinerant Merchant/Peddler	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	Max. Floor Area Ratio (FAR)	Min. Open Space Ratio (OSR)	Min. Livability Space Ratio (LSR)	Min. Recreation Space Ratio (RSR)	Minimum Landscaped Area	Setbacks	
									Street	Interior
B3	5,000 ft^2	50 ft.	40 ft.	.429	.71	.27	.062	-	20'	17'

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Building Height

Zone	Height Limitation (Feet)
B3	44 (primary) – 67 (secondary)

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.

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

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.

B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.

C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.

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

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.

F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.

G. The Town shall support the development of new business parks.

2.1.2 Commercial Development

A. Uncontrolled strip development along the area's through streets shall be prohibited. The undesirable effects of existing strip development shall be reduced and/or reconfigured when redevelopment opportunities permit. New strip development on isolated single lots along through streets shall be discouraged.

B. Commercial and office development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development.

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

C. Community/Commercial Centers shall be located adjacent to a major street and contain or be adjacent to other appropriate community facilities.

D. Automobile Orientated Neighborhood and Convenience Commercial Centers shall be encouraged to locate on a collector street or secondary street at its intersection with a major street.

F. Commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property, only when such consolidation and expansion does not encroach upon a viable residential area.

G. Effective buffering and/or landscaping shall be provided where a large scale or automobile-orientated commercial or office use adjoins an existing or planned residential use.

J. Highway Oriented Commercial uses shall be clustered along segments of major streets and contain land uses which are mutually compatible and reinforcing in use and design. Businesses shall be encouraged to coordinate their site designs with other nearby businesses. Design factors shall include, at a minimum, shared parking and street access, convenient pedestrian and vehicular movement, and consistent sign standards.

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

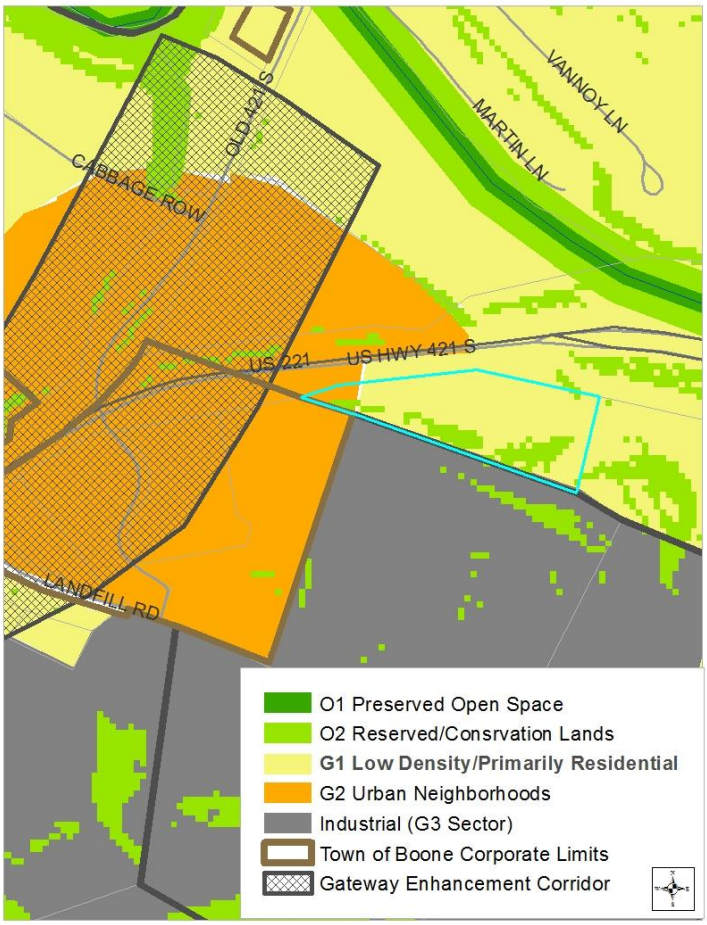
C. The significance of major roadway entrances into Boone as measures of community image and quality shall be recognized through building placement, landscape, signage and other visual improvements. The Town, along with private property owners and developers, shall work to jointly improve the appearance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

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

BOONE 2030 LAND USE PLAN



The 2030 Land Use Plan works together with the Town's Comprehensive Plan and other plans and programs to provide for the Town's long range growth. The Land Use Plan is a three-dimensional framework for the comprehensive plan and serves as the basis for all the facility and service needs of the Town. The Land Use Plan serves as the guiding vision and policy basis for determining the appropriateness of any development or redevelopment that is proposed for the Town's planning jurisdiction.

This area is located within the multiple sectors.

The **O-2 sector** represent areas that are prime candidates for moving into the O-1 sector through conservation easements or other open space acquisition/protection measures such as Transfer of Development Rights. This sector, shown in medium green on the Framework Map, consists of lands that should be off-limits to development except occasional residential/rural buildings at very low densities. These areas may be legally developable based on current federal, state, and local regulations. However, they are areas that based on environmental and urban service factors (difficulty of providing of sewer/water service and roadways, for example) should be lightly developed or undeveloped, remaining in a rural or natural state. In large part, these areas correspond with locations identified for viewshed protection in the Town's current regulations. This zone also corresponds with areas in the Secondary Water Pressure Zone, defined as elevations above 3400 feet, which are difficult to efficiently serve with adequate public water pressure. For Boone, this sector also consists of:

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

- 100 year floodplain
- Slopes of 30-70%
- 100 ft. riparian stream buffer
- Zone of potential rock instability
- High landslide hazard zones

The **G-1 sector** is intended for relatively low density residential development. This sector includes existing low-density residential neighborhoods that are not appropriate for redevelopment. It also includes lands that are not proximate to thoroughfares and are not projected to be high growth areas due to limited access to transportation networks and utilities.

Appropriate Land Uses/Development Types include:

- Low density cluster developments
- low density single family residential development
- Limited convenience retail;
- civic uses such are parks, government or religious

The G-2 sector contains denser, mixed-use development at the scale of neighborhood centers, indicated by 1/4 mile circles (equivalent to a 5-minute walk), and suburban, residential development at the scale of walkable "traditional neighborhoods" shown in orange. This type of residential development creates an identifiable center organized around a small public square or green, often with some civic facilities or a building such as a church or a small store. Local, slow-speed streets form a connected network, with larger collector streets. Paths form pedestrian connections linking sidewalks to internal parks and preserved open space along the boundaries of the neighborhood. This pattern of development can be more environmentally sensitive to its context and can provide improved public health benefits for citizens through its capacity for safe walking and cycling.

G-2 lands are typically close to thoroughfares and at key cross-road locations. For Boone, the G-2 sector specifically includes areas that are already developed with neighborhood-serving retail and service uses or at key cross-roads where future development of this type is likely to occur, such as around the intersection of NC 105 and Poplar Grove Road, or the intersection of Boone Heights Drive and State Farm Road. The G-2 designation is also used in areas where a mixture of higher density residential types (e.g., small lot single family houses, townhomes, apartment or condominium buildings, or mixed-use buildings) are already occurring or would be appropriate to transition between higher intensity commercial uses and existing lower density neighborhoods, and take advantage of proximity to existing centers of commerce, education, or employment such as the university, downtown, the hospital, the industrial park, and the Hardin Park Elementary School/NC 194 corridor.

Appropriate Land Uses/Development Types include:

- traditional neighborhood developments
- single-family and multifamily residential
- neighborhood mixed-use centers
- neighborhood-scale commercial uses (retail and office)
- civic uses
- light industrial uses

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

Certification of Notification by Mail

I, Jane Shook, certify that individual notices meeting the requirements of Article 9, Subsection 9.03.03(B)(2) of the Town of Boone UDO were placed in the mail (first class) on January 6, 2017.

_____

Jane Shook, Interim Director of Planning and Inspections

Certification of Posting

I, Brian Johnson, 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 January 6, 2017.

_____

Brian Johnson, Urban Design Specialist

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:

_____

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

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:

Communication: PL00145-010417 Staff Report (Case PL 00145-010417 Brown of boone, III, LLC - General Use Zoning Map Amendment)

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: Town of Boone Company: _____

Address: PO Drawer 192, Boone, NC 28607

Phone Number: _____ Email Address: _____

Property Owner: _____ Company: _____

Address: _____

Phone Number: Email Address:

B. PROPERTY INFORMATION

Watauga County Parcel Identification Number(s): NA

Address/Location: NA

Project Name: Article 2 Administrative Mechanisms –Modification, UDO Text Amendment

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 Occupancy	*Commerical 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

Communication: PL00147-010417 Application Information (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

D. DETAILED DESCRIPTION OF PROJECT

See Project Data Form

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: NA Company:

Address: License #:

Phone Number: Email Address:

F. DESIGN PROFESSIONAL INFORMATION

Engineer: NA

Name: Company:

Address: License #:

Phone Number: Email Address:

Architect: NA

Name: 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.

Jane Shook	Jane Shook	01/04/17
Applicant[1] (Print)	**Applicant Signature**	**Date**
NA	**NA**	**NA**
Property Owner (Print)	**Property Owner Signature**	**Date**

Official Use Only

Project File Name:

Article 2 Administrative Mechanisms –Modification, UDO Text Amendment

Permit Number:

PL00147-010417

Project Name/Number:

NA

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
January 4, 2017	NA	NA	NA	NA

S:\FORMS\Forms_2015\ZoningPermitApplication_052015.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.

Communication: PL00147-010417 Application Information (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

UDO Text Amendment Project Data Form

Town of Boone Planning & Inspections Department
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Official Use Only
Project Name/Number:
Permit Name/Number: PL00147

A. TEXT INFORMATION

Amendment is to:

Article(s): Article 2, Article 6

Section(s): varies

Brief Description of Amendment (Attach Proposed Text):

Modification of the UDO text as it relates to changes due to the NC Supreme Court decision to uphold Senate Bill 865 which removed the Town of Boone's ability to exercise any extra-territorial jurisdiction (ETJ) related powers.

Reason for Change:

Official Use Only

Public Hearing Meeting Date: January 23, 2017

PC Meeting Date: January 23, 2017

TC Meeting Date: February 16, 2017

Text Approved: ❑ Yes ❑ No

Date UDO Updated: _____

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STAFF REPORT
PUBLIC HEARING
CASE PL00147 ADMIN. MECHANISMS/ETJ MODIFICATIONS-UDO TEXT AMENDMENT

Request

The Town of Boone has initiated a text amendment to modify the UDO to remove or alter regulations related to the Extra-Territorial Jurisdiction (ETJ). Modifications are necessary due to the recent NC Supreme Court decision in December 2016 which upheld Senate Bill 865 which removed the Town of Boone's ability to exercise any extra-territorial jurisdiction (ETJ) related powers (Effective January 10, 2017).

Analysis

The text below in ~~red strikethrough~~ is the text proposed to be deleted and the blue underline is the new text for consideration. Please note, text amendments now contain the case number and effective date in italicized font at the end of the section in which the text was modified.

§ 2.01 BOARD OF ADJUSTMENT.

2.01.01 The Board is a quasi-judicial body which acts on specified appeals, variances, major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the town.

2.01.02 Appointment and terms of Board of Adjustment.

A. Number of members. There shall be a Board of Adjustment consisting of ~~eight~~ five regular members and ~~eight~~ three alternate members~~s~~. Alternates shall serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a regular member~~only in the absence or temporary disqualification of any regular member or to fill a~~in the event of a ~~vacancy pending appointment of a regular member position~~. ~~Each alternate, while attending~~When serving in place of a regular member, ~~at any regular or special meeting of the Board ,~~ an alternate member~~and serving on behalf of any regular member,~~ shall have ~~and may exercise~~ all the powers and duties of a regular member.

~~1. Number of town members. Five regular members of the Board of Adjustment and five alternates shall reside within the Town (hereafter, "resident members").~~

~~2. Number of ETJ members. Three regular members and three alternates shall reside within the town's ETJ (hereafter, "ETJ members"). Should the town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the town increase or decrease, in accordance with G.S. § 160A-362 and as specified herein, the town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ relative to the town. However, the resident members may never number fewer than five regular members and five alternates, so if necessary to maintain proportionality, the full size of the Board shall be increased. There shall be at all times at least one representative of the ETJ on the Board of Adjustment.~~

~~B. Adjustment of ratio of town and ETJ members. Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of town population to ETJ population which requires a modification in the number of town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes a full fraction of the town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the town's population divided by the total membership of the Board of Adjustment, respectively.~~

~~C. Appointment of members to the Board of Adjustment.~~

~~1. Town appointments. All town members of the Board shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.~~

~~2. ETJ appointments.~~

~~a. Council procedure. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Watauga County Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Watauga County Board of Commissioners proceed with an appointment.~~

~~b. Watauga County Board of Commissioners procedure. The Watauga County Board of Commissioners shall consider the choices directed to it by the Council. If the Watauga County Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Board, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~

~~i. Notice. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.~~

~~ii. Qualifications. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area,~~

~~then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town to fill these seats.~~

~~iii. The Commissioners shall make the appointment within 45 days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within 90 days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.~~

B~~D~~. Appointments; a~~A~~voidance of conflicts of interest. All town members of the Board shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.

In making appointments to the Board, ~~both~~ the Town Council ~~and the Watauga County Board of Commissioners~~ shall consider the employment of current Board members ~~and alternates~~, and their spouses, and shall strive to create such employment diversity upon the Board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board from assembling a ~~full Board of eight members or five members, according to the quorum requirements to hear the case~~quorum. Therefore, in order to be appointed to the Board, an applicant must provide the Town ~~or County~~ with information concerning his or her employment and that of his or her spouse, if any.

C~~E~~. Term. Regular members and alternates shall be appointed for three year staggered terms, but may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Members may be reappointed to successive terms without limitation.

D~~F~~. Absences.

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. In the event of a long illness or other such cause for prolonged absence, however, as determined by the Administrator ~~and confirmed by the Council~~, the member shall be replaced; provided, however, that ~~.~~

~~a.~~ Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's proposed or actual removal.

2. Regular Board members shall be automatically removed for unexcused failure to attend three consecutive meetings or for unexcused failure to attend 50% of the regular meetings in any 12 month period. For example, if a member misses six of 12 meetings during a 12 month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. Alternate members shall likewise be removed for unexcused failure to attend or participate in three consecutive meetings for which the member's attendance is requested.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

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-EG. Residency. All members must be residents within the Town corporate limits or ETJ. If a regular or alternate resident member moves outside the Town limits, or if an ETJ regular or alternate member moves outside the ETJ, that shall constitute a resignation from the Board.

H. Alternates. A resident member alternate may sit only in lieu of a regular resident member and an ETJ alternate may sit only in lieu of the regular ETJ member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

FI. Resignation. A member of the Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

JG.. Removal. The Administrator or a member of the Town Council may propose removal of a member for good cause related to the performance of Board duties.

1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.01.03 Meetings of the Board of Adjustment.

A. Schedule. At a time which it establishes, the Board shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Board is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") Continuation meetings may be scheduled without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present and announced by the Board at a duly advertised meeting.

B. Rules of procedure. The Board shall conduct its meetings in accordance with its duly adopted Rules of Procedure so long as they are not inconsistent with the provisions of this ordinance or state law. The Rules of procedure may address any of the following:

1. Scheduling and order of cases before the Board; and

2. Representation; and

3. Intervention of a person other than the applicant or appellant who has a special and substantial interest in the outcome of the case to fully participate as a party in the hearing; and

4. Pre-hearing procedures; and

5. Hearing procedures; and

6. Admissibility of evidence; and

7. Decision-making procedures; and

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8. Length of meetings; and

9. Special meetings; and

10. Meeting decorum pursuant to Subsection 6.01.07(B); and

11. Such other matters as may be needed for the effective and proper functioning of the Board.

C. Open meetings. The Board and any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "subcommittee") shall operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. At a minimum, all meetings of the Board or any subcommittee shall require all of the following:

1. A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by law.

2. Minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

2.01.04 Board of Adjustment officers.

A. Unless the Town Council designates the Chair and Vice-Chair of the Board, it shall retain the power to choose its own Chair and Vice-Chair~~, but both must be resident members of the Board~~. The people so designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms by the Town Council.

1. The Board shall designate the Chair and Vice-Chair of any subcommittee.

B. If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote.

C. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.01.05 Duties of the Board of Adjustment.

A. The Board is a quasi-judicial body that shall hear and decide:

1. Appeals from any order, decision, requirement, interpretation, or determination made by the Administrator, as provided in Article 6 Board of Adjustment Hearings.

2. Applications for special-use permits, as provided in Article 6 Board of Adjustment Hearings.

3. Applications for variances, as provided in Article 6 Board of Adjustment Hearings.

4. Applications for major subdivision preliminary plat approval, as provided in Article 6 Board of Adjustment Hearings.

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5. Appeals of the grant or denial of an application for a certificate of appropriateness by the Historic Preservation Commission.

6. Any other matter the Board is required to act upon by any other town ordinance.

B. Limitations on the powers of the Board of Adjustment.

1. No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted rules of procedure explicitly authorizing the member to speak or act on its behalf.

2. No individual member of the Board, or the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, or the Board itself, may direct staff to take action requiring the expenditure of Town funds.

4. The Board shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board on tasks assigned by the Town Council or its designee.

5. The Board may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

(Ord. passed 12-16-2013)

§ 2.02 PLANNING COMMISSION.

2.02.01 The Planning Commission is an advisory board which makes recommendations to Council on future growth and development issues that affect the town. The Planning Commission reviews and makes recommendations to the Council pursuant to Subsection 2.02.06.

