

**Town of Boone
Planning Commission
Special Meeting
6:00 PM, Nov. 1, 2021
WebEx, WebEx**

This meeting will be held remotely using video conferencing software (WebEx).

For information on how to watch, listen, and/or participate in the meeting, please see the WebEx Video Conferencing Information section at the end of the agenda.

I. Call to Order

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

Case PL05168-100621 Revised Language Based Upon Public Hearing Discussion - *Add-On*

Case PL05168-100621 Application Information

Case PL05168-100621 Staff Report

Case PL05168-100621 Exhibit 1 Meeting Minutes

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

Case PL05188-100821 Revised Language Based Upon Public Hearing Discussion - *Add-On*

Case PL05188-100821 Application

Case PL05188-100821 Staff Report

IV. Other Matters

V. Adjournment

WebEx Video Conferencing Information

TO PARTICIPATE IN OR WATCH THE MEETING: Individuals who wish to participate in or watch the meeting may do so through WebEx, the video conferencing software or by telephone. To do so, please email Jane Shook, Director of Planning and Inspections at jane.shook@townofboone.net and you will be provided with an email invitation to the meeting. All requests for participation must be completed by 5pm on the day of the meeting.

Ordinance # _____

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

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

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

WHEREAS, the Planning Commission considered the proposed amendments at its duly-noticed meeting held on November 1, 2021 and made certain recommendations to the Town Council concerning their adoption;

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160A, Article 19; and

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

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

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

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

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

as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

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

Adopted this ____ day of _____, 2021

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

15.05 Homestay Rental

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

15.05.01 Every homestay rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. Upon application for an initial permit and for each renewal, the applicant must demonstrate compliance with all applicable provisions of this section on such forms as may be provided by the Administrator.

15.05.02 The homestay operation shall be managed and carried on by a person who: 1) is a full-time resident of the property; and 2) is present during the homestay term for the entire time lodgers are staying at the property. To be a "full time resident," the person must reside on the property on a permanent basis, and it must be the person's primary home. A person can have only one homestay permit at any one time.

15.05.03 For purposes of this homestay ordinance, a person can only have one primary, full-time residence, and the homestay must be operated from that primary, full time residence. In order to be "present during the homestay term," the full-time resident shall be at the property overnight and not away on vacation, visiting friends or family, travelling out of town for business or personal reasons, etc. during the homestay term. However, the full-time resident may be temporarily absent from the property for purposes related to normal residential activities such as shopping, working, attending class, etc. A minimum of two documents establishing proof of residency shall be supplied from an approved list of documents.

15.05.04 The maximum number of guest rooms used as a homestay rental is two (2) per detached single-family, two-family, or three-family dwelling unit located on a single lot. In addition, up to two guest rooms may be located in an accessory dwelling unit if the accessory structure and accessory residential use are lawful under the UDO with respect to the property at issue.

15.05.05 The maximum number of overnight guests for any dwelling used as a homestay rental is the greater of (i) two (2) adults and any number of children under those adults' care, or (ii) two occupants per guest room. The occupancy limit shall be posted prominently within the short-term rental and be included in property listings on online platforms or any other media.

15.05.06 A homestay rental operator shall ensure that the primary responsible renter of a homestay rental is at least twenty-one (21) years old.

- 15.05.076** Cooking facilities are not permitted in any bedroom. For the purpose of this regulation, cooking facilities include any refrigerator in excess of seven cubic feet; any stovetop range that operates on 220-volt electric service; any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance, which contains more than two cooking surfaces or burners.
- 15.05.087** No signs advertising the property as a rental are allowed.
- 15.05.098** No displays of goods, products, services, or other advertising may be visible from outside of the dwelling.
- 15.05.1009** In residential zoning districts, homestay renters shall not utilize the premises for holding special events or large gatherings. The rental operator shall inform renters of this regulation and of the applicability of the town's noise ordinance (Chapter 82 of the Code of Ordinances), which regulates nuisance noises and makes it unlawful to create, cause, or allow the continuance of any unreasonably loud noise, particularly during nighttime, which interferes with neighboring residents' reasonable enjoyment of their properties.
- 15.05.110** The premises shall not be used for any home occupation that allows employees, customers, clients or patrons to visit.
- 15.05.121** Homestay rental operators shall comply with all applicable State and local laws, including those relating to fire and building codes, smoke detecting and carbon monoxide detecting equipment, and housing codes.
- 15.05.132** Homestay rental operators are responsible for and must ensure that any and all occupancy taxes and to the Town and pay any other applicable taxes due under law as a result of their rental activities are remitted to the proper tax authorities, whether through their online platform service or by personally remitting the required taxes. The town shall require evidence of payment of such taxes as part of the application and permitting process, and may also conduct audits of homestay rental permittees, as it sees fit in its sole discretion, in order to ensure payment of all such applicable taxes.
- 15.05.143** The zoning permit number authorizing the homestay rental shall be conspicuously posted on (i) all advertisements for homestay rentals, and (ii) on the subject property in a place that is conspicuous from the exterior of the property.
- 15.05.154** A homestay rental must provide at least one (1) dedicated parking space per guest room, which may not be located on any street right of way and must conform to all applicable parking regulations of this ordinance.
- 15.05.165** Except as specifically set forth herein, a dwelling or dwelling unit must comply with all UDO requirements applicable to the primary residential use.
- 15.05.176** **Revocation of Permit**