2.02.02 Appointment and terms of Planning Commission members.

A. Number of members. There shall be a Planning Commission consisting of 7~~13~~ members.

~~1. Number of town members. Eight members of the Planning Commission shall reside within the Town. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.~~

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~~2. Number of ETJ members. Five members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with G.S. § 160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ. There shall be at all times at least one representative of the ETJ on the Planning Commission.~~

~~B. Adjustment of ratio of town and ETJ members. Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of town population to ETJ population which requires a modification in the number of town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Planning Commission when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Planning Commission or when the population of the ETJ falls below a full fraction of the town's population divided by the total membership of the Planning Commission, respectively.~~

C. Appointment of members to the Planning Commission~~.~~

~~1. Town appointments~~. ~~All town m~~Members of the Planning Commission shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.

~~2. ETJ appointments.~~

~~a. Council procedure. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the resulting increased population requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person to serve as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Watauga County Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.~~

~~b. Watauga County Board of Commissioners procedure. The Watauga County Board of Commissioners shall consider the choices directed to it by the Council. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Planning Commission, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~

~~i. Notice. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.~~

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~~ii. Qualifications. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the town to fill these seats.~~

~~iii. The Commissioners shall make the appointment within 45 days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within 90 days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.~~

D. Term. Planning Commission members shall generally be appointed for four year staggered terms, but members may continue to serve until their successors have been appointed. ~~The~~ An Appalachian State University student member shall serve a term of one year. Vacancies which occur for reasons other than the expiration of a term shall be filled as they occur only for the unexpired remainder of the term.

1. Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

E. Absences.

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board.

a. For example, if a member misses six of twelve meetings during a 12 month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.

b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator ~~and confirmed by the Council~~, the member shall be replaced.

c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.

2. Planning Commission members shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the regular meetings in any 12 month period.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

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F. Residency. All members must be residents within the town corporate limits~~ or ETJ~~. If a resident member moves outside the town ~~or if an ETJ member moves outside the ET~~limits~~J~~, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

G. Resignation. A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

H. Removal. The Administrator or a member of the Town Council may propose removal of a member for any other good cause related to the performance of Board duties.

1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.02.03 Meetings of the Planning Commission.

A. Schedule. The Planning Commission shall conduct a meeting no less than quarterly, or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Planning Commission is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present~~it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Commission at a duly advertised meeting~~.

1. The Planning Commission shall also attend any public hearings on proposed ordinance amendments scheduled by Town Council. ~~These public hearings will be scheduled no less frequently than on a quarterly basis in February, May, August and November.~~

B. Rules of procedure. Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.

1. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Commission can elect a presiding officer by majority vote.

2. The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.

a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.

b. Issues considered under agenda items entitled, "other matters" or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.

3. Meetings of the Planning Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

4. The business of the Planning Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

C. Open meetings. The Planning Commission shall operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Planning Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin Board for that purpose in Town Hall, unless a longer notice is required by this ordinance or state law. If an agenda has been distributed to members of the Commission, it shall also be posted.

a. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or a "special meeting" when a majority of the Planning Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

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a. Minutes of the Planning Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

D. Speakers. At any meeting of the Planning Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town ~~or ETJ~~.

1. Speakers shall be recognized in the order in which they have signed up.

2. Unless a different time limit is adopted by the Planning Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.

3. Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

4. All persons addressing the Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

2.02.04 Quorum and voting.

A. A quorum is necessary for the Planning Commission to take official action.

1. ~~A quorum shall consist of at least seven members.~~A quorum shall consist of a majority of the members of the Commission. Vacant positions are not counted as members for purposes of calculating quorum. A member who is present shall be counted for purposes of quorum even if he or she is recused from voting.

B. All actions or recommendations of the Planning Commission or subcommittee are only effective or adopted upon majority vote of the members present, following a motion and second.

1. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

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2. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

3. A roll call vote shall be taken upon the request of any member.

~~4. ETJ members may vote on all matters considered by the Commission, regardless of the location of the property affected.~~

2.02.05 Planning Commission officers.

A. Unless the Town Council designates the Chair and Vice-Chair of the Planning Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

B. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.02.06 Powers and duties of Planning Commission.

A. The Planning Commission may:

1. Make studies of the area within its jurisdiction and surrounding areas; and

2. Determine objectives to be sought in the development of the study area; and

3. Prepare and adopt plans for achieving these objectives; and

4. Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to "initiate" changes to this ordinance, as the term "initiate" is used in, § 9.02; and

5. Advise the Council concerning the use and amendment of means for carrying out plans; and

6. Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with § 9.05; and

7. Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles 5 and 29 of this ordinance; and

8. Perform any other related duties that the Council may direct.

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B. Limitations on powers of the Planning Commission.

1. No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf; and

2. No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf; and

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, shall direct staff to take action requiring the expenditure of town funds; and

4. The Planning Commission shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or it's designee; and

5. The Planning Commission may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

2.02.07 Advisory committees.

A. From time to time the Council may appoint one or more individuals to help the Planning Commission carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider the thoroughfare plan, bikeway plans, community appearance plans, housing plans, economic development plans, and the like. Such advisory committees shall be created and operate, unless otherwise designated by the Council, according to the procedures established under Municipal Code §§ 30.51, and 35.01, et seq.

B. 1. Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered, and they shall be invited to lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations of the Planning Commission to the Council shall be made by the Planning Commission itself.

2. As with Commission members, unless the Council takes specific action to excuse the absences and reappoints an advisory committee member after being informed by the Administrator of the member's removal, an advisory committee member shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in

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the calculations toward automatic removal from the committee. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

C. Nothing in this section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.

(Ord. passed 12-16-2013)

ARTICLE 6: BOARD OF ADJUSTMENT HEARINGS

Section

6.01 Provisions applicable to all hearings

6.02 Special use permit, transitional zones and major subdivision preliminary plat applications

6.03 Variances

6.04 Appeal of administrative decision

6.05 Appeal of decisions of Community Appearance and Historic Preservation Commissions

§ 6.01 PROVISIONS APPLICABLE TO ALL HEARINGS.

6.01.01 General provisions.

A. All hearings of the Board shall be conducted in a quasi-judicial manner as described herein.

B. Subject to the specific provisions of Section 6.04 as to appeals, the Board shall hear and decide every appeal and application within a reasonable time.

C. The Board's packet shall include the Administrator's analysis of the issues, identifying any information, documents, and adopted plans material to the case. The Administrator's analysis may also include recommendations as appropriate.

D. Each hearing conducted by the Board shall provide an opportunity for parties and interested members of the public to testify and offer competent evidence, but the Board may limit the time available for each person offering testimony and may exclude testimony and evidence which is cumulative or redundant.

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E. Hearings shall be conducted in compliance with the Board's duly adopted rules of procedure.

F. The town is considered a party in every hearing before the Board.

G. The Board may continue any hearing until a subsequent meeting and may keep a hearing open to take additional information up to the point a final decision is made.

6.01.02 Quorum.

A. A quorum shall consist of four (4) members for all action that may be taken by the Board. A quorum is necessary for the Board to take official action, except that at any duly-noticed regular or special meeting a majority of the Board then present, whether a quorum or not, may vote to continue the meeting to a specified later date, time and location.

~~1. For cases involving property located in whole or in part in the ETJ, a quorum for the Board shall consist of seven members.~~

~~2. For cases involving property located wholly with the town's corporate limits, a quorum for the Board shall consist of five members.~~

~~B. A member who has withdrawn from the meeting and left the premises shall not be counted as present for purposes of determining whether a quorum is present.~~

6.01.03 Voting.

A. The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this paragraph, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused or has been allowed to withdraw from the meeting in accordance with this section.

C~~B~~. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

1. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
2. Undisclosed ex parte communications;
3. A close familial, business, or other associational relationship with an affected person; or
4. A financial interest in the outcome of the matter.

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D~~C~~. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

E~~D~~. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

F~~E~~. Except as authorized in this section, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

G~~F~~. A roll call vote shall be taken upon the request of any member.

~~G. Both ETJ and resident members must participate and vote on all matters coming before the Board involving property located in whole or in part in the ETJ. On all other matters coming before the Board, only resident members may participate and vote.~~

6.01.04 Notice of hearing.

A. The Administrator shall give notice of any hearing of the Board as follows:

1. Contents of notice. Every notice shall state the date, time, and place of hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

2. Mailed notice. Notice shall be mail by depositing in the mail at least ten days, but not more than 25 days, prior to the date of the hearing to:

a. The person or entity whose appeal, application, or request is the subject of the hearing;

b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;

c. The owners of all parcels of land abutting the parcel of land that is the subject of the hearing;

d. The owners of real property located within 150 feet of the subject lot(s);

e. The owners of any real property in a protected district, whose property boundary has triggered application of transitional zone standards; and

f. Any other persons who have submitted a written request for notice and intervening parties so long as the request for notice or intervention request have been filed prior to notification being mailed.

3. Posted notice. At least ten days, but not more than 25 days prior to the date of the hearing, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The signs to be posted shall include the date, time and location of the hearing and shall direct the public to detailed information about the hearing.

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6.01.05 Subpoenas.

A. The Board through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence.

B. To request issuance of a subpoena, persons with standing must make a written request to the Chair, on a form provided by the Administrator, explaining why it is necessary for certain witnesses or evidence to be compelled.

C. The Chair shall issue requested subpoenas the Chair determines to be relevant, reasonable in nature and scope, and not oppressive.

D. The Chair shall rule on any motion to quash or modify a subpoena.

E. Decisions regarding subpoenas made by the Chair may be appealed to the full Board.

F. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

6.01.06 Modification of applications after distribution of board book except appeals of staff decisions.

A. Modification of application between distribution of the board book and the board meeting.

1. Modification in response to Administrator's recommendation or request. An applicant may not significantly modify an application between the distribution of the Board Book containing the staff report of the case and the Board meeting unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.

a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

2. Insignificant or minor modifications in an application. An applicant may make a non-substantial modification to an application between the distribution of the Board book containing the staff report and the scheduled hearing.

a. A proposed non-substantial modification shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to an application during the

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scheduled hearing, and the Administrator indicates that adequate time exists to evaluate the insignificant modification can be fully evaluated with or without a recess by the Board, the modified application may be acted upon by the Board.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

3. Major modification of an application. An applicant seeking to significantly modify an application between the distribution of the Board Book containing the staff report of the case and the Board meeting, whether in response to staff recommendations or self-initiated, must file a new application.

4. Determination as to whether a proposed modification is insignificant, minor or major. The Planning Director shall make the determination as to whether a modification is "insignificant", "minor" or "major" in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the town and is not appealable.

B. Modification of application in response to concerns and issues raised at the hearing.

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board, an applicant may agree to modify an application, including the plans and specifications submitted.

2. Unless such modification is so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Board may approve the application with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

6.01.07 Testimony and documentary evidence.

A. Oaths. All persons who present testimony to the Board shall be sworn. The Chair of the Board or any member temporarily acting as Chair, and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board.

1. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

B. Speakers. At any meeting of the Board, when the meeting is opened for public testimony:

1. Speakers shall be recognized in the order in which they have signed up unless a different order is requested by the Board and agreed upon by the speakers.

2. Each speaker wishing to address the Board shall state his or her name and then shall be sworn.

3. All persons addressing the Board shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. The Board may address in its

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rules of procedures under what circumstances the presiding officer or Board may direct that a person who violates proper decorum may be removed, but the Chair shall have inherent authority to have removed a person who threatens other participants or member of the Board as well as any person whose behavior is so disruptive as to prevent the Board from continuing the hearing.

C. Competent evidence. The Board may address the standards for authenticating and admitting evidence in its duly adopted rules of procedure.

1. The rules of evidence as applied in the trial division of the General Court of Justice do not strictly apply. However, no evidence shall be consider unless:

a. The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision making board to rely upon it; or

b. The evidence was admitted without objection,

2. To be considered "competent", testimony shall generally meet the following:

a. The witness has personal knowledge of the subject of the testimony; and

b. The subject of the testimony is relevant to an issue involved in the hearing.

3. To be considered "competent", documentary evidence shall generally require authentication. A document is authenticated by one of the following methods:

a. Certification, by signature, title and seal, of the person who is the custodian of the records; or

b. Information within the document which establishes its origin and reliability; or

c. Testimony by a person with personal knowledge of the documents origin and reliability.

4. If a copy is used in place of an original, testimony must be offered by a witness establishing the date and author of the document and confirming that such document is a true and accurate copy of the original document.

5. Photographs must be accompanied by testimony as to the date and place where the photograph was taken and a statement that the photograph fairly and accurately represents the subject is depicted.

6. Notwithstanding the forgoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property; or

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

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6.01.08 Burden of presenting evidence; burden of persuasion.

A. Evidence. The burden of presenting evidence shall be upon the party or parties urging a particular position. However, at a minimum, the applicant or appellant must provide competent evidence which addresses every material issue.

B. Credibility. In making its decision the Board may explicitly or implicitly make credibility determinations regarding the testimony of any witness, and where the Board has concluded that the testimony of a particular witness is incredible or otherwise unreliable, it is not bound to accept that testimony and may not only reject it but, if warranted, may make a contrary finding from the facts asserted.

C. Persuasion. The burden of persuasion shall be on the applicant or appellant or other party or person advocating a particular position.

6.01.09 Decisions of the Board.

A. The Board's decision shall resolve all contested facts and their application to the applicable standards. The decision shall include individual findings of fact which support its conclusions of law.

B. All findings and conclusions made by the Board shall be based upon competent, material, and substantial evidence presented at the hearing, including all information in the Board's packet, unless objected to by a party and excluded by the Board.

C. Each decision, including any conditions adopted by the Board, shall be reduced to writing and signed by the Chair or other authorized member of the Board.

D. The decision shall be effective upon filing with the Clerk of the Board.

E. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective.

1. The Clerk of the Board shall certify that proper notice shall be made.

F. Any conditions attached to an approval shall be entered on the face of any necessary zoning permit.

6.01.10 Reconsideration of Board action.

A. Whenever the Board denies an application for a special use permit, major subdivision preliminary plat approval or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time unless the applicant clearly demonstrates that:

1. Circumstances affecting the -subject property have substantially changed; or

2. New information is available that could not, with reasonable diligence, have been presented at a previous hearing and is submitted to the Administrator within 30 days of the denial.

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a. The submission of purported new information under this section shall not, however, toll the period during which an applicant may seek judicial review of the denial and does not extend the period within which an appeal must be taken.

B. Notwithstanding Subsection 6.01.10(A), the Board may at any time consider a new application affecting the same property as an application previously denied.

1. A new application is one that differs in some substantial way from the one previously considered.

6.01.11 Judicial review.

A. Every decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393.

B. A petition for review by the superior court shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Subsection 6.01.09(E).

C. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Ord. passed 12-16-2013)

§ 6.02 SPECIAL USE PERMIT, TRANSITIONAL ZONES AND MAJOR SUBDIVISION PRELIMINARY PLAT APPLICATIONS.

6.02.01 An applicant for a special use permit or major subdivision preliminary plat approval must demonstrate all of the following:

A. The application is complete;

B. If completed as proposed, the development or subdivision:

1. Will comply with the requirements of this ordinance;

2. Will not materially endanger the public health or safety;

3. Will not substantially injure the value of adjoining or abutting property;

4. Will be in harmony with the area in which it is to be located;

5. Will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town; and

6. In cases involving transitional zones, meets the standards of Subsection 6.02.02.

6.02.02 Transitional zones.

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A. Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this section.

B. Transitional zones attach to each R1, R1A, RR, R2, and RA district, (hereinafter, "the protected district") without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a "one size fits all" approach.

C. The location of a transitional zone shall be determined as follows.

1. For designated development in an adjacent zone, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected district as measured from all points along that boundary, the nearest point controlling applicability of this subsection.

2. For development subject to transitional zones within the protected districts, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected lot, the nearest point controlling applicability of this subsection.

D. The size of the transitional zone varies with the type of development proposed. The following are the transitional zones as shown in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses:

1. T50: transitional zone equal to 50 feet;

2. T75: transitional zone equal to 75 feet;

3. T125: transitional zone equal to 125 feet;

4. T200: transitional zone equal to 200 feet; and

5. T300: transitional zone equal to 300 feet.

E. Whenever a permit is sought to authorize development within a transitional zone, and any area used or disturbed for the development will be located within the pertinent transitional zone, a special use permit is required. If any portion of the area used or disturbed for the development falls within the transitional zone the standards of this Section shall apply to the entire development. The Board may deny the application if the requirements of this section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

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1. Exemption. Development within an approved industrial park shall not be subject to the requirements of Subsection 6.02.02.

F. In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this section, the applicant must also show:

1. That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including but not limited to:

a. Noise impacts;

b. Light impacts; and

c. Any other predictable negative effect, including but not limited to:

i. Negative visual effects;

ii. Negative traffic effects; and

iii. Negative health effects.

G. Because of the variable topography and characteristics of particular tracts of land within the town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate by clear and convincing evidence that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.

6.02.03 Board of Adjustment action on special use permits and major subdivision preliminary plat applications.

A. Conclusions of law. In deciding whether to approve or deny an application for a special use permit or a major subdivision preliminary plat, the Board shall proceed according to the following format:

1. The Board shall determine whether the application is complete.

a. The burden of presenting a complete application to the Board shall be upon the applicant. The fact that the Administrator believes the application is complete or the applicant has submitted all requested supplemental documentation to the Administrator shall not bind the Board to conclude that the application is complete. The Board is the final arbiter of whether an application is complete.

i. If the Board concludes that the application is incomplete in a hearing conducted following a demand by the applicant for immediate action by the Board pursuant to Subsection 4.06.02(A) or the applicant refuses to provide the information determined by the Board necessary to complete the application, the application shall be denied.