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

- 1) Convicted of violating any of the following criminal laws on the homestay rental premises within the prior three-year period: Article 10 (*kidnapping*), Article 10A (*human trafficking*), or Article 27 (*prostitution*) of Chapter 14 of the North Carolina General Statutes;

- 2) Convicted of committing a violent felony as defined at N.C. Gen. Stat. §14-7.7 on the homestay rental premises within the prior three-year period.
- 3) Convicted of violating any of the following criminal laws on the homestay rental premises within the prior 365-day period:
 - (i) Article 3 of Chapter 18B of the North Carolina General Statutes (sale, possession and consumption of alcohol)
 - (ii) N.C. Gen. Stat. §14-71.1 (possession of stolen goods)
 - (iii) N.C. Gen. Stat. §14-292 (unlawful gambling)
- 4) Received within a 365-day period two or more “Verified Violations” of any combination of the following, occurring on the homestay rental premises:
 - (i) Any Town Code zoning regulation.
 - (ii) Any noise regulation set forth at Town Code Chapter 82.
 - (iii) Any nuisance prohibited by Town Code Chapter 80.

A Verified Violation means a determination made by a code enforcement official, law enforcement officer, or judge, following notice of violation being issued by the Town Code and opportunity to respond to the noticed alleged offenses and an order or other mandate issued to the owner or any other person imposing a sanction or requiring further actions to comply with the Town Code, including, without any limitation, the payment of civil penalties or administrative fees, or implementation of corrective measures, or cessation of activities, or conviction of a criminal offense. A verified violation that is appealed continues as a verified violation unless it is overturned on appeal. If the violation is reinstated on a further appeal, it resumes its status as a verified violation.

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

15.05.187 Compliance period; existing nonconformities

- A. Homestay operators in operation as of December 30, 2021 must apply for a permit as required in this section 15.05 ~~within 12/18 months of adoption of this ordinance on _____, 2021~~ on or before December 31, 2022, and must come into compliance with this section ~~within 18[/24] months of the adoption of this ordinance~~ by June 30, 2023.
- B. Any existing homestay rental not conforming under this section 15.05 must ~~come be brought~~ into compliance with this ordinance or cease operation ~~within 18[/24] months of adoption of this ordinance on _____~~ by June 30, 2021/2023.
- ~~B.~~ C. Any person seeking to begin operation of a homestay rental after December 30, 2021 must first apply for and obtain a homestay rental permit as required under this section 15.05.

15.05.198 Neighborhood Conservation Districts

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

15.14 Vacation Rental

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

[To Consider:] Notwithstanding the foregoing, the full-time resident of a dwelling unit (as defined at section 15.05.02 above) may rent out his or her dwelling unit for up to two weeks in any calendar year and such rental shall not be deemed a vacation rental under this section 15.14 but rather shall be considered an incidental use of the dwelling that does not require approval or permitting under this Article.

15.14.01 Every vacation rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. The zoning permit number authorizing the short-term rental shall be conspicuously posted on (i) all advertisements for short-term rentals, and (ii) on the subject property in a location easily viewable from the exterior of the structure. [to consider:] provided, that if the permit number cannot be viewed from a private or public street, it shall be displayed where it can be viewed from the public or private street adjoining the primary façade of the dwelling unit.

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

15.14.03 A vacation rental operator shall ensure that the primary responsible renter of a vacation rental is at least twenty-one (21) years old.

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

15.14.0405 In the R3 Multiple-Family, B1 Central Business, B2 Neighborhood Business, and B3 General Business zoning districts, o~~Only existing~~ single-family detached dwellings and two-family detached dwellings ~~in the R3 Multiple-Family, B1 Central Business, B2 Neighborhood Business, and B3 General Business zoning district and~~ existing as of January 1, 2014 ~~s~~ may be converted to a ~~v~~Vacation ~~r~~Rental.

15.14.065 Cooking facilities are not permitted in any bedroom. For the purpose of this regulation, cooking facilities include any refrigerator in excess of seven cubic feet; any stovetop range that operates on 220-volt electric service; any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance, which contains

more than two cooking surfaces or burners. This shall not prohibit cooking facilities within a one-room studio vacation rental. For the purpose of this regulation, a studio shall be a single-room rental with a sleeping area, living area and kitchen/eating area in one consolidated room.

- 15.14.07~~6~~** No signs advertising the property as a rental are allowed.
- 15.14.08~~7~~** In residential zoning districts, renters of vacation rentals shall not utilize the premises for holding special events or large gatherings. The rental operator shall inform renters of this regulation and of the applicability of the town's noise ordinance (Chapter 82 of the Code of Ordinances), which regulates nuisance noises and makes it unlawful to create, cause, or allow the continuance of any unreasonably loud noise, particularly during nighttime, which interferes with neighboring residents' reasonable enjoyment of their properties.
- 15.14.08~~9~~** The premises shall not be used for a home occupation that allows employees, customers, clients or patrons to visit.
- 15.14.10** For any ~~multi-unit dwelling~~building that contains multiple dwelling units, no more than ~~25%~~of the dwelling units, or two dwelling units, whichever is greater, may be operated as a vacation rental in any single building. Permits shall be issued on a first-come, first-served basis based on the initial application date, and thereafter may be renewed. If a permit lapses before renewal, a renewal application shall be treated like an initial application for purposes of this paragraph.
- 15.14.11** Vacation rental operators shall comply with all applicable State and local laws, including those relating to fire and building codes, smoke detecting and carbon monoxide detecting equipment, and housing codes.
- 15.14.12** Vacation rental operators are responsible for and must ensure that any and all occupancy taxes and other applicable taxes due under law as a result of their rental activities are remitted to the proper tax authorities, whether through their online platform service or by personally remitting the required taxes. The town shall require evidence of payment of such taxes as part of the application and permitting process, and may also conduct audits of vacation rental permittees, as it sees fit in its sole discretion, in order to ensure payment of all such applicable taxes.
- 15.14.13~~2~~** The rental operator or the operator's employee, management company, or other agent must be available to respond to complaints by renters or neighbors and to~~or~~ emergencies within two (2) hours at all times that a rental is occupied. [To consider, potentially in lieu of alternative like a registry on Town's website:] A telephone number for such complaints or emergencies shall be posted on the subject property in a location easily viewable from the exterior of the structure; provided, that if the telephone number cannot be viewed from a private or public street, it shall be displayed where it can be viewed from the public or private street adjoining the primary façade of the dwelling unit.
- 15.14.14~~3~~** If the primary structure on a property qualifies for vacation rental use, a lawful accessory dwelling structure on the same property also may be used for vacation rental. The operators of such a vacation rental may, at any given time, offer for short-term rental either the single-family dwelling unit or the accessory apartment, or both units. The simultaneous

rental of both the single-family dwelling unit and the accessory apartment to more than one party under separate contracts is prohibited. The units may, however, be rented out together to one party under a single contract.

15.14.154 Revocation of Permit

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

15.14.16 Compliance period; existing nonconformities

1. The owner of any un-permitted vacation rental in operation as of December 30, 2021 must apply for a permit as required in this section 15.14 on or before December 31, 2022 and must come into compliance with this section by June 30, 2023.
2. Any existing, un-permitted vacation rental not conforming under this section 15.14 must

[be brought into compliance with this ordinance or cease operation by June 30, 2023.](#)

3. [Any person seeking to begin operation of a vacation rental after December 30, 2021 must first apply for and obtain a vacation rental permit as required under this section 15.14.](#)

ARTICLE 34 DEFINITIONS

Adult

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

Child/Children

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

Dwelling unit

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

Dwelling

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

Guest room

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

Homestay rental

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

Multi-Family Dwelling

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

Single-Family Detached Dwelling

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

Two-Family Detached Dwelling

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

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

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

NOTES:

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

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

Planning Application - UDO Text Amendment

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

Official Use Only

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

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____

Address: 567 West King Street

Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 7, 14, 15, 24, 34 and Appendix B

Section(s): _____

Brief Description of Amendment (Attach Proposed Text):

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

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

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

10/06/2021
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: October 25, 2021

PC Meeting Date: _____

TC Meeting Date: _____

Text Approved: ☐ Yes ☐ No

Notes: _____

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

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



STAFF REPORT
PUBLIC HEARING
OCTOBER 25, 2021

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

Request

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

History

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

Proposed Ordinance Amendment

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

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

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

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

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

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

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

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

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

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

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

Adopted this the ____th day of _____, 2021.