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ii. If the Board otherwise concludes that the application is incomplete the Board may deny the application or may give the applicant an appropriate opportunity to complete the application if the applicant expresses an interest in timely supplementing the application to make it complete.

A. A motion to continue the hearing in order to afford the applicant an opportunity to complete the application shall state the location, date and time of the reconvened hearing.

B. A case continued under these circumstances shall not require the same Board identity at the reconvened hearing, as the applicant will be expected to present his full case at that time.

b. If an application includes features which must be approved by another town board, commission or department, then such approvals must be obtained prior to the hearing.

2. If the Board concludes that the application is complete, the Board next shall consider whether the application complies with all of the applicable requirements of this ordinance. If the Board concludes that an element of the application does not fully comply with this ordinance but has a minimal effect on the issues before the Board, it may conditionally approve the application. If the Board concludes that the application does not comply with all applicable requirements of this ordinance and conditions will not sufficiently cure the deficiencies or the Board concludes that the deficiency is material to the Board's approval, then the Board shall deny the application.

3. If the Board concludes that the application is complete and complies with this ordinance, if completed as proposed, before it may approve the permit or subdivision it must find all the following:

a. The development or subdivision as proposed will not materially endanger the public health or safety; and

b. The development or subdivision as proposed will not substantially injure the value of adjoining or abutting property; and

c. The development or subdivision as proposed will be in harmony with the area in which it is to be located; and

d. The development or subdivision as proposed will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town.

B. Conditions. Even when a development or subdivision meets the criteria above, the Board may still impose conditions on an approval.

1. All conditions shall be reasonable and appropriate and shall be related to the predicted impacts of the development.

2. Unless the Board explicitly orders otherwise, every approval is conditioned upon the development being completed in accordance with the plans submitted by the applicant, the commitments and representations concerning the proposed development made by the applicant and representatives at the public hearing, and final conformity with all requirements of the UDO.

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3. The Board may attach to a special use permit a condition limiting the permit to a specified duration and in appropriate situations may provide additional process including another public hearing after the special use has begun to evaluate unanticipated impacts, provided such a condition shall not be employed to terminate a special use for which substantial construction or reconstruction has occurred.

4. Without limiting the foregoing, conditions should normally require measures to address impacts on the:

a. Public health or safety; and

b. Values of adjoining or abutting properties; and

c. Harmony with the area in which it is located; and

d. In the case of transitional zones, noise, light, and other predictable negative effects

such as visual, traffic and health.

6.02.04 Voting. The adoption of each conclusion of law under Subsection 6.02.03(A), which is required in order to issue the permit, authorize the preliminary plat or deny the application shall be by majority vote. Should any conclusion of law fail to be adopted, the application shall be denied.

6.02.05 Special use permits shall be recorded at the office of the Watauga County Register of Deeds.

(Ord. passed 12-16-2013)

§ 6.03 VARIANCES.

6.03.01 A variance is specific to the lot and to the development for which it is requested and neither the nonconforming use of lands, buildings, or structures in the same zoning district; nor the permitted use of lands, buildings or structures in other zoning districts are grounds for the granting of a variance.

6.03.02 A variance granted must be specific and the minimum variance required.

6.03.03 Financial hardship alone does not constitute grounds for the granting of a variance.

6.03.04 The fact that a lot may be utilized for greater profit if the variance is granted is not grounds for the granting of a variance.

6.03.05 No change in permitted uses may be authorized by variance.

6.03.06 A variance may not enlarge or expand nonconformities.

6.03.07 In order to grant a variance, the Board must conclude based upon competent evidence:

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A. Unnecessary hardship would result from the strict application of the ordinance; however it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and

B. The hardship results from conditions that are peculiar to the property such as location, size or topography; however hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and

C. The hardship did not result from actions taken by the applicant or the property owner however the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

6.03.08 In granting variances, the Board may impose appropriate conditions reasonably related to the condition or circumstance that give rise to the variance and which will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

6.03.09 A variance may be granted for an limited or indefinite duration.

6.03.10 Water supply watershed variances.

A. Before a water supply watershed variance is heard by the Board, the Administrator shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption.

1. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Administrator prior to a decision by the Watershed Review Board, which for this purpose shall be the Board of Adjustment. Such comments shall become a part of the record.

2. In considering the decision whether to recommend that a major variance from the requirements of Article 29 be granted, the Board shall apply the criteria of Subsection 6.03.07.

3. The Board may place appropriate conditions on the recommended approval of the major variance but they must be reasonably related to the variance.

B. If the Board recommends that a major variance be granted, the Administrator shall promptly prepare a preliminary record of the hearing and transmit it to the North Carolina Environmental Management Commission, (hereafter "EMC") for its consideration. The preliminary record shall include:

1. The variance application; and

2. The hearing notices; and

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3. The evidence presented; and

4. Motions, offers of proof, objections to evidence, and rulings on them; and

5. Proposed findings and exceptions; and

6. The proposed decision, including all recommended conditions to be added to the permit. Proposed conditions should be appropriate and reasonably related to the variance.

C. The Board shall take final action in accordance with the decision by the EMC:

1. If the EMC approves the variance as proposed, the Administrator shall prepare a final decision granting the recommended major variance and the Board shall adopt the decision at its next meeting.

2. If the EMC approves the variance but makes modifications to the recommended major variance, the Administrator shall prepare a final decision, in accordance with the action of the EMC, and the Board shall adopt the modified decision at its next meeting.

3. In the EMC denies the recommend major variance the Administrator shall prepare a final decision in accordance denying the major variance, and the Board shall adopt the denial at its next meeting.

6.03.11 Special flood hazard area variance.

A. A special flood hazard area variances may be issued for:

1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

2. Functionally dependent facilities if determined to meet the definition as stated in Article 34, provided such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

3. Any other requirements of Article 30.

B. Limitations on variances.

1. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued prior to development permit approval.

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5. Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

C. A written report addressing each of the factors in Subsection 6.03.11(D) shall be submitted by the applicant with the application for a variance.

D. The Board shall consider all technical evaluations, all relevant factors, all standards specified in other Sections of Article 30, and:

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location as a functionally dependent facility, where applicable;

6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

7. The compatibility of the proposed use with existing and anticipated development;

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

E. Upon consideration of the factors listed in Subsection 6.03.11(D) and the purposes of this Article 30 Flood Damage Prevention, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of Article 30.

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F. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to $25 per $100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

G. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

6.03.12 Voting. The adoption of each conclusion of law under Subsection 6.03.07 and the granting of a variance shall require a four-fifths vote of the Board. Should any conclusion of law receive less than a four-fifths vote, the variance shall be denied.

6.03.13 Variances shall be recorded at the office of the Watauga County Register of Deeds.

(Ord. passed 12-16-2013)

§ 6.04 APPEAL OF ADMINISTRATIVE DECISION.

6.04.01 The Board shall hear and decide appeals from decisions of administrative officials charged with enforcement of the ordinance. For purposes of this section a "decision" includes any final and binding order, requirement, or determination.

6.04.02 An appeal of an administrative decision is initiated by a person timely filing an Appeal to Administrative Decision application, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed;

2. A person who has a leasehold interest in the property that is the subject of the decision being appealed;

3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed;

4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed;

5. A person who was the applicant for the decision in question;

6. Any other person who will suffer special damages as the result of the decision being appealed;

7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association

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otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal; or

8. The town.

B. An appeal of an administrative decision, including the imposition of penalties, must be taken within 30 days after the date of the receipt of the notice of the decision in the case of the owner or the applicant, or 30 from actual or constructive notice by any other person with standing to appeal.

1. The date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail by the Administrator, with proper postage affixed, and addressed in accordance with the provisions of Section 1.13 except that an earlier date can be established by a return receipt for a certified mail notice. The date of receipt of an email is the date of transmission.

2. Constructive notice shall include, but shall not be limited to, any visible signs of the initiation of construction work on a site.

3. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Any such posting shall be the responsibility of the landowner or applicant, and verification of the posting shall be provided to the official who made the decision. Posting of signs however is not required.

C. An appeal is taken by filing a notice of appeal with the Town Clerk on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient to allow for a thorough understanding by the Board of the decision appealed.

D. The Clerk shall stamp the appeal with the date received and shall promptly transmit it to the Administrator. The Clerk shall maintain a chronological log of the appeals which are filed.

6.04.03 Once the appeal has been filed, the Administrator shall schedule a public hearing at the first available Board meeting and give public notice in accordance with Subsection 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

6.04.04 Appeal stays enforcement action.

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A. An appeal of a decision of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:

1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or

2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.

B. The appellant shall be notified of the Administrator's certification.

C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.

1. The Board shall meet to hear the appeal within 15 days after such a request is filed.

E. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

6.04.05 Deviations from matters presented in notice of appeal. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

6.04.06 Scope of hearing. The hearing shall be based on the record below and the scope of review shall be as follows:

A. The Board shall ensure that the rights of the appellant have not been prejudiced because the Administrator's findings, inferences, conclusions, or decisions were:

1. In violation of constitutional provisions, including those protecting procedural due process rights.

2. In excess of the statutory authority conferred upon the town by ordinance.

3. Inconsistent with applicable procedures specified by statute or ordinance.

4. Affected by other error of law.

5. Unsupported by substantial competent evidence in view of the entire record.

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6. Arbitrary or capricious.

B. When the issue before the Board is whether the Administrator erred in interpreting an ordinance, the Board shall review that issue de novo. The Board shall consider the interpretation of the Administrator, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

6.04.07 The parties to an appeal that has been made under this Section may agree to mediation or other forms of alternative dispute resolution. If all parties confirm they wish to engage in alternative dispute resolution, the Board shall adjourn the hearing to give them a reasonable opportunity to do so.

6.04.08 Decision.

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Administrator who made the decision.

B. The Board may reduce the penalty imposed if it determines:

1. That the appellant has acted in good faith; and

2. That the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control; or

3. The Board makes other findings which make the amount of the presumptive civil penalty unfair under the circumstances of the particular case.

6.04.09 Voting. The decision shall be by majority vote.

(Ord. passed 12-16-2013)

§ 6.05 APPEAL OF DECISIONS OF COMMUNITY APPEARANCE AND HISTORIC PRESERVATION COMMISSIONS.

6.05.01 The Board shall hear and decide appeals of any decision by the Community Appearance Commission allowing or denying a deviation of Article 25 Community Appearance Standards, or any decision by the Historic Preservation Commission granting or denying a Certificate of Appropriateness.

6.05.02 An appeal is initiated by a person timely filing an notice of appeal, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed.

2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.

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3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.

4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.

5. A person who was the applicant for the decision in question.

6. Any other person who will suffer special damages as the result of the decision being appealed.

7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

8. The town.

B. An appeal must be taken within 30 days after decision by the Commission.

C. An appeal is taken by filing a notice of appeal with the Administrator on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient information to allow for a thorough review by the Board.

D. The Administrator shall stamp the appeal with the date received.

6.05.03 Once the application has been filed, the Administrator must schedule a public hearing at the first available Board meeting and give public notice in accordance with Section 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant.

6.05.04 Appeal stays Commission decision.

A. An appeal of a decision by the Community Appearance Commission allowing a deviation of Article 25 Community Appearance Standards, or a decision by the Historic Preservation Commission granting a certificate of appropriateness shall be stayed while the appeal is pending.

6.05.05 Burden of proof. The burden of proof and burden of persuasion shall be on the party appealing the decision of the Commission.

6.05.06 Scope of action. An appeal of a Commission decision shall be in the nature of certiorari. The hearing shall be based on the Commission record and the scope of review shall be as follows:

A. The Board shall uphold the decision of the Commission unless it finds the decision is:

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1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the authority conferred upon the Commission by statute or ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. The term "competent evidence," as used in this section, shall not preclude reliance by the Commission on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if the evidence appears to be sufficiently trustworthy and was obtained under such circumstances that it was reasonable for the Commission to rely upon it.

6.05.07 Board action.

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Commission which made the decision.

(Ord. passed 12-16-2013)

MISCELLANEOUS OTHER UDO REVISIONS TO REMOVE REFERENCES TO ETJ

§ 1.05 JURISDICTION.

1.05.01 This ordinance shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the Town of Boone ~~and the town's extraterritorial jurisdiction (ETJ)~~ as depicted on the official zoning map of the Town of Boone, which is incorporated by reference herein.

§ 30.01 GENERAL PROVISIONS.

30.01.01 Lands to which this article applies. This article shall apply to all special flood hazard areas within the town's jurisdiction, ~~including extra-territorial jurisdictions (ETJs).~~

Article 34: Definitions

~~EXTRA TERRITORIAL JURISDICTION (ETJ). The portion of the town's planning jurisdiction that lies outside the corporate limits of the town.~~

Communication: PL00147 Staff Report (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

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:

Communication: PL00147 Staff Report (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

§ 2.01 BOARD OF ADJUSTMENT.

2.01.01 The Board is a quasi-judicial body which acts on specified appeals, variances, major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the town.

2.01.02 Appointment and terms of Board of Adjustment.

A. Number of members. There shall be a Board of Adjustment consisting of five regular members and three alternate members. Alternates shall serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a regular member. When serving in place of a regular member, an alternate member shall have all the powers and duties of a regular member.

B. Appointments; avoidance of conflicts of interest. All town members of the Board shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.
In making appointments to the Board, the Town Council shall consider the employment of current Board members, and their spouses, and shall strive to create such employment diversity upon the Board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board from assembling a quorum. Therefore, in order to be appointed to the Board, an applicant must provide the Town with information concerning his or her employment and that of his or her spouse, if any.

C. Term. Regular members and alternates shall be appointed for three year staggered terms, but may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Members may be reappointed to successive terms without limitation.

D. Absences.

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. In the event of a long illness or other such cause for prolonged absence, however, as determined by the Administrator, the member shall be replaced; provided, however, that Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's proposed or actual removal.

2. Regular Board members shall be automatically removed for unexcused failure to attend three consecutive meetings or for unexcused failure to attend 50% of the regular meetings in any 12 month period. For example, if a member misses six of 12 meetings during a 12 month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. Alternate members shall likewise be removed for unexcused failure to attend or participate in three consecutive meetings for which the member's attendance is requested.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

E. Residency. All members must be residents within the Town corporate limits. If a regular or alternate member moves outside the Town limits, that shall constitute a resignation from the Board.

F. Resignation. A member of the Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

G. Removal. The Administrator or a member of the Town Council may propose removal of a member for good cause related to the performance of Board duties. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.01.03 Meetings of the Board of Adjustment.

A. Schedule. At a time which it establishes, the Board shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule special meetings as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Board is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present.

B. Rules of procedure. The Board shall conduct its meetings in accordance with its duly adopted Rules of Procedure so long as they are not inconsistent with the provisions of this ordinance or state law. The Rules of procedure may address any of the following:

1. Scheduling and order of cases before the Board; and
2. Representation; and
3. Intervention of a person other than the applicant or appellant who has a special and substantial interest in the outcome of the case to fully participate as a party in the hearing; and
4. Pre-hearing procedures; and
5. Hearing procedures; and
6. Admissibility of evidence; and
7. Decision-making procedures; and
8. Length of meetings; and
9. Special meetings; and
10. Meeting decorum pursuant to Subsection 6.01.07(B); and
11. Such other matters as may be needed for the effective and proper functioning of the Board.

C. Open meetings. The Board and any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "subcommittee") shall operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. At a minimum, all meetings of the Board or any subcommittee shall require all of the following:

1. A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by law.
2. Minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

2.01.04 Board of Adjustment officers.

A. Unless the Town Council designates the Chair and Vice-Chair of the Board, it shall retain the power to choose its own Chair and Vice-Chair. The people so designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms by the Town Council.

1. The Board shall designate the Chair and Vice-Chair of any subcommittee.

B. If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote.

C. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.01.05 Duties of the Board of Adjustment.

A. The Board is a quasi-judicial body that shall hear and decide:

1. Appeals from any order, decision, requirement, interpretation, or determination made by the Administrator, as provided in Article 6 Board of Adjustment Hearings.

2. Applications for special-use permits, as provided in Article 6 Board of Adjustment Hearings.

3. Applications for variances, as provided in Article 6 Board of Adjustment Hearings.

4. Applications for major subdivision preliminary plat approval, as provided in Article 6 Board of Adjustment Hearings.

5. Appeals of the grant or denial of an application for a certificate of appropriateness by the Historic Preservation Commission.

6. Any other matter the Board is required to act upon by any other town ordinance.

B. Limitations on the powers of the Board of Adjustment.

1. No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted rules of procedure explicitly authorizing the member to speak or act on its behalf.

2. No individual member of the Board, or the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, or the Board itself, may direct staff to take action requiring the expenditure of Town funds.

4. The Board shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board on tasks assigned by the Town Council or its designee.

5. The Board may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

(Ord. passed 12-16-2013)

§ 2.02 PLANNING COMMISSION.

2.02.01 The Planning Commission is an advisory board which makes recommendations to Council on future growth and development issues that affect the town. The Planning Commission reviews and makes recommendations to the Council pursuant to Subsection 2.02.06.

2.02.02 Appointment and terms of Planning Commission members.

A. Number of members. There shall be a Planning Commission consisting of 7 members.

C. Appointment of members to the Planning Commission. Members of the Planning Commission shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.