Exhibit A

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

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

Article 15 Limited Use Requirements

...

15.05 ~~Reserved~~ Homestay Rental

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

15.05.01 Every homestay rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. Upon application for an initial permit and for each renewal, the applicant must demonstrate compliance with all applicable provisions of this section on such forms as may be provided by the Administrator.

15.05.02 The homestay operation shall be managed and carried on by a person who: 1) is a full-time resident of the property; and 2) is present during the homestay term for the entire time lodgers are staying at the property. To be a "full time resident," the person must reside on the property on a permanent basis, and it must be the person's primary home. A person can have only one homestay permit at any one time.

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

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

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

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

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

15.05.16 Revocation of Permit

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

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

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

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

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

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

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

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

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

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

15.05.17 Compliance period; existing nonconformities

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

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

15.05.18 Neighborhood Conservation Districts

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

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

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

15.14 — Vacation Rental

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

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

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

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

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

15.14 — Vacation Rental

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

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

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

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

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

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

ARTICLE 34 DEFINITIONS

...

Adult

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

Child/Children

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

Dwelling

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

Dwelling unit

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

Guest room

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

Homestay rental

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

Multi-Family Dwelling

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

Single-Family Dwelling

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

Single-Family Detached Dwelling

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

Two-Family Detached Dwelling

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

Vacation Rental

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

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

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

Appendix B Comparative Tables

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

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

NOTES:

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

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

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

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

2.3 THE COMMUNITY

2.3.2 Community Character

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

2.3.3 Housing and Neighborhoods

- A. The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.
 - A.1 As road widenings are proposed, carefully evaluate their potential impact on the integrity of residential areas, pedestrian-oriented commercial districts, and the ability of bicyclists and pedestrians to function in the affected area.

- A.2** Prepare at least two neighborhood plans, working closely with neighborhood residents, and incorporating the full range of neighborhood issues to include: land use, traffic, housing, neighborhood business services, infrastructure improvements, parks and recreation needs, crime and safety.
- A.3** Prepare a document readily accessible to the public that details residential zoning areas and the date on which each was implemented.
- A.4** Establish a planning and development policy that protects older established residential neighborhoods from the negative effects of adjacent commercial development.
- A.5** Establish a task force to determine how like communities successfully enforce their existing residential codes. Items requiring focused attention: Detailed analysis of implementation and enforcement. For example, penalties, personnel requirements, budget implications, long-term effect on town character and economic development.
- A.6** Implement a residential zoning enforcement policy based on the task force analysis above.
- B.** Street system designs which discourage through traffic on purely local streets while allowing for free circulation within the neighborhood shall be encouraged.
- C.** Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.
- D.** Innovative and flexible land planning and development practices shall be encouraged to create livable developments which better safeguard land, water, energy and historic resources.
- E.** Factors in determining preferred locations for high density residential development shall include: close proximity to the university, employment or shopping centers; access to major thoroughfares and the transit system; the availability of public services and facilities; and compatibility with adjacent land uses.
- F.** The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development.
- G.** Compact, full service neighborhoods, offering opportunities for living, working, shopping, and gathering places, shall be encouraged in newly planned developments, as well as for redeveloping areas.
- H.** The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

PLANNING BOARD REPORT/RECOMMENDATIONS

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

Vote 1: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because:

Note 1

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

Note 2

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

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

TOWN COUNCIL ACTION

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

Vote 1: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because:

Note 1

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

Note 2

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

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

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

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

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

OTHERS PRESENT: Allison Meade-Town Attorney

CALL TO ORDER

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

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

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

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

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

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

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

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

SHORT-TERM AND HOMESTAY RENTAL PROPERTIES WITHIN RESIDENTIAL ZONING DISTRICTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMORTIZATION OF NON-CONFORMING USES IN LOW DENSITY RESIDENTIAL DISTRICTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADJOURNMENT

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

Rennie Brantz, Mayor

Brenda Henson, Admin. Support Specialist

Ordinance # _____

**AN ORDINANCE TO REVISE ARTICLES 14 AND 34 OF THE TOWN OF BOONE
UNIFIED DEVELOPMENT ORDINANCE RELATING TO
RESIDENTIAL OCCUPANCY REGULATIONS**

WHEREAS, _____;

WHEREAS, _____; and

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to its zoning authority under G.S. Chapter 160A, Article 19;

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

SECTION 1. Articles 14 and 30 of the Town of Boone Uniform Development Ordinance (“UDO”) are hereby revised as set forth in the attached **Exhibit A** to this Ordinance, which is incorporated by reference.

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

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

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

Adopted this _____ day of _____, 2021

Rennie Brantz, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

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

ARTICLE 14

14.01 Residential Occupancy Controls

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

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

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

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

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

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

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

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

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

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

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

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

A.B. With respect to any current, continuing occupancy violation proven by the property owner to pre-date the 2014 ordinance, such violation must be remedied within two years from the date that written notification of the violation is made by the Administrator to the record owner of the dwelling unit. To the extent practicable, all occupants of such dwelling units, as of the date of notification of the record owner, shall also be provided written notice of the nonconformity and the deadline for bringing the dwelling unit into compliance. This section shall not be construed to prevent immediate enforcement of any building or health code regulations regarding the number of occupants that may inhabit a dwelling unit.

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

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

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

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

In applicable districts set forth at Article 14 and/or in definitions at Article 30, add the following language as appropriate (based on whether the applicable occupancy limit is 2 or 4 unrelated persons):

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

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

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

ARTICLE 34: DEFINITIONS

Family

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

- ~~A. a single person or married couple's parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great or great-great;~~
- ~~B. spouses of any persons named in the above groups;~~
- ~~C. cousins, who are defined to be relatives who are decedents from a common grandparent.~~

Occupant, Residential

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

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

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

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

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

DRAFT

Planning Application - UDO Text Amendment

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

Official Use Only

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

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 7, 14, 24, and 34

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

Brief Description of Amendment (Attach Proposed Text):

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

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

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

10/08/2021
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting

Date: October 25, 2021

PC Meeting Date: _____

TC Meeting Date: _____

Text Approved: ☐ Yes ☐ No

Notes:

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

Communication: Case PL05188-100821 Application (Case PL05188-100821 Definition of Family and Occupancy Regulations - UDO Text



STAFF REPORT
PUBLIC HEARING
OCTOBER 25, 2021

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

Request

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

History

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

Proposed Ordinance Amendment

ORDINANCE # PL05188-100821

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

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

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

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

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

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

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

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

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

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

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

Adopted this the ____th day of _____, 2021.

EXHIBIT A

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

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

ARTICLE 14

14.04 Residential Occupancy Controls

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 34: DEFINITIONS

Family

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

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

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

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

Occupant, Residential

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

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

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

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

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

[End of Exhibit A]

FURTHER DISCUSSION ITEMS:

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

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

EXAMPLE: Chapel Hill –neighborhood conservation districts regulations – parking

Standard Regulation

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

Administrative exception for duplex and triplexes

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

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

7.6. - Nonconforming parking areas in front yards.

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

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

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

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

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

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

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

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

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

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

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

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

2.3 THE COMMUNITY

2.3.2 Community Character

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

2.3.3 Housing and Neighborhoods

- A.** The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.
 - A.1** As road widenings are proposed, carefully evaluate their potential impact on the integrity of residential areas, pedestrian-oriented commercial districts, and the ability of bicyclists and pedestrians to function in the affected area.
 - A.2** Prepare at least two neighborhood plans, working closely with neighborhood residents, and incorporating the full range of neighborhood issues to include: land use, traffic, housing, neighborhood business services, infrastructure improvements, parks and recreation needs, crime and safety.
 - A.3** Prepare a document readily accessible to the public that details residential zoning areas and the date on which each was implemented.
 - A.4** Establish a planning and development policy that protects older established residential neighborhoods from the negative effects of adjacent commercial development.
 - A.5** Establish a task force to determine how like communities successfully enforce their existing residential codes. Items requiring focused attention: Detailed analysis of implementation and enforcement. For example, penalties, personnel requirements, budget implications, long-term effect on town character and economic development.
 - A.6** Implement a residential zoning enforcement policy based on the task force analysis above.
- B.** Street system designs which discourage through traffic on purely local streets while allowing for free circulation within the neighborhood shall be encouraged.
- C.** Proposed residential development which would expose residents to harmful effects