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D. Term. Planning Commission members shall generally be appointed for four year staggered terms, but members may continue to serve until their successors have been appointed. An Appalachian State University student member shall serve a term of one year. Vacancies which occur for reasons other than the expiration of a term shall be filled as they occur only for the unexpired remainder of the term.

1. Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

E. Absences.

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board.

a. For example, if a member misses six of twelve meetings during a 12 month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.

b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator, the member shall be replaced.

c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.

2. Planning Commission members shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the regular meetings in any 12 month period.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

F. Residency. All members must be residents within the town corporate limits. If a resident member moves outside the town limits, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

G. Resignation. A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

H. Removal. The Administrator or a member of the Town Council may propose removal of a member for any other good cause related to the performance of Board duties.

1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.02.03 Meetings of the Planning Commission.

A. Schedule. The Planning Commission shall conduct a meeting no less than quarterly, or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Planning Commission is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present.

1. The Planning Commission shall also attend any public hearings on proposed ordinance amendments scheduled by Town Council.

Communication: PL00147 Clean Version of Revised Text (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

B. Rules of procedure. Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.

1. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Commission can elect a presiding officer by majority vote.

2. The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.

a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.

b. Issues considered under agenda items entitled, "other matters" or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.

3. Meetings of the Planning Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

4. The business of the Planning Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

C. Open meetings. The Planning Commission shall operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Planning Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin Board for that purpose in Town Hall, unless a longer notice is required by this ordinance or state law. If an agenda has been distributed to members of the Commission, it shall also be posted.

a. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or a "special meeting" when a majority of the Planning Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

a. Minutes of the Planning Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

D. Speakers. At any meeting of the Planning Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town.

1. Speakers shall be recognized in the order in which they have signed up.

2. Unless a different time limit is adopted by the Planning Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.

3. Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

4. All persons addressing the Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

2.02.04 Quorum and voting.

A. A quorum is necessary for the Planning Commission to take official action.

1. A quorum shall consist of a majority of the members of the Commission. Vacant positions are not counted as members for purposes of calculating quorum. A member who is present shall be counted for purposes of quorum even if he or she is recused from voting.

B. All actions or recommendations of the Planning Commission or subcommittee are only effective or adopted upon majority vote of the members present, following a motion and second.

1. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

2. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

3. A roll call vote shall be taken upon the request of any member.

2.02.05 Planning Commission officers.

A. Unless the Town Council designates the Chair and Vice-Chair of the Planning Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so

designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

B. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.02.06 Powers and duties of Planning Commission.

A. The Planning Commission may:

1. Make studies of the area within its jurisdiction and surrounding areas; and
2. Determine objectives to be sought in the development of the study area; and
3. Prepare and adopt plans for achieving these objectives; and
4. Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to "initiate" changes to this ordinance, as the term "initiate" is used in, § 9.02; and
5. Advise the Council concerning the use and amendment of means for carrying out plans; and
6. Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with § 9.05; and
7. Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles 5 and 29 of this ordinance; and
8. Perform any other related duties that the Council may direct.

B. Limitations on powers of the Planning Commission.

1. No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf; and
2. No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf; and
3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, shall direct staff to take action requiring the expenditure of town funds; and
4. The Planning Commission shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or it's designee; and
5. The Planning Commission may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

2.02.07 Advisory committees.

A. From time to time the Council may appoint one or more individuals to help the Planning Commission carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider the thoroughfare plan, bikeway plans, community appearance plans, housing plans, economic

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development plans, and the like. Such advisory committees shall be created and operate, unless otherwise designated by the Council, according to the procedures established under Municipal Code §§ 30.51, and 35.01, et seq.

B. 1. Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered, and they shall be invited to lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations of the Planning Commission to the Council shall be made by the Planning Commission itself.

2. As with Commission members, unless the Council takes specific action to excuse the absences and reappoints an advisory committee member after being informed by the Administrator of the member's removal, an advisory committee member shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the committee. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

C. Nothing in this section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.

(Ord. passed 12-16-2013)

ARTICLE 6: BOARD OF ADJUSTMENT HEARINGS

Section

6.01 Provisions applicable to all hearings
6.02 Special use permit, transitional zones and major subdivision preliminary plat applications
6.03 Variances
6.04 Appeal of administrative decision
6.05 Appeal of decisions of Community Appearance and Historic Preservation Commissions

§ 6.01 PROVISIONS APPLICABLE TO ALL HEARINGS.

6.01.01 General provisions.

A. All hearings of the Board shall be conducted in a quasi-judicial manner as described herein.

B. Subject to the specific provisions of Section 6.04 as to appeals, the Board shall hear and decide every appeal and application within a reasonable time.

C. The Board's packet shall include the Administrator's analysis of the issues, identifying any information, documents, and adopted plans material to the case. The Administrator's analysis may also include recommendations as appropriate.

D. Each hearing conducted by the Board shall provide an opportunity for parties and interested members of the public to testify and offer competent evidence, but the Board may limit the time available for each person offering testimony and may exclude testimony and evidence which is cumulative or redundant.

E. Hearings shall be conducted in compliance with the Board's duly adopted rules of procedure.

F. The town is considered a party in every hearing before the Board.

G. The Board may continue any hearing until a subsequent meeting and may keep a hearing open to take additional information up to the point a final decision is made.

6.01.02 Quorum.

A. A quorum shall consist of four (4) members for all action that may be taken by the Board. A quorum is necessary for the Board to take official action, except that at any duly-noticed regular or special meeting a majority of the Board then present, whether a quorum or not, may vote to continue the meeting to a specified later date, time and location.

6.01.03 Voting.

A. The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this paragraph, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused or has been allowed to withdraw from the meeting in accordance with this section.

C. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

1. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
2. Undisclosed ex parte communications;
3. A close familial, business, or other associational relationship with an affected person; or
4. A financial interest in the outcome of the matter.

D. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

E. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

F. Except as authorized in this section, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

G. A roll call vote shall be taken upon the request of any member.

6.01.04 Notice of hearing.

A. The Administrator shall give notice of any hearing of the Board as follows:

1. Contents of notice. Every notice shall state the date, time, and place of hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

2. Mailed notice. Notice shall be mail by depositing in the mail at least ten days, but not more than 25 days, prior to the date of the hearing to:

a. The person or entity whose appeal, application, or request is the subject of the hearing;

b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;

c. The owners of all parcels of land abutting the parcel of land that is the subject of the hearing;

d. The owners of real property located within 150 feet of the subject lot(s);

e. The owners of any real property in a protected district, whose property boundary has triggered application of transitional zone standards; and

f. Any other persons who have submitted a written request for notice and intervening parties so long as the request for notice or intervention request have been filed prior to notification being mailed.

3. Posted notice. At least ten days, but not more than 25 days prior to the date of the hearing, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The signs to be posted shall include the date, time and location of the hearing and shall direct the public to detailed information about the hearing.

6.01.05 Subpoenas.

A. The Board through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence.

B. To request issuance of a subpoena, persons with standing must make a written request to the Chair, on a form provided by the Administrator, explaining why it is necessary for certain witnesses or evidence to be compelled.

C. The Chair shall issue requested subpoenas the Chair determines to be relevant, reasonable in nature and scope, and not oppressive.

D. The Chair shall rule on any motion to quash or modify a subpoena.

E. Decisions regarding subpoenas made by the Chair may be appealed to the full Board.

F. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

6.01.06 Modification of applications after distribution of board book except appeals of staff decisions.

A. Modification of application between distribution of the board book and the board meeting.

1. Modification in response to Administrator's recommendation or request. An applicant may not significantly modify an application between the distribution of the Board Book containing the staff report of the case and the Board meeting unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.

a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

2. Insignificant or minor modifications in an application. An applicant may make a non-substantial modification to an application between the distribution of the Board book containing the staff report and the scheduled hearing.

a. A proposed non-substantial modification shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to an application during the scheduled hearing, and the Administrator indicates that adequate time exists to evaluate the insignificant modification can be fully evaluated with or without a recess by the Board, the modified application may be acted upon by the Board.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

3. Major modification of an application. An applicant seeking to significantly modify an application between the distribution of the Board Book containing the staff report of the case and the Board meeting, whether in response to staff recommendations or self-initiated, must file a new application.

4. Determination as to whether a proposed modification is insignificant, minor or major. The Planning Director shall make the determination as to whether a modification is "insignificant", "minor" or "major" in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the town and is not appealable.

B. Modification of application in response to concerns and issues raised at the hearing.

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board, an applicant may agree to modify an application, including the plans and specifications submitted.

2. Unless such modification is so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Board may approve the application with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

6.01.07 Testimony and documentary evidence.

A. Oaths. All persons who present testimony to the Board shall be sworn. The Chair of the Board or any member temporarily acting as Chair, and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board.

1. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

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B. Speakers. At any meeting of the Board, when the meeting is opened for public testimony:

1. Speakers shall be recognized in the order in which they have signed up unless a different order is requested by the Board and agreed upon by the speakers.

2. Each speaker wishing to address the Board shall state his or her name and then shall be sworn.

3. All persons addressing the Board shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. The Board may address in its rules of procedures under what circumstances the presiding officer or Board may direct that a person who violates proper decorum may be removed, but the Chair shall have inherent authority to have removed a person who threatens other participants or member of the Board as well as any person whose behavior is so disruptive as to prevent the Board from continuing the hearing.

C. Competent evidence. The Board may address the standards for authenticating and admitting evidence in its duly adopted rules of procedure.

1. The rules of evidence as applied in the trial division of the General Court of Justice do not strictly apply. However, no evidence shall be consider unless:

a. The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision making board to rely upon it; or

b. The evidence was admitted without objection,

2. To be considered "competent", testimony shall generally meet the following:

a. The witness has personal knowledge of the subject of the testimony; and

b. The subject of the testimony is relevant to an issue involved in the hearing.

3. To be considered "competent", documentary evidence shall generally require authentication. A document is authenticated by one of the following methods:

a. Certification, by signature, title and seal, of the person who is the custodian of the records; or

b. Information within the document which establishes its origin and reliability; or

c. Testimony by a person with personal knowledge of the documents origin and reliability.

4. If a copy is used in place of an original, testimony must be offered by a witness establishing the date and author of the document and confirming that such document is a true and accurate copy of the original document.

5. Photographs must be accompanied by testimony as to the date and place where the photograph was taken and a statement that the photograph fairly and accurately represents the subject is depicted.

6. Notwithstanding the forgoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property; or

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

6.01.08 Burden of presenting evidence; burden of persuasion.

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A. Evidence. The burden of presenting evidence shall be upon the party or parties urging a particular position. However, at a minimum, the applicant or appellant must provide competent evidence which addresses every material issue.

B. Credibility. In making its decision the Board may explicitly or implicitly make credibility determinations regarding the testimony of any witness, and where the Board has concluded that the testimony of a particular witness is incredible or otherwise unreliable, it is not bound to accept that testimony and may not only reject it but, if warranted, may make a contrary finding from the facts asserted.

C. Persuasion. The burden of persuasion shall be on the applicant or appellant or other party or person advocating a particular position.

6.01.09 Decisions of the Board.

A. The Board's decision shall resolve all contested facts and their application to the applicable standards. The decision shall include individual findings of fact which support its conclusions of law.

B. All findings and conclusions made by the Board shall be based upon competent, material, and substantial evidence presented at the hearing, including all information in the Board's packet, unless objected to by a party and excluded by the Board.

C. Each decision, including any conditions adopted by the Board, shall be reduced to writing and signed by the Chair or other authorized member of the Board.

D. The decision shall be effective upon filing with the Clerk of the Board.

E. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective.

1. The Clerk of the Board shall certify that proper notice shall be made.

F. Any conditions attached to an approval shall be entered on the face of any necessary zoning permit.

6.01.10 Reconsideration of Board action.

A. Whenever the Board denies an application for a special use permit, major subdivision preliminary plat approval or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time unless the applicant clearly demonstrates that:

1. Circumstances affecting the subject property have substantially changed; or

2. New information is available that could not, with reasonable diligence, have been presented at a previous hearing and is submitted to the Administrator within 30 days of the denial.

a. The submission of purported new information under this section shall not, however, toll the period during which an applicant may seek judicial review of the denial and does not extend the period within which an appeal must be taken.

B. Notwithstanding Subsection 6.01.10(A), the Board may at any time consider a new application affecting the same property as an application previously denied.

1. A new application is one that differs in some substantial way from the one previously considered.

6.01.11 Judicial review.

A. Every decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393.

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B. A petition for review by the superior court shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Subsection 6.01.09(E).

C. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(Ord. passed 12-16-2013)

§ 6.02 SPECIAL USE PERMIT, TRANSITIONAL ZONES AND MAJOR SUBDIVISION PRELIMINARY PLAT APPLICATIONS.

6.02.01 An applicant for a special use permit or major subdivision preliminary plat approval must demonstrate all of the following:

A. The application is complete;

B. If completed as proposed, the development or subdivision:

1. Will comply with the requirements of this ordinance;
2. Will not materially endanger the public health or safety;
3. Will not substantially injure the value of adjoining or abutting property;
4. Will be in harmony with the area in which it is to be located;
5. Will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town; and
6. In cases involving transitional zones, meets the standards of Subsection 6.02.02.

6.02.02 Transitional zones.

A. Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this section.

B. Transitional zones attach to each R1, R1A, RR, R2, and RA district, (hereinafter, "the protected district") without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a "one size fits all" approach.

C. The location of a transitional zone shall be determined as follows.

1. For designated development in an adjacent zone, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected district as measured from all points along that boundary, the nearest point controlling applicability of this subsection.
2. For development subject to transitional zones within the protected districts, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected lot, the nearest point controlling applicability of this subsection.

D. The size of the transitional zone varies with the type of development proposed. The following are the transitional zones as shown in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses:

1. T50: transitional zone equal to 50 feet;
2. T75: transitional zone equal to 75 feet;

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3. T125: transitional zone equal to 125 feet;
4. T200: transitional zone equal to 200 feet; and
5. T300: transitional zone equal to 300 feet.

E. Whenever a permit is sought to authorize development within a transitional zone, and any area used or disturbed for the development will be located within the pertinent transitional zone, a special use permit is required. If any portion of the area used or disturbed for the development falls within the transitional zone the standards of this Section shall apply to the entire development. The Board may deny the application if the requirements of this section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

1. Exemption. Development within an approved industrial park shall not be subject to the requirements of Subsection 6.02.02.

F. In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this section, the applicant must also show:

1. That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including but not limited to:
   a. Noise impacts;
   b. Light impacts; and
   c. Any other predictable negative effect, including but not limited to:
      i. Negative visual effects;
      ii. Negative traffic effects; and
      iii. Negative health effects.

G. Because of the variable topography and characteristics of particular tracts of land within the town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate by clear and convincing evidence that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.

6.02.03 Board of Adjustment action on special use permits and major subdivision preliminary plat applications.

A. Conclusions of law. In deciding whether to approve or deny an application for a special use permit or a major subdivision preliminary plat, the Board shall proceed according to the following format:

1. The Board shall determine whether the application is complete.
   a. The burden of presenting a complete application to the Board shall be upon the applicant. The fact that the Administrator believes the application is complete or the applicant has submitted all requested supplemental documentation to the Administrator shall not bind the Board to conclude that the application is complete. The Board is the final arbiter of whether an application is complete.
      i. If the Board concludes that the application is incomplete in a hearing conducted following a demand by the applicant for immediate action by the Board pursuant to

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Subsection 4.06.02(A) or the applicant refuses to provide the information determined by the Board necessary to complete the application, the application shall be denied.

ii. If the Board otherwise concludes that the application is incomplete the Board may deny the application or may give the applicant an appropriate opportunity to complete the application if the applicant expresses an interest in timely supplementing the application to make it complete.

A. A motion to continue the hearing in order to afford the applicant an opportunity to complete the application shall state the location, date and time of the reconvened hearing.

B. A case continued under these circumstances shall not require the same Board identity at the reconvened hearing, as the applicant will be expected to present his full case at that time.

b. If an application includes features which must be approved by another town board, commission or department, then such approvals must be obtained prior to the hearing.

2. If the Board concludes that the application is complete, the Board next shall consider whether the application complies with all of the applicable requirements of this ordinance. If the Board concludes that an element of the application does not fully comply with this ordinance but has a minimal effect on the issues before the Board, it may conditionally approve the application. If the Board concludes that the application does not comply with all applicable requirements of this ordinance and conditions will not sufficiently cure the deficiencies or the Board concludes that the deficiency is material to the Board's approval, then the Board shall deny the application.

3. If the Board concludes that the application is complete and complies with this ordinance, if completed as proposed, before it may approve the permit or subdivision it must find all the following:

a. The development or subdivision as proposed will not materially endanger the public health or safety; and

b. The development or subdivision as proposed will not substantially injure the value of adjoining or abutting property; and

c. The development or subdivision as proposed will be in harmony with the area in which it is to be located; and

d. The development or subdivision as proposed will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town.

B. Conditions. Even when a development or subdivision meets the criteria above, the Board may still impose conditions on an approval.

1. All conditions shall be reasonable and appropriate and shall be related to the predicted impacts of the development.

2. Unless the Board explicitly orders otherwise, every approval is conditioned upon the development being completed in accordance with the plans submitted by the applicant, the commitments and representations concerning the proposed development made by the applicant and representatives at the public hearing, and final conformity with all requirements of the UDO.

3. The Board may attach to a special use permit a condition limiting the permit to a specified duration and in appropriate situations may provide additional process including another public hearing after the special use has begun to evaluate unanticipated impacts, provided such a condition shall not be employed to terminate a special use for which substantial construction or reconstruction has occurred.

4. Without limiting the foregoing, conditions should normally require measures to address impacts on the:

a. Public health or safety; and

b. Values of adjoining or abutting properties; and

c. Harmony with the area in which it is located; and

d. In the case of transitional zones, noise, light, and other predictable negative effects such as visual, traffic and health.

6.02.04 Voting. The adoption of each conclusion of law under Subsection 6.02.03(A), which is required in order to issue the permit, authorize the preliminary plat or deny the application shall be by majority vote. Should any conclusion of law fail to be adopted, the application shall be denied.

6.02.05 Special use permits shall be recorded at the office of the Watauga County Register of Deeds.

(Ord. passed 12-16-2013)

§ 6.03 VARIANCES.

6.03.01 A variance is specific to the lot and to the development for which it is requested and neither the nonconforming use of lands, buildings, or structures in the same zoning district; nor the permitted use of lands, buildings or structures in other zoning districts are grounds for the granting of a variance.

6.03.02 A variance granted must be specific and the minimum variance required.

6.03.03 Financial hardship alone does not constitute grounds for the granting of a variance.

6.03.04 The fact that a lot may be utilized for greater profit if the variance is granted is not grounds for the granting of a variance.

6.03.05 No change in permitted uses may be authorized by variance.

6.03.06 A variance may not enlarge or expand nonconformities.

6.03.07 In order to grant a variance, the Board must conclude based upon competent evidence:

A. Unnecessary hardship would result from the strict application of the ordinance; however it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and

B. The hardship results from conditions that are peculiar to the property such as location, size or topography; however hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and

C. The hardship did not result from actions taken by the applicant or the property owner however the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

D. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

6.03.08 In granting variances, the Board may impose appropriate conditions reasonably related to the condition or circumstance that give rise to the variance and which will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

6.03.09 A variance may be granted for an limited or indefinite duration.

6.03.10 Water supply watershed variances.

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A. Before a water supply watershed variance is heard by the Board, the Administrator shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption.

1. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Administrator prior to a decision by the Watershed Review Board, which for this purpose shall be the Board of Adjustment. Such comments shall become a part of the record.

2. In considering the decision whether to recommend that a major variance from the requirements of Article 29 be granted, the Board shall apply the criteria of Subsection 6.03.07.

3. The Board may place appropriate conditions on the recommended approval of the major variance but they must be reasonably related to the variance.

B. If the Board recommends that a major variance be granted, the Administrator shall promptly prepare a preliminary record of the hearing and transmit it to the North Carolina Environmental Management Commission, (hereafter "EMC") for its consideration. The preliminary record shall include:

1. The variance application; and
2. The hearing notices; and
3. The evidence presented; and
4. Motions, offers of proof, objections to evidence, and rulings on them; and
5. Proposed findings and exceptions; and
6. The proposed decision, including all recommended conditions to be added to the permit. Proposed conditions should be appropriate and reasonably related to the variance.

C. The Board shall take final action in accordance with the decision by the EMC:

1. If the EMC approves the variance as proposed, the Administrator shall prepare a final decision granting the recommended major variance and the Board shall adopt the decision at its next meeting.

2. If the EMC approves the variance but makes modifications to the recommended major variance, the Administrator shall prepare a final decision, in accordance with the action of the EMC, and the Board shall adopt the modified decision at its next meeting.

3. In the EMC denies the recommend major variance the Administrator shall prepare a final decision in accordance denying the major variance, and the Board shall adopt the denial at its next meeting.

6.03.11 Special flood hazard area variance.

A. A special flood hazard area variances may be issued for:

1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

2. Functionally dependent facilities if determined to meet the definition as stated in Article 34, provided such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

3. Any other requirements of Article 30.

B. Limitations on variances.

1. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

Communication: PL00147 Clean Version of Revised Text (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued prior to development permit approval.

5. Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

C. A written report addressing each of the factors in Subsection 6.03.11(D) shall be submitted by the applicant with the application for a variance.

D. The Board shall consider all technical evaluations, all relevant factors, all standards specified in other Sections of Article 30, and:

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location as a functionally dependent facility, where applicable;

6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

7. The compatibility of the proposed use with existing and anticipated development;

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

E. Upon consideration of the factors listed in Subsection 6.03.11(D) and the purposes of this Article 30 Flood Damage Prevention, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of Article 30.

F. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to $25 per $100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

G. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

6.03.12 Voting. The adoption of each conclusion of law under Subsection 6.03.07 and the granting of a variance shall require a four-fifths vote of the Board. Should any conclusion of law receive less than a four-fifths vote, the variance shall be denied.

6.03.13 Variances shall be recorded at the office of the Watauga County Register of Deeds. (Ord. passed 12-16-2013)

§ 6.04 APPEAL OF ADMINISTRATIVE DECISION.

6.04.01 The Board shall hear and decide appeals from decisions of administrative officials charged with enforcement of the ordinance. For purposes of this section a "decision" includes any final and binding order, requirement, or determination.

6.04.02 An appeal of an administrative decision is initiated by a person timely filing an Appeal to Administrative Decision application, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed;
2. A person who has a leasehold interest in the property that is the subject of the decision being appealed;
3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed;
4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed;
5. A person who was the applicant for the decision in question;
6. Any other person who will suffer special damages as the result of the decision being appealed;
7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal; or
8. The town.

B. An appeal of an administrative decision, including the imposition of penalties, must be taken within 30 days after the date of the receipt of the notice of the decision in the case of the owner or the applicant, or 30 from actual or constructive notice by any other person with standing to appeal.

1. The date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail by the Administrator, with proper postage affixed, and addressed in accordance with the provisions of Section 1.13 except that an earlier date can be established by a return receipt for a certified mail notice. The date of receipt of an email is the date of transmission.
2. Constructive notice shall include, but shall not be limited to, any visible signs of the initiation of construction work on a site.

Communication: PL00147 Clean Version of Revised Text (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

3. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Any such posting shall be the responsibility of the landowner or applicant, and verification of the posting shall be provided to the official who made the decision. Posting of signs however is not required.

C. An appeal is taken by filing a notice of appeal with the Town Clerk on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient to allow for a thorough understanding by the Board of the decision appealed.

D. The Clerk shall stamp the appeal with the date received and shall promptly transmit it to the Administrator. The Clerk shall maintain a chronological log of the appeals which are filed.

6.04.03 Once the appeal has been filed, the Administrator shall schedule a public hearing at the first available Board meeting and give public notice in accordance with Subsection 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

6.04.04 Appeal stays enforcement action.

A. An appeal of a decision of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:

1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or

2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.

B. The appellant shall be notified of the Administrator's certification.

C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.

1. The Board shall meet to hear the appeal within 15 days after such a request is filed.

E. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

6.04.05 Deviations from matters presented in notice of appeal. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

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6.04.06 Scope of hearing. The hearing shall be based on the record below and the scope of review shall be as follows:

A. The Board shall ensure that the rights of the appellant have not been prejudiced because the Administrator's findings, inferences, conclusions, or decisions were:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the statutory authority conferred upon the town by ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. When the issue before the Board is whether the Administrator erred in interpreting an ordinance, the Board shall review that issue de novo. The Board shall consider the interpretation of the Administrator, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

6.04.07 The parties to an appeal that has been made under this Section may agree to mediation or other forms of alternative dispute resolution. If all parties confirm they wish to engage in alternative dispute resolution, the Board shall adjourn the hearing to give them a reasonable opportunity to do so.

6.04.08 Decision.

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Administrator who made the decision.

B. The Board may reduce the penalty imposed if it determines:

1. That the appellant has acted in good faith; and
2. That the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control; or
3. The Board makes other findings which make the amount of the presumptive civil penalty unfair under the circumstances of the particular case.

6.04.09 Voting. The decision shall be by majority vote.

(Ord. passed 12-16-2013)

§ 6.05 APPEAL OF DECISIONS OF COMMUNITY APPEARANCE AND HISTORIC PRESERVATION COMMISSIONS.

6.05.01 The Board shall hear and decide appeals of any decision by the Community Appearance Commission allowing or denying a deviation of Article 25 Community Appearance Standards, or any decision by the Historic Preservation Commission granting or denying a Certificate of Appropriateness.

6.05.02 An appeal is initiated by a person timely filing an notice of appeal, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed.
2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.
3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.

Communication: PL00147 Clean Version of Revised Text (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.

5. A person who was the applicant for the decision in question.

6. Any other person who will suffer special damages as the result of the decision being appealed.

7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

8. The town.

B. An appeal must be taken within 30 days after decision by the Commission.

C. An appeal is taken by filing a notice of appeal with the Administrator on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient information to allow for a thorough review by the Board.

D. The Administrator shall stamp the appeal with the date received.

6.05.03 Once the application has been filed, the Administrator must schedule a public hearing at the first available Board meeting and give public notice in accordance with Section 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant.

6.05.04 Appeal stays Commission decision.

A. An appeal of a decision by the Community Appearance Commission allowing a deviation of Article 25 Community Appearance Standards, or a decision by the Historic Preservation Commission granting a certificate of appropriateness shall be stayed while the appeal is pending.

6.05.05 Burden of proof. The burden of proof and burden of persuasion shall be on the party appealing the decision of the Commission.

6.05.06 Scope of action. An appeal of a Commission decision shall be in the nature of certiorari. The hearing shall be based on the Commission record and the scope of review shall be as follows:

A. The Board shall uphold the decision of the Commission unless it finds the decision is:

1. In violation of constitutional provisions, including those protecting procedural due process rights.

2. In excess of the authority conferred upon the Commission by statute or ordinance.

3. Inconsistent with applicable procedures specified by statute or ordinance.

4. Affected by other error of law.

5. Unsupported by substantial competent evidence in view of the entire record.

6. Arbitrary or capricious.

B. The term “competent evidence,” as used in this section, shall not preclude reliance by the Commission on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if the evidence appears to be sufficiently

Communication: PL00147 Clean Version of Revised Text (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

trustworthy and was obtained under such circumstances that it was reasonable for the Commission to rely upon it.

6.05.07 Board action.

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Commission which made the decision.

(Ord. passed 12-16-2013)

MISCELLANEOUS OTHER UDO REVISIONS TO REMOVE REFERENCES TO ETJ

§ 1.05 JURISDICTION.

1.05.01 This ordinance shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the Town of Boone ~~and the town's extraterritorial jurisdiction (ETJ)~~ as depicted on the official zoning map of the Town of Boone, which is incorporated by reference herein.

§ 30.01 GENERAL PROVISIONS.

30.01.01 Lands to which this article applies. This article shall apply to all special flood hazard areas within the town's jurisdiction, ~~including extra-territorial jurisdictions (ETJs).~~

Article 34: Definitions

~~EXTRA TERRITORIAL JURISDICTION (ETJ). The portion of the town's planning jurisdiction that lies outside the corporate limits of the town~~.

Communication: PL00147 Clean Version of Revised Text (Case PL 00147-010417 Article 2 Administrative Mechanisms UDO Text Amendment)

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: Town of Boone Company: _____

Address: PO Drawer 192, Boone, North Carolina 28607

Phone Number: 828-268-6200 Email Address: _____

Property Owner: _____ Company: _____

Address: _____

Phone Number: Email Address:

B. PROPERTY INFORMATION

Watauga County Parcel Identification Number(s): _____

Address/Location: _____

Project Name: Intensity and Use Modifications

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	*Commerical 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

Communication: Case 20160751 Application Information (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text Amendment)

D. DETAILED DESCRIPTION OF PROJECT

At the November 15, 2016 mid-year Planning Retreat, Council directed modifications to the UDO in regards to Use and Intensity.

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: NA Company:

Address: License #:

Phone Number: Email Address:

F. DESIGN PROFESSIONAL INFORMATION

Engineer:

Name: NA Company:

Address: License #:

Phone Number: Email Address:

Architect:

Name: NA 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.

Town of Boone	Jane Shook	11/16/2016
Applicant[1] (Print)	**Applicant Signature**	**Date**
NA	**NA**	**NA**
Property Owner (Print)	**Property Owner Signature**	**Date**

Official Use Only

Project File Name:

Intensity and Use Modifications-UDO Text Amendment

Permit Number:

20160751

Project Name/Number:

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
November 16, 2016	NA	NA	NA	NA

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.

Communication: Case 20160751 Application Information (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text Amendment)

UDO Text 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: Wellness District Modification- UDO Text Amendment
Permit Name/Number: 20160737

A. TEXT INFORMATION

Amendment is to:

Article(s): Article 15 District Uses; Article 16 District Standards; Article 34 Definitions

Section(s):

Brief Description of Amendment (Attach Proposed Text):

Modification of regulations related to use and intensity

Reason for Change:

Official Use Only

Public Hearing Meeting Date: November 28, 2016

PC Meeting Date: November 28, 2016

TC Meeting Date: December 15, 2016

Text Approved: ❑ Yes ❑ No

Date UDO Updated:

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Communication: Case 20160751 Application Information (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text Amendment)

STAFF REPORT
PUBLIC HEARING
CASE 20160751 INTENSITY AND USE MODIFICATIONS- UDO TEXT AMENDMENT

REQUEST

At the November 15, 2016 Planning Retreat, Council directed that modifications to the UDO be made in regards to intensity and use within UDO Article 15 District Uses and UDO Article 16 District Standards. Amendments may also be made to other Articles to conform them to changes made in these Articles.

ANALYSIS

See attached documentation

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.

Communication: Case 20160751 Staff Report (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text Amendment)

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 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 ☐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 ☐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 ☐deny the proposed amendment to the Town's zoning ordinance and believe ☐approval ☐denial is reasonable and in the public interest because:

_____

_____

Communication: Case 20160751 Staff Report (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text Amendment)

MEMORANDUM

To: Planning Commission members

From: Allison M. Meade, Town Attorney

Re: Proposed changes to UDO Article 15

Date: November 18, 2016

****

Attached please find proposed changes to Article 15 in follow up to Town Council's planning retreat held November 15th. The changes and the intent behind them are described below:

(1) *Recreation space*: this requirement has been removed from the intensity table in Article 16 (where it had populated the whole table despite applying only to manufactured home parks and multifamily), and placed in the district use-specific standards of Article 15. In addition, a single standard of 5% is established for all uses, whereas previously the requirement had ranged from 3.9% to 6.2%. The 5% standard was proposed by a Planning Commission "Density Subcommittee" in its proposal issued in 2009.

(2) *Setbacks for multi-use multi-family buildings in the B-3*: This has been changed from a 0' setback to a 20' minimum setback. This reflects the consensus of Council members that the "hulking" effect of large buildings immediately on the sidewalk (*e.g.*, The Standard) is not appropriate for the B-3 district. For essentially the same reason, the prior prohibition on parking in front of such buildings has been deleted. [Note that the current 0' setback provision applies only to multi-use developments involving multi-family; all other uses are subject to the minimum 20' setback. This change simply puts the same requirements on multi-use multifamily as already are applied with other developments in the B-3.]

(3) *Clarification of what counts as "commercial space" in a multi-use multi-family development*. These changes at 15.11.01(C) are intended to fulfill Council's intent in requiring "real" commercial space in multi-use buildings.

Council would appreciate the Planning Commission providing a recommendation on these proposed changes in time for the Council to act on them at its December 15, 2016 regular meeting.

****

In addition, Planning staff and I request that the Planning Commission consider taking up the following question and providing a recommendation prior to Council's January meeting, if possible:

In addition to applying the same 20' minimum setback to multifamily multi-use as is applied to other developments in the B-3 district, Council members indicated interest in requiring a 20-foot landscaped street yard for B-3 (and potentially B-2 and O/I) developments. This would require 20' of landscaped space between any street right-of-way and the building/parking areas of the development. Council's interest is in more greenery and a more "buffered" space between the street and buildings. In its proposal issued in 2009, the Planning Commission's Density Subcommittee proposed requiring 20' street yards in the B-2, B-3 and O/I, but also proposed decreasing interior setbacks. (The Subcommittee's

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report is attached.) Currently, a 10' to 25' street yard is required in these zoning districts, and almost all developments go with the lowest (10') number. The required interior setbacks are 17'.

However, Planning staff are concerned that a 20' street yard, especially when combined with current interior setback requirements, may result in a great deal of difficulty for development of many parcels.

Accordingly, we ask that the Planning Commission (or a subcommittee) take up this issue and make a recommendation as to how, if at all, Council should consider changing the required street yards and/or interior setbacks applicable in the B-2, B-3 and O/I districts.

DISTRICT USE REQUIREMENTS

Manufactured Home Park

15.09.01 Plan Requirements: In addition to the other plan requirements of the Ordinance, an applicant for a Zoning Permit to establish a manufactured home park must submit a detailed plan which specifies the following:

A. Name of the manufactured home park (approval required by Fire Marshall)

B. Location and dimensions of every manufactured home space, including total number of spaces ; and

C. Location and dimensions of every street (street names required for approval by the Fire Marshall) and vehicle accommodation area; and

D. Recreation Space; and

E. Landscape buffers; and

F. Office location; and

G. Storage building(s) utilized by the park.

15.09.02 General Requirements for the Manufactured Home Park

A. There shall be at least one (1) entrance sign identifying the park which meets the requirements of Article 26.

B. There shall be a designated office which may be a manufactured home.

C. There shall be a designated space on the grounds for mail service for the residents of manufactured home park.

D. Storage buildings utilized by the park for materials and equipment must be located a minimum of twenty-five feet (25') from any residential unit within the park and a minimum of twenty-five (25') feet from any property line.

E. Streets:

1. No individual manufactured home space may have direct vehicular access to a public street.
2. Access to each manufactured home space must be provided by a private street constructed to the standards as set forth in Article 23.
3. All streets in the manufactured home park intersecting another street shall have a stop sign that conforms to the NC Department of Transportation specifications.
4. Each street shall have a permanent street sign installed with an approved (Fire Marshall approval required) designated name identifying each street.

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F. Parking:

1. Two (2) off-street parking spaces must be provided within each manufactured home space.
2. Parking spaces shall be constructed to the standards as set forth in Article 24 Parking.
3. Off-street parking areas shall be at least four feet (4') away from any unit.
4. An applicant may utilize on-street parking if the private street within the manufactured home park is designed and constructed to accommodate on-street parking.
5. A combination of off-street and on-street parking is allowed.

G. All manufactured home spaces must be set back at least twenty-five feet (25') from all public right-of-ways and property lines.

H. Landscaping for the manufactured home park shall be provided in accordance with Article 31 Landscape Standards.

I. Recreation space:

1. A minimum of 5% of the parcel shall be provided as recreation space for residents of the park.
2. In general, required recreation space shall have a least dimension of twenty-five feet (25), an average dimension of fifty feet (50'), and a minimum area of 2,500 square feet. Smaller dimensions are acceptable if:
    a. Less than 2500 square feet of recreation area is required, or
    b. The recreation area is a suitably improved roof area or enclosed floor area, or
    c. The anticipated needs of the residents require smaller facilities, such as tot lots or shuffle board courts, or
3. The dedication of a greenway easement may be used to satisfy the requirements for recreational space.

~~1.~~4. Outdoor recreation area for common use should be located twenty feet (20') or more from any residential windows at the same general level. ~~A recreation area constructed in accordance with Section 16.05 is required in all manufactured home parks.~~

~~2.~~5. Recreation areas shall be maintained in a safe and sanitary manner.

J. Utilities:

1. All utilities must be installed underground in accordance with Article 22.

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2. The source of the water supply system shall be the public water system.
3. The source of the sewer system shall be the public sewer system.
4. Solid waste and recycling enclosures shall be provided in accordance with Section 22.13.

K. The park operator must maintain a register containing a record of all occupants. The register must contain the following information:

1. Name, address, and space number of each occupant; and
2. The date the manufactured home entered the park.

L. Recreational vehicles shall not be used for residential purposes.

M. Maintenance:

1. Grounds and buildings of the manufactured home park shall be kept free of debris, trash, and litter to prevent the infestation of rodents, flies, mosquitos, and other pests.
2. Grounds within the manufactured home park, including manufactured home spaces, shall be maintained to prevent the growth of ragweed, poison ivy, poison oak and other weeds.
3. Grounds within the manufactured home park shall have proper drainage to prevent the accumulation of water.

*** * * ***

1.07 Duplex; 1.08-1.10 Townhouse; 1.11-1.13 Multi-Family Dwelling; 1.14-1.16 Multi-Family Dwelling In Mixed Use (unless specifically excluded)

15.10.01 Applicable standards described in this Section are required for Uses 1.07-1.16 and apply to all of the following:

A. New construction, whether such construction constitutes a new development or an expansion of an existing development;

B. Multi-family dwelling units created by a change in use of a portion or all of an existing development to multi-family use; and

C. Renovation or replacement of a portion or all of an existing multi-family development when the costs of renovation or replacement trigger the requirements of Article 7 for compliance with this Ordinance.

15.10.02 This Section shall not apply to:

A. Multi-family dwelling units in mixed-use building(s) constructed pursuant to and in accordance with the requirements of Section 15.11,

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B. Multi-family dwelling units in single use buildings within a mixed use project constructed pursuant to an in accordance with the requirements of Section 15.11, if:

1. The development is approved through a Conditional District B-1 General Business, B-2 Neighborhood Business, B3 General Business or PD rezoning process; and
2. No phasing of construction is proposed or approved unless:
   a. The commercial portions of the development will be constructed as part of the initial phase; or
   b. All phases approved prior to the construction of the phase in which the commercial portions of the development are completed, together allow the construction of no more than one-third (1/3) the number of multi-family dwelling units which are approved for the development as a whole; or
   c. The applicant provides adequate assurances in the form of financial commitments which will guarantee that all commercial portions of the development will be completed within the approved vesting period. For purposes of this alternative, by example only and not by way of exclusion, an irrevocable letter of credit from an appropriate financial institution in favor of the Town in a sufficient amount to cover 125% of the projected costs of construction, said projection sealed by a North Carolina licensed engineer, is considered such a guarantee.

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15.10.03 Each new multi-family development shall meet the following standards:

A. A townhouse style design and a mixture of unit configuration and sizes per development shall be encouraged. No one type of dwelling units, as defined by the number of bedrooms, shall comprise more than 50% of the total units.

B. Parking shall be limited to a maximum of two (2) spaces per unit and a clearly designated parking area for visitors.

1. The square footage of the parking designated for visitors may not exceed ten percent (10%) of the total parking area. A minimum of twenty-five percent (25%) of units shall have a garage or carport.
2. If freestanding, garages and carports shall be architecturally integrated with the development and be approved by the Community Appearance Commission. To the greatest extent practicable, parking shall be located behind or underneath proposed building(s).

C. The fee-in-lieu provisions contained in Section 23.08.05 shall not apply. All required sidewalks shall be installed.

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D. A livability space ratio of .50 must be met for the development. Fifty percent (50%) of the required livability space shall be designated to a defined area exclusively for the use of ground floor units. This space must consist of a common yard with accompanying private outdoor space for each ground level unit, or individual yards contiguous with the unit served. Either configuration must provide direct access from all ground floor units. The remaining livability space shall be designated for the use of the development as a whole as recreation space and shall be located so as to provide for direct auditory, visual, and physical access from the dwelling units served.

E. On-site property management or an owners association shall be required.

F. Recreation space

1. A minimum of 5% of the parcel shall be provided as recreation space for residents.
2. In general, required recreation space shall have a least dimension of twenty-five feet (25), an average dimension of fifty feet (50'), and a minimum area of 2,500 square feet. Smaller dimensions are acceptable if:
    a. Less than 2500 square feet of recreation area is required, or
    b. The recreation area is a suitably improved roof area or enclosed floor area, or
    c. The anticipated needs of the residents require smaller facilities, such as tot lots or shuffle board courts, or
3. The dedication of a greenway easement may be used to satisfy the requirements for recreational space.
4. Outdoor recreation area for common use should be located twenty feet (20') or more from any residential windows at the same general level.

~~1.~~5. Recreation areas shall be maintained in a safe and sanitary manner.

15.10.04 Each residential building shall meet the following standards:

A. The maximum building height shall be three (3) stories of occupied space, and in no case shall the building exceed fifty feet (50') in total height including the roof or the maximum in the particular zoning district, whichever is less.

B. Roof Requirements:

1. If a pitched roof is proposed, the pitched roof area may be used as attic or storage space.
2. If a flat roof is proposed, fifty percent (50%) of the roof area must be used as livability space.

C. The front entrance of each unit on the first floor must be at ground level to the greatest extent practicable.

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15.10.05 Each dwelling unit shall meet the following standards:

A. The bedroom to bathroom ratio of each unit within the development shall be limited as follows:

1. Efficiency unit and one (1) bedroom unit: one (1) bathroom.
2. Two (2) bedroom unit: one (1) or two (2) bathrooms, with no less than one bathroom with common access.
3. Three (3) bedroom unit: Two (2) bathrooms with no less than one (1) bathroom with common access.
4. Four (4) or more bedroom unit: Three (3) bathrooms with no less than two (2) bathrooms with common access from a hall.

B. In every unit with two (2) or more bedrooms, a designated master suite must be included and shall be at least twenty-five percent (25%) larger than every other bedroom and not less than 144 square feet excluding closet space.

C. Dedicated storage space of at least fifty square feet (50 ft^2) per unit must be provided for units without garages. Any storage space which is not within or attached to the building containing the units served by the space must be architecturally integrated with the development and approved by the Community Appearance Commission.

D. Occupancy of each unit shall be limited to (2) two unrelated persons.

Multi-Family in Mixed Uses

15.11.01 Multi-family residential uses (Use 1.114, 1.115 and 1.116) are allowed in the B1, B2 and B3 zoning districts when the criteria in this Section are met.

A. For purposes of this Section, "commercial" shall include the following issues from Section 15.07 Table of Principal Uses: 3.07 Motel, 3.08 Hotel, 4.03 Funeral Home Establishment, 4.05 Post Office, 5.01 Government Cultural Facility, 5.02-5.03 Government Neighborhood Cultural Facility, 5.04-5.06 Recreation Facility, 5.07-5.09 Event Venue, 5.12 Police Substation, 5.16 Government Facility, 8.0 Assembly, 9.0 Education, 10.02 Child Daycare Center, 10.04 Adult Daycare Center, 10.5 All Other Daycare, 11.0 General Sales and Service, 12.0 Recreation, 14.0 Manufacturing, 16.01 Mini-Storage, 17.0 Transportation, and 19.0 Particular Activities which pose Particular Concerns about Public Health.

B. To the extent this Section conflicts with other Articles of this Ordinance, this Section shall control.

~~**B.**~~**C.** "Commercial use" and "street level commercial land use" as referred to in this section 15.11 means only space in a building used or to be used for commercial uses unrelated to the residential use of the building or development. By way of clarification and not as a limitation, the following uses may not be counted as "commercial use": amenities

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operated entirely or in the main for residents (including but not limited to swimming pools, gyms, etc.); required recreation space; space used to operate and maintain the residential portion of the development, including leasing, management, and/or maintenance-related office space; and/or common areas of the residential units. Notwithstanding the foregoing, parking spaces in a parking structure may be counted as "street level commercial land use" where the parking is located in the interior of the building and all street frontage consists of non-parking commercial uses (e.g., retail, office, restaurant, etc.)

15.11.02 Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Central Business District (B1) only if the projects in which they are included meet all the following criteria:

A. Each project shall provide primary street level commercial land uses (i.e. retail, office, restaurant) of at least fifty percent (50%) of the square footage of the footprint of each building on the primary street level. For developments located on lots which abut more than one public street in the Central Business District, each additional street level floor shall provide commercial uses of at least 30% of that level's square footage. For purposes of this Subsection, the "primary street" shall be determined according to the following order: King Street, Howard Street, Depot Street, all other streets. For example, if a project is located on a lot that abuts both King Street and Howard Street, King Street shall be considered the "primary street" while for a project which abuts Howard Street and Depot Street, Howard Street shall be considered the "primary street" and so on.

B. The entire frontage of the primary street level of the building abutting the street shall provide commercial uses. Required entrances for ingress and egress to secondary uses are permitted along said frontage so long as they are no larger than necessary to meet building code and safety requirements for ingress and egress. Commercial uses on the non-primary street level(s) shall front on the non-primary street.

C. The entire primary street level floor of the building shall be constructed to commercial standards in accordance with North Carolina Building Code Group A, B, E or M.

D. New projects shall be at least two floors above the primary street level.

E. Buildings facades shall be oriented to each public street and shall have a primary entrance door facing each abutting public sidewalk.

F. A minimum of 60% of primary public street level facing building facade shall be comprised of transparent, non-reflective windows and 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.

G. Surface parking shall be located away from each public street to the extent possible, and if practical, to the rear of the principal building.

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H. Structured parking is permitted to the rear or interior of the building or below the street level floor.

I. Building facades may be no further than 0'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.

J. The minimum building footprint shall be 50% of the total gross square feet of the lot.

K. Pedestrian weather protection such as awnings or canopies are encouraged along the public street but may be placed only in accordance with an encroachment agreement authorized by the Town Council.

15.11.03 Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Neighborhood Business District (B2) only if the projects in which they are included meet all the following criteria:

A. Each project shall provide street level commercial land uses (i.e. retail, office, restaurant) of at least 100% of the street-level floor square footage.

B. Buildings facades shall be oriented to the public street and shall have a primary entrance door facing the public sidewalk.

C. A minimum of 60% of the street facing street level building facade shall be comprised of transparent, non-reflective windows.

~~**D.** Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.~~

~~**E.**~~**D.** Structured parking is permitted but shall be located to the rear or below street level commercial uses.

~~**F.**~~**E.** Building facades may be no further than 0'-0" from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or when there would be interference with public utilities.

~~**G.**~~**F.** Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

~~**H.**~~**G.** Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council. Such awnings or canopies

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count toward the recreation space requirements found in Section 16.05 of this Ordinance.

~~I.~~**H.** All development shall comply with the landscape standards set forth in Article 31 except that Type "A" interior landscape buffers may be provided regardless of adjacent land use classifications.

15.11.04 Multi-family residential uses, either as the result of new construction or conversion, are allowed in the General Business District (B3) only if the projects in which they are included meet the following:

A. Multi-family uses wholly or partially on property zoned B3 General Business within the Corridor Districts.

1. Mixed Use Building(s):

   a. Each building shall fully consist of street level commercial uses (i.e. retail, office, and restaurant).

   b. A minimum of 60% of the street level building façade facing the Corridor shall be comprised of transparent, non-reflective windows.

   c. ~~Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.~~ Structured parking is permitted but shall be located to the rear or in the interior of the building, or under street level commercial uses.

   ~~d. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.~~

   ~~e.~~d. Interior setbacks for all mixed use buildings shall be a minimum of 10' except where abutting a residential zoning district, in which case the interior setback shall at a minimum equal the required interior setback in the abutting residential district.

   ~~f. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.~~

2. Single Use Building(s)

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a. Single use multi-family building(s) are only allowed as part of a mixed use project if approved through the Conditional District B3 General Business rezoning.

b. A mixed use project shall meet the following criteria:

i. Each project shall fully consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a corridor protected by the Corridor District. In addition, at least 50% of the total gross floor area of all buildings located within the Corridor District shall fully consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.

ii. The street level floor of all buildings within the Corridor District shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.

iii. A minimum of 60% of the street facing street level building façade of a building which fronts a protected corridor shall be comprised of transparent, non-reflective windows.

~~iv. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.~~

~~v.~~iv. Structured parking is permitted but shall be located to the rear or in the interior of the building, or below the commercial uses.

~~vi. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.~~

~~vii.~~v. Interior setbacks for all mixed use buildings shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

~~Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.~~

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B. Multi-Family Uses wholly or partially on Property Zoned B3 General Business Outside the Corridor District but Proximate to Major Streets.

1. For the purposes of this Section "major street" refers to collector and arterial streets.
2. "Proximate" shall mean any building wholly or partially within 200 feet of the centerline of a major street.
3. Mixed Use Building(s)
   a. Mixed use building(s) shall meet the same requirements as described in Subsection 15.11.04(A)(1).
4. Single Use Building(s)
   a. Single use multi-family building(s) are only allowed as part of a mixed use project.
   b. A mixed use project shall meet the following criteria:
      i. Each project shall consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a major street. In addition, at least 25% of the total gross floor area of all buildings wholly or partially located within 200 feet of the centerline of a major street shall consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.
      ii. For any floor containing a commercial use the entire floor shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
      iii. A minimum of 60% of the major street facing street level façade of a building containing commercial use(s) shall be comprised of transparent, non-reflective windows.
      ~~iv. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.~~
      ~~v.~~iv. Structured parking is permitted but shall be located to the rear or in the interior of the building, or below the commercial uses.
      ~~vi. Building facades fronting the major street may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public~~

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~~utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.~~

~~vii.~~v. Interior setbacks shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

~~viii. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.~~

C. Multi-Family Uses wholly or partially on property zoned B3 General Business in all other areas.

Multi-family uses not part of a mixed use development may be allowed if an applicant demonstrates that within ¼ mile (1,320 feet) of the borders of the lot that is to be developed there exists commercial uses with gross floor area square footage equal to the gross floor area square footage of the proposed multi-family project. If this standard cannot be met then the proposed project must meet the requirements in Subsection 15.11.04(B) above.

D. Recreation space shall be provided for multi-family developments in the B-3 district as provided at Section 15.10.03(F).

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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	
15.0 Parking																		
15.01	Parking Lot									L	L		L		P			15.46
15.02	Parking Structure								L[T125]	L	L		L	L	P			15.47
15.03	Park and Ride Lots	L								L			L	L	P			15.46

15.07 Table of Principal Uses

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MEMORANDUM

To: Planning Commission members

From: Allison M. Meade, Town Attorney

Re: Proposed changes to UDO Article 16

Date: November 18, 2016

****

Attached please find proposed changes to Article 16 in follow up to Town Council's planning retreat held November 15th. The changes and the intent behind them are described below:

(1) *Simplification of intensity tables; removal of requirements related to Floor Area Ratio and "open space"; revised definition of "livability space"*: Removing the FAR and so-called "open space" requirements is intended to simplify the intensity requirements and focus on "livability space" as the real attribute of public value. "Open space" is essentially what is left over after livability space and building structures -- i.e, surface parking and other vehicular areas -- and actually discourages alternatives to surface parking lots such as parking structures. Council and Planning staff believe it is appropriate to focus on the amount of green space/recreation area and, upon ensuring that area is sufficient, allow flexibility as to how the remainder of a parcel's area is used.

(2) *Recreation space requirements* – moved to Article 15 (see comments regarding that Article).

(3) *Height limitations*: Height limitations per 16.08 have been changed to focus on the maximum number of stories, with height constituting a second limitation. Maximum heights in the B-1 district have been adjusted with the intent of allowing typical parapet-walled flat-roof construction to come within the height limitations.

(4) *Exemptions from height limitations.* Changes at 16.08.08 are intended to exempt mechanical items that extend thorough a roof from the height limitations, and to provide flexibility so as to allow for appropriate recreational use of roof-tops. Such roof-top structures will have to be screened from view below by parapet walls and set back from roof edges.

DISTRICT STANDARDS

Schedule of Land Use Intensity Regulations

16.01.01 Unless otherwise specified, development in the following zones shall comply with the intensity regulations indicated in the following Intensity Table.

A. Unless otherwise provided in this Ordinance, the land use intensity regulations for architecturally integrated subdivisions shall apply to the development as a whole and not to individual parts thereof.

~~**B.** A site specific development plan consisting of no other use than one (1) "single family dwelling" is not subject to the maximum floor area ratio requirements but all other intensity rules apply.~~

~~**C.**~~**B.** In the B-1 Zoning District, a minimum "Building Footprint" of fifty percent (50%) of the lot or parcel area is required. All other regulations in the Intensity Table apply.

~~**D.** In the B2 Zoning District, a development may utilize the values in the Intensity Table or may substitute a maximum "Building Footprint" of thirty percent (30%) and an open space ratio of seventy percent (70%). All other regulations in the Intensity Table apply.~~

~~**E.** In the B3 Zoning District, a development may utilize the values in the Intensity Table or may substitute a maximum "Building Footprint" of thirty percent (30%) and an open space ratio of seventy percent (70%). All other regulations in the Intensity Table apply.~~

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16.01.02 Intensity Table

Zoning District	Minimum Gross Land Area	Minimum Lot Width	Minimum Street Frontage	~~Maximum Floor Area Ratio (FAR)~~	~~Minimum Open Space Ratio (OSR)~~	Minimum Livability Space Ratio* (LSR)	~~Minimum Recreation Space Ratio (RSR)~~	Minimum Setbacks	
								Street	Interior
Residential Zoning Districts									
RA No Public Water & Sewer Available	20,000 sq. ft	100 ft.	80 ft.	~~.100~~	~~.80~~	.65	~~.025~~	20 ft.	18 ft.
RA Public Water Available	15,000 sq. ft.	80 ft.	64 ft.	~~.100~~	~~.80~~	.65	~~.025~~	20 ft.	18 ft.
RA Public Water & Sewer Available	10,000 sq. ft.	65 ft.	52 ft.	~~.100~~	~~.80~~	.65	~~.025~~	20 ft.	14 ft.
R1	8,000 sq. ft.	70 ft.	56 ft.	~~.162~~	~~.77~~	.53	~~.032~~	20 ft.	14 ft.
R1A	8,000 sq. ft.	70 ft.	56 ft.	~~.162~~	~~.77~~	.53	~~.032~~	20 ft.	14 ft.
RR	6,000 sq. ft.	70 ft.	56 ft.	~~.283~~	~~.74~~	.48	~~.042~~	20 ft.	13 ft.
R2	6,000 sq. ft.	70 ft.	56 ft.	~~.283~~	~~.74~~	.48	~~.042~~	20 ft.	13 ft.
R4	6,000 sq. ft.	70 ft.	56 ft.	~~.283~~	~~.74~~	.48	~~.042~~	20 ft.	13 ft.
R3	5,000 sq. ft.	80 ft.	64 ft.	~~.480~~	~~.72~~	.40	~~.062~~	20 ft.	13 ft.
MH	87,120 sq. ft.	None	56 ft.	~~.214~~	~~.76~~	.51	~~.039~~	20 ft.	20 ft.
Commercial/Industrial Zoning Districts									
OI	10,000 sq. ft.	100 ft.	80 ft.	~~.340~~	~~.71~~	.27	~~.032~~	20 ft.	17 ft.
B1	5,000 sq. ft.	15 ft.	12 ft.	~~None~~	~~None~~	None	~~None~~	Refer to Section 16.06.02	Refer to Section 16.06.04
B2	5,000 sq. ft.	50 ft.	40 ft.	~~.264~~	~~.76~~	.27	~~.049~~	20 ft.	17 ft.
B3	5,000 sq. ft.	50 ft.	40 ft.	~~.429~~	~~.71~~	.27	~~.062~~	20 ft.	17 ft.
M1	17,000 sq. ft.	80 ft.	64 ft.	~~.350~~	~~.65~~	.3	~~None~~	20 ft.	22 ft.
Educational Zoning Districts									
U1	None	None	None	~~.429~~	~~.71~~	.27	~~.039~~	Refer to Section 16.06.09	Refer to Section 16.06.08

(20140384-08212014)

**LSR is a ratio where the numerator is the square footage of Livability Space and the denominator is the square footage of the entire parcel.*

16.01.03 Where a lot is located in more than one zoning district, the appropriate land use intensity ratios shall be applied individually to each portion of the gross land area located within the different districts.

~~**A.** However, the floor area permitted on that portion of the gross land area located within one district may be transferred to any portion of the lot's land area located in a district with a higher land use intensity ratio.~~

Gross Land Area

16.02.01 When a lot is located in more than one zoning district, the minimum square footage of the lot shall be the sum of the square footage derived by multiplying the minimum square footage required for each represented district by the proportion of the lot located within that district.

16.02.02 The area within the street right-of-way may not be used to satisfy lot area requirements.

Minimum Lot Widths

16.03.01 No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:

A. Could be used for purposes that are permissible in that zoning district, and

B. Could satisfy any applicable setback requirements for that district.

16.03.02 Where a lot fronts two (2) or more streets, the minimum lot width requirement shall be considered met if the lot width at the street setback from any one of such streets meets the minimum lot width requirement.

16.03.03 No lot created after the effective date of this Ordinance that is less than the required width shall be entitled to a variance from any building setback requirement.

Minimum Street Frontage Widths

16.04.01 The minimum width of the frontage of a lot on a street shall be eighty percent (80%) of the minimum lot width required for the lot. Easement areas shall be excluded from this requirement.

16.04.02 Where a lot fronts on two (2) or more streets, the minimum street frontage width requirements shall be considered met if the frontage along any one of such streets meets the minimum street frontage width requirements.

16.04.03 Where a lot fronts on a turning circle of a cul-de-sac or at a point of a street where the radius of the curvature of the right-of-way is less than ninety feet (90'), the minimum street frontage width requirement shall not apply.

~~**Minimum Recreation Space**~~

~~**16.05.01** Recreation space is only required for multifamily developments and manufactured home parks.~~

~~**16.05.02** In general, required recreation space shall have a least dimension of twenty-five feet (25), an average dimension of fifty feet (50'), and a minimum area of 2,500 square feet. Smaller dimensions are acceptable if:~~

~~**A.** Less than 2500 square feet of recreation area is required, or~~

~~**B.** The recreation area is a suitably improved roof area or enclosed floor area, or~~

~~**C.** The anticipated needs of the residents require smaller facilities, such as tot lots or shuffle board courts, or~~

~~**D.** In the B1 district, canopies are provided to cover the sidewalk.~~

~~**16.05.03** The dedication of a greenway easement may be used to satisfy the requirements for recreational space.~~

~~**16.05.04** Outdoor recreation area for common use should be located twenty feet (20') or more from any residential windows at the same general level.~~

Building Setback Requirements

16.06.01 Subject to Sections 16.07 and 16.11 and the other provisions of this Section, no portion of any building may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the Intensity Table.

A. If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline. Whenever a lot fronts a street with a right-of-way of thirty feet (30') or less, the setback shall be measured from a line running parallel to the centerline at a distance of fifteen feet (15') from the centerline.

B. As used in this Section, the term "lot boundary line" refers to lot boundaries other than those that abut streets.

C. As used in this Section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:

1. Gas pumps and overhead canopies or roofs.

2. Fences running along lot boundary adjacent to public street rights-of-way if such fences exceed nine feet (9') in height and are substantially opaque.

3. Retaining walls which exceed four feet (4') in height.

D. Flagpoles, bridges, transmission poles, cables, heat pumps, generators, air condition units and pad mounted transformers shall be exempt from building setback requirements, however, walk in coolers and refrigeration units must meet the requirements for accessory buildings.

16.06.02 In the B1 district, existing development may rebuild to existing building footprint lines, but cannot rebuild any closer to a street than the established existing building setback line as noted on the Official Existing Building Line Maps recorded with the Watauga County Registry in Deed Book 239, Pages 132-138. Structures existing prior to February 25, 1993 that do not meet the required setbacks shall not be considered to have nonconforming features.

16.06.03 In the B1 district, the minimum street setback distance shall not apply to a projecting theater marquee, canopy or roof overhang supports as long as such supports do not go beyond the edge of the sidewalk. This exemption shall not obviate the need for an encroachment agreement.

16.06.04 The interior setback for the B1 zoning district is 0', unless the lot abuts a district other than a U1 zoning district, in which case the lot boundary setback shall be fifteen feet (15').

16.06.05 In the B2 and B3 zoning districts, sideline to sideline construction may be permitted on one or more lots of at least 100 feet road frontage upon issuance of a special use permit in accordance with the provisions of Article 6 and subject to the following conditions:

A. The building must be constructed in accordance with the regulations for the primary fire district as contained in the North Carolina State Building Code.

B. There shall be a deeded street or right-of-way, built to Town standards, at both the front and the rear of the property.

C. Loading, unloading and refuse disposal access shall be from the street at the rear of the property.

D. Loading and parking shall be in compliance with Article 24 of this Ordinance.

16.06.06 Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

16.06.07 Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that

is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.).

16.06.08 In the U1 district, the minimum street setback of ten feet (10') shall apply only when development is proposed adjacent to Town maintained streets.

16.06.09 In the U1 district, the minimum interior setback shall be increased to fourteen feet (14') only when development is proposed adjacent to R1 zoned property. Additional setback provisions in Section 16.06.05 do not apply in the U1 district. The minimum interior setback is zero feet (0') only when development is proposed adjacent to B1 zoned property.

Accessory Structure Setback Requirements

16.07.01 All accessory structures shall meet the building street setback requirement of fifteen feet (15') from the street right-of-way line and seven feet (7') from any interior lot line.

16.07.02 No accessory structure may be further forward to the street setback than the front most point of the principal structure.

16.07.03 The maximum lot coverage of the accessory structure shall not exceed twenty percent (20%) of the lot.

16.07.04 An accessory structure must be clearly subordinate to the principal structure in all dimensional aspects.

16.07.05 An accessory structure shall not be located in an easement unless expressly allowed.

Building Height Limitations

16.08.01 For the purposes of this Section:

The height of a building shall be the vertical distance measured from the ~~mean~~ average elevation of the finished grade at the primary façade of the building to the highest point of the building.

~~A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater.~~

"Stories" as used herein refers to the number of heated, habitable floors above grade at the primary facade. Where both stories and heights are listed in the table below at section 16.08.02, the building can have no more than the listed number of stories, and also may not exceed the specified height in feet.~~Roofs with slopes greater than seventy five percent (75%) are regarded as walls.~~

16.08.02 Subject to the remaining provisions of this Section, building height limitations in the various zoning districts shall be as follows:

Zone	Height Limitation ~~(Feet)~~
R1, R1A, RR, R2, R4, RA	3 stories~~35~~;
R3	3 stories/~~50 (primary) – 90 (secondary)~~

MH	35'
OI	4 stories/67'
B1	On King St. from Water to College and on Depot Street from King to Howard: 3 stories/45~~0~~'; elsewhere: 4 stories/55'
B2	3 stories/ ~~35 (primary) –~~ /40' ~~(secondary)~~
B3	3 stories/45~~4~~' (primary) – 5 stories/~~-~~67' (secondary)
U1	Refer to Subsection 16.08.09
M1	67'

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 (1) foot. In no case shall the height of a structure exceed the secondary height limitation established in the table.

16.08.04 In the B1 district the maximum building height shall be limited to forty-five feet (~~40'~~45'), as measured from the average elevation of the existing or proposed sidewalk along the primary street at the middle of the building elevation facing the street to the highest point of the building or structure. Where a property has primary street frontages on opposite sides the applicable height limitation shall apply for each side and the building height limitation for each side shall terminate at the midpoint of the ~~lot~~building. ~~with the same standard being applied to the opposite street frontage~~. Where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation of the finished building. For the purpose of this Section, the following are considered primary streets: King Street, Queen Street, Howard Street, Rivers Street, Water Street, Depot Street, Appalachian Street, Grand Boulevard, Poplar Grove Road, Straight Street, Bent Street, Orchard Street, and Wallace Circle.

16.08.05 In all nonresidential zones and the R3 zone, all structures located within 100 feet of an R1 zoned property shall not exceed ~~thirty-five feet~~forty feet (~~35'~~40') in height.

16.08.06 Where a multi-unit or nonresidential structure has a height in excess of twenty feet (20') and adjoins a low density residential district, the structure shall meet an additional setback of one and one half feet (1 ½') for each foot in height above twenty feet (20').

16.08.07 If a structure is located at an elevation of 3000 feet above mean sea level and 500 feet above the valley floor, in no case shall the height of such structure exceed forty feet (40') above the mean natural grade.

16.08.08 The following features are ~~exempt from~~not included in calculating the height of a structure for purposes of applying the district height limitations set forth in Subsection 16.08.02, except that on a corner lot in any residential district no planting, structures, fence, wall or obstruction to vision more than three feet (3') in height measured from the street center line

shall be placed or maintained within the triangular area formed by the intersecting~~on~~ street lines and a straight line connecting points on said street lines each o~~i~~f which is twenty-five feet (25') from the point of intersection.

A. Chimneys, accessory radio or television antennas, flagpoles, monuments or solar collectors provided that such features do not exceed fifteen percent (15%) of the maximum height requirements.

B. Church spires, belfries, cupolas, domes, smokestacks, windmills, or observation towers, provided such structures do not exceed in height the horizontal distance from the structure to the nearest property line.

C. Utility transmission poles and cables.

D. Elevator or other mechanical equipment and mechanical penthouses; provided, however, that such features must be screened from view by parapets and set-back from roof edges.

~~**C.**~~**E.** Limited structures to enable recreational use of open rooftops; provided, however, that such features must be screened from view by parapets and set-back from roof edges and may be no more than 1/3 the area of the entire roof. As used in this provision, "structures" do not include areas that are simply decking to be used for standing or sitting.

16.08.09 In the U1 district, building heights for structures internal to the main campus shall be generally limited only by the Town's firefighting capability except for those structures located immediately adjacent to property in a non-University district. In this instance:

A. All buildings proposed within 100 feet of an R1, R1A, RR, R2, R4, or RA zoned property shall be limited to a maximum height of thirty-five feet (35').

B. All buildings proposed within fifty feet (50') of an R3, OI, B1, B2, or B3 zoned property shall be limited to the maximum height allowed in the adjoining district. Additional height restrictions in Subsection 16.08.04 and 16.08.05 shall not apply in the U1 district.

Minimum Building Spacing

16.09.01 The minimum spacing between any two (2) buildings located on a single lot or in the U1 district, which contain dwelling units, shall be the sum of the spacing distances required for the walls of each building or portion thereof as follows:

A. The required spacing between buildings for any wall containing windows shall be the horizontal distance equal to the minimum interior setback applicable to the lot or district in which it is located, plus one (1) additional foot for each foot the height of the building exceeds thirty-five feet (35').

B. The required spacing distance for a windowless wall shall be in accordance with the applicable building codes.

16.09.02 Unless otherwise regulated by this Ordinance, the spacing between structures or portions of structures not containing dwelling units shall be appropriate to the use of such structures or portions thereof. Spacing shall be related to fire protection requirements, the separation of spaces by fences, walls or vegetative screening, the location of parking and service areas, the exposure to nearby living quarters and similar considerations.

Intensity Regulations for the U1 District

16.10.01 University campus land will be considered as a whole for purposes of computing land use intensities. This provision does not apply to satellite tracts; however, land separated from the main campus only by a public street or thoroughfare will be deemed part of the main campus, and any land separated from the University's State Farm property only by a public street or thoroughfare will be deemed part of the State Farm property.

Architecturally Integrated Subdivisions

16.11.01 In an architecturally integrated subdivision, the applicant may create lots and construct buildings without regard to any minimum lot size, ~~maximum floor area ratio for single family residences (use 1.100),~~ lot width or setback restrictions except that:

A. Lot boundary setback requirements shall apply where and to the extent that the subdivided tract abuts land that is not part of the subdivision, and

B. Each lot must be of sufficient size and dimensions that it can support the structure proposed to be located on it, consistent with all other applicable requirements of this Ordinance.

16.11.02 The number of dwelling units in an architecturally integrated subdivision may not exceed the maximum density authorized for the tract under Section 16.01. The number of lots allowed in an architecturally integrated subdivision shall be calculated by dividing the project area by the minimum gross land area as shown in Section 16.01. For an architecturally integrated subdivision project that is composed of areas with different zoning designations, the number of units shall be determined for each zoning district. The maximum number of units for the project shall be the sum of the densities for each district. The units may be distributed throughout the project without regard to the zoning district lines subject to meeting the requirements of Subsection 16.11.01. Further, only uses authorized by Article 15 shall be permitted in each zoning district.

16.11.03 To the extent reasonably practicable, in architecturally integrated subdivisions the amount of land saved by creating lots that are smaller than the standards set forth in Section 16.01 shall be set aside as usable open space.

16.11.04 The purpose of this Section is to provide flexibility, consistent with the public health and safety and without increasing overall density, to the applicant who subdivides property and constructs buildings on the lots created in accordance with a unified and coherent plan of development.

Density On Lots Where Portion Dedicated to Town

16.12.01 Subject to the other provisions of this Ordinance, if (i) any portion of a tract lies within an area designated on any officially adopted Town plan as part of a proposed public park, greenway, or bikeway, and (ii) before the tract is developed, the owner of the tract, with the concurrence of the Town, dedicates to the Town that portion of the tract so designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.

Chapter 39 DEFINITIONS

Livability Space

~~The portion of total open space including existing natural~~Natural areas, lawns and other landscaped areas, walkways, ~~paved~~ terraces, sitting areas, outdoor recreational areas and the pervious, landscaped portion of street rights-of-way. ~~Such space shall not include open space used for motorized vehicles.~~ Livability space does not include paved pedestrian sidewalks or vehicular areas. A maximum of one-third of the livability space required for a development may be impervious (e.g., paved terraces or sitting areas).

~~**Open Space (using FAR)**~~

~~The total gross land area not covered by buildings, including covered open areas with at least two (2) sides which are open and unobstructed fifty percent (50%) or more.~~

~~**Open Space (using Building Footprint)**~~

~~Space outside the building(s) footprint.~~

Primary Façade.

The face of the building that is its primary orientation to the street or other public thoroughfare; normally the front of the building that faces ~~façade which faces the public~~the street and ~~which~~ contains the building's primary pedestrian entrance.

~~**Recreation Space**~~

~~The portion of total open space and livability space plus enclosed floor area, which is reserved and improved for the common recreational use of residents of multi-family developments.~~

Draft: Density Subcommittee Proposal for Planning Commission Review December 7, 2009

Background & Purpose

Our work has been in response to the Town Council's memo of Nov. 20, 2008, related to Case 20080389 "Density & Dimensional Requirements" presented at the Fall 2008 Quarterly Public Hearing. In reference to this case, the Town Council has expressed that, "*There was general agreement to the concepts presented on increasing the intensity regulations for the following zones: R3, O/I, B-1, B-2, B-3 and M-1. The Planning Commission should evaluate whether the following ratios are needed: Maximum Floor Area Ratio, Minimum Open Space Ratio, Minimum Livability Ratio, And Minimum Recreation Space Ratio. Attention needs to be given to see what if any can be combined or eliminated*." At the August 10th Planning Commission meeting, a Density Subcommittee was formed to examine these issues and make recommendations to the Town Council for modification to the Town's regulatory system related to height, setbacks, and density in the districts of interest.

Goals

- Encourage greater density and infill development where appropriate
- Facilitate site design and building form in accordance with Smart Growth principles
- Encourage mixed-use development
- Reduce sprawl
- Increase walkability
- Make the UDO's Schedule of Land Use Intensity Regulations more user-friendly

Proposed Changes

- Remove the Maximum Floor Area Ratio (FAR), and create a Maximum Building Footprint (BF) (see Proposed Intensity Table below)
    - B-1 and B-2: Minimum two-story building required
    - Other Districts: Removal of FAR permits the development of a two-story building
- Require maximum street setbacks and reduced interior setbacks
    - See new "Max/Min" in proposed chart above
    - Increase street yard from 10 to 20 ft. in B-2, B-3, O/I
- Require 70% of developed building frontage at street setback on all facing streets (i.e. corner lots)
- Change the name of Livability Space Ratio to Landscaping Space to make it more understandable
- Eliminate the Open Space Ratio (OSR). This area represents the balance of land after Building Footprint.
- Eliminating the Minimum Recreation Space Ratio (RSR)
    - Add recreation requirements to Section 204
        - All multi-family recreation space = 5%
        - Rather than provide recreation space, developer can provide "fee in lieu of"

Communication: Case 20160751 2009 Density Subcommittee Report (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text

Proposed Intensity Table

Zone	Min. Gross Land Area (GLA) (sq.ft.)	Min. Lot Width (ft.)	Max. Building Footprint % GLA (BF)	Number of Building Stories (NBS)	Min. Landscape Space % GLA (LS)	Street Setback (Min./Max.) (ft.)	Interior Setback (Min.) (ft.)
R-3	2000	30	50	-	25	20/-	5
O/I	5,000	50	50	-	25	0/0 [5]	10
B-1	5,000	15	100	Min. 2	none	0/0 [1]	0 [1]
B-2	5,000	50	50	Min. 2	25	0/0 [5]	10
B-3	5,000	50	50	-	25	0/0 [5]	10
U-1 [2]	none	none	25	-	25	10/- [3]	10 [4]
M-1	17,000	80	35	Max. 2	25	20/-	22

1 Refer to 205 [b] and [c]
2 Refer to 209 [a]
3 Refer to 205 [g]
4 Refer to 205 [h]
5 Proposed increase of street yard from 10 to 20 ft.

Supporting Documentation

&

References

Conformity to Adopted Plans

Boone 2030 Land Use Plan

1: Executive Summary

MARKET ASSESSMENT, page 3
The plan includes a qualitative market assessment. Key findings of the assessment include: The most important housing issues facing Boone and the region include: affording housing for working residents; affordable housing for low income residents & seniors; infill housing on vacant or underutilized sites; mixed-use buildings (residential over commercial).

SUMMARY OF PUBLIC INPUT: COMMUNITY PRIORITIES, page 4
The list below summarizes the major points made by the public during the plan process in the various venues for feedback: the kick-off meeting, the community survey, and the public workshop meetings. The list very much reinforces and corroborates the vision statement developed by the Advisory Committee.

6. Create attractive streetscapes and corridors
7. Encourage denser/pedestrian-friendly, mixed-use development
8. Facilitate infill/redevelopment

ACTION ITEMS, page 6 (excerpt from Table)

Pg	Project/Task Type	Project/Task	Implementing Agency	Coordinate With	Yr.
50	Policy & Ordinance Amendments	Encourage infill in developed areas with regulations and incentives.	Town of Boone	Landowners, developers	2009-2014
92	Policy & Ordinance Amendments; Studies & Plans	Evaluate various strategies to help maximize the use of existing parking facilities and help promote continued infill development downtown.	Town of Boone, ASU	Watauga County	2009-2014
93	Support, Assistance, Coordination	Promote mixed-use infill along King Street	Town of Boone	ASU	On-going
98-110	Support, Assistance, Coordination	Various development/redevelopment model sites which exemplify the principles of mixed-use, pedestrian-orientation, compact development/ infill, and conservation subdivision.	Landowners, developers	Town of Boone	On-going
117	Policy & Ordinance Amendments	Rewrite the UDO and revise the zoning map based on the Framework Plan.	Town of Boone	Developers, landowners, advocacy organizations	2009-2014

Communication: Case 20160751 2009 Density Subcommittee Report (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text

2: Civic Dialogue & Participation

VISION FOR BOONE IN 2030, page 28

Vibrant Downtown

- Urban neighborhood/downtown living, historic core that is surrounded by density

Infill/Redevelopment

- Planning infill
- Old buildings redeveloped or torn down

Redevelopment/High Density Areas

- Context-sensitive heights; appropriate location for higher buildings: 5-6 stories, concentrated in/around: B1 & B3 districts; Howard St; ASU; Hardin Street; Blowing Rock Road; NC 105
- Density, density, density !!!! Especially close to downtown & university
- Give incentives for redevelopment/height

Revise the UDO

- Current UDO not development/redevelopment friendly
- Setbacks, parking requirements, height requirements make interconnectivity an issue along corridors
- Special zoning district for higher density/mixed-use (i.e., Old High School site)
- Until UDO is overhauled, very little can happen; Make UDO change recommendations ASAP
- Prioritize parcels for form improvement (form-based codes)

4: The Framework Plan

FRAMEWORK PLAN: METHODOLOGY, page 37 (excerpt from table)

Sector/Transect Zone Allocation for Boone:

T-6 Urban Core

General Character: Medium to high-density mixed use buildings, entertainment, civic and cultural uses. Attached buildings forming a continuous street wall; trees within the public right-of-way; highest pedestrian and transit activity

Building Placement: Shallow setbacks or none; buildings oriented to street, defining a street wall

Frontage Types: Stoops, shopfronts, and arcades

Typical Building Height: 2- to 4-story with a few taller buildings

5: Infrastructure and Sustainability

GREEN INFRASTRUCTURE, page 50 (last paragraph)

Encourage Infill in Developed Areas with Regulations and Incentives:

"In addition [NCWRC] encourage[s] 'infill' (new development in unused or underutilized land in existing urban areas) development in urbanized portions of the jurisdiction" as one of the most basic ways to protect and preserve more sensitive environmental features elsewhere. This Plan recommends that downtown and the Town's existing commercial corridors are the most important infill areas for the Town because of the established utilities and infrastructure there, but also because these areas are the most accessible and most appropriate locations to develop in a mountain environment. The Town should develop guidelines and development incentives for infill development as part of updates of the Town's policies and regulations. Incentives

Communication: Case 20160751 2009 Density Subcommittee Report (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text

might include tax rebates, streamlined permitting, density bonuses, and tax increment financing or other public participation for projects in key locations."

7: Downtown Boone
SUGGESTED DOWNTOWN IMPROVEMENTS, page 87
Long Term Improvements

- Uniform look in downtown
- Lacking quaint charm of… Banner Elk, Blowing Rock, etc—apply concept to the streets as many shops are doing
- New investment and development in downtown
- Redevelopment of entire blocks (facilitate density)
- Planning & Inspections—need flexibility to minimize cost of rehab [goal to make it better than it is now]

Boone 2007 SmartGrowth Audit

Executive Summary (page 2, excerpts from Table)

Pg	Project/Task Type	Project/Task	Priority	Implementing Agency	Coordinate With (Project/Task Section)
22	Policy & Ordinance Amendments	Encourage Greater Density	2	Town of Boone	Develop Strategic Land Use Master Plan; Apply the Transect
25	Policy & Ordinance Amendments	Update Density & Height Requirements	2	Town of Boone	Apply the Transect; Use Form-Based Coding

Analysis by SmartGrowth Principle

2. TAKE ADVANTAGE OF COMPACT BUILDING DESIGN
OPPORTUNITIES/CHALLENGES (page 21)
Need for increased Building height/density

- "Increased density will be the only way to make this sustainable, but need to sell idea – one of the biggest obstacles"
- "Interest in density bonuses"
- "Land intensity ratios in the UDO are hindrance to Smart Growth because of height restrictions; 6-7 stories would be ideal"
- "Need to make downtown more vibrant and build up, but council scared of tweaking heights"
- "Need infill, go vertical"
- "ASU would like to look into building higher, but need to rezone to university zoning to not be subject to setbacks or height requirements."
- "Secondary height requirement kills projects"

RECOMMENDATIONS (page 22)
ENCOURAGE GREATER DEVELOPMENT DENSITY
One of the greatest and most obvious opportunities for Boone—as pointed out by numerous stakeholders—given the high cost of land, the sensitive environmental conditions, and the

challenges of the High Country terrain is to use the most buildable land more efficiently by building more compactly and more vertically. Compact development can help Boone to achieve many of its other Smart Growth goals.

Higher-density development:

- Is a key element to creating walkable communities and providing more transportation options. (Walkable urbanism is said to become feasible at floor area ratios of 0.8. Typical auto-oriented suburban development has floor area ratios of 0.2 to 0.3. Outside of the B-1 district, Boone's Intensity Regulations allow *maximum* floor area ratios of 0.48.)
- Can also contribute to a wider range of housing choices and more affordable housing options. (Smart Growth Network,2005)

REDUCE SETBACK/DIMENSIONAL STANDARDS (page 24)
The current UDO's Schedule of Land Use Intensity Regulations represents a major obstacle to Smart Growth development in Boone and specifically compact development. With the exception of the B-1 standards, the requirements are overly complex, redundant, not context-sensitive or context-dependent, very suburban in orientation, and work against many of the environmental and Smart Growth goals that the community has articulated in its policy plans.

UPDATE DENSITY & HEIGHT REQUIREMENTS (page 25)
In addition to minimum lot sizes and minimum dimensional standards, Boone's UDO includes maximum Floor Area Ratios (FAR), and minimum ratios for Open Space, Livability Space, and Recreation Space which must be included on each lot, as well as maximum height limitations. The UDO's Schedule of Land Use Intensity Regulations also includes various restrictions on the mass and height of buildings. When combined with the relatively large minimum lot sizes, these regulations result in a land use pattern that is inefficient and not at all compact.

In general, the density and height requirements could be simplified and made more context-sensitive, based on a land use plan and the location in Town. For example, instead of FAR the Town should consider maximum heights and maximum pervious areas based on a development's location in a more urban or more rural context.

APPENDIX (page 102)
UDO ASSESSMENT

Promote SG?	**Smart Growth Principle**	**Policy/Recommendation /Regulation**	**Commentary: Implementation? Consistency with Town programs, policies, regulations, decisions? Recommendations for Implementation.**
N	2,3,4,5,6	Sec. 200 Schedule of Land Use Intensity Regulations	These standards represent a major obstacle to Smart Growth development in Boone. With the exception of the B-1 standards, the requirements are overly complex, redundant, not context sensitive or context dependent, very suburban in orientation, and work against many of the environmental and Smart Growth goals that the community is trying to achieve. Consider maximum densities vs. minimum gross land area Reduce minimum lot widths. Consider maximum heights and maximum pervious areas versus FAR.

Communication: Case 20160751 2009 Density Subcommittee Report (Case 20160751: Modification to UDO Articles 15 and 16 - UDO Text

			Minimum number of stories (or FARs) may be appropriate in some areas, including downtown. The ratios need to be simplified and made context-sensitive (e.g. rural, suburban, urban). Setbacks are too large in many cases for pedestrian-oriented development.

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Section 2.1.1 ECONOMIC DEVELOPMENT (page 21)
POLICIES & ACTIONS
D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.

D.1 Evaluate development regulations for amendments providing flexibility in the renovation and redevelopment of existing structures and sites.

Section 2.1.5 DOWNTOWN (page 34)
Residential Uses Downtown
The downtown is a logical area for higher density residential development: close to town services, bus lines, entertainment, and other urban services. In many instances, where residential development can be established over ground floor commercial uses, there are no land costs involved, thereby contributing to the affordability of these units. Further, the more pedestrian oriented the downtown area and the more residential areas convenient to the downtown area, the less traffic and parking demand will be generated by automobiles in the area.

POLICIES & ACTIONS (page 35)
C. A variety of mutually compatible and supportive mixed uses shall be encouraged in the downtown area.

C.1 Examine zoning ordinances and revise as necessary to encourage construction of buildings with residences over ground-floor businesses.

Outside Resources:

Consisting of documents and excerpts from model codes, ordinances, and plans dealing with land use impacts on individual communities or larger regions.

Model Development Code for Small Cities

www.oregon.gov/LCD/TGM/modelCode05.shtml

The code is designed with smaller communities in mind using a template format with suggested ranges listed in [] to be determined by a community which best fulfills its goals. One of many templates available for use or reference.

The Chattanooga Climate Action Plan
www.Chattanooga.gov/Final_CAP_adopted.pdf
Chattanooga, TN Climate Action Plan with highlighted sections relating to Smart Growth, Food, and Transportation. Begin reading at page 39-50 Regarding Healthy Communities

The Infill and Redevelopment Code Handbook
www.lcd.state.or.us/LCD/docs/publications/infilldevcode.pdf
A more lengthy and technical document with a template code that identifies common infill/redevelopment issues with a "Problem, Objective, and Strategy" format, and includes an appendix of samples of codes, worksheets, and principles.

Colorado Springs, CO – Types of Zone Districts
www.springsgov.com/Page.aspx?NAVID=1036
A general listing of zoning districts for the City of Colorado Springs, CO with minimum lots sizes, setbacks, widths, and coverage.

Creating Great Neighborhoods: Density in Your Community
www.lgc.org/freepub/docs/community_design/reports/density_manual.pdf
A short manual created by the Local Government Commission and EPA discussing benefits of density, several case studies, and design issues to consider.

Envision Utah Toolbox
Link to entire Toolbox-- http://www.envisionutah.org/eu_resources_toolboxes.html
Scroll to bottom of page for listing of chapters.

Envision Utah strives to address the enormous growth pressures facing the state in the next 40 years affecting quality of life for current and future residents.

Chapters of interest:

Chapter 2 Meeting Housing Needs
http://www.envisionutah.org/Urban%20Planning%20Tools%20for%20QG_ch2_1.pdf

Chapter 3 Making Our Community a Good Place to Walk
http://www.envisionutah.org/Urban%20Planning%20Tools%20for%20QG_ch3_1.pdf

Chapter 4 Reuse and Infill
http://www.envisionutah.org/Urban%20Planning%20Tools%20for%20QG_ch4_1.pdf

Chapter 8 Strategies for Walkable Commercial Development
http://www.envisionutah.org/Urban%20Planning%20Tools%20for%20QG_ch8_sup.pdf
Pages 1-7 and 24-end should be of particular interest.

EPA-Essential Smart Growth Fixes for Urban and Suburban Zoning Codes (Draft)
http://www.epa.gov/smartgrowth/pdf/2009_essential_fixes.pdf

Town of Davidson
http://www.ci.davidson.nc.us/DocumentView.aspx?DID=1302
Section 9

Town of Cornelius
http://www.cornelius.org/landdevelopmentcode.html
Chapter 4 (Pages 4-1 thru 4-4)
Chapter 5 (All of Sections 5.4, 5.5, 5.6, & 5.7)

Town of Huntersville
http://www.huntersville.org/Planning%20Info/Z-Ord%2009-09.pdf
Article 3 (.pdf pages 39-50)
Article 4 (begins at .pdf Page 97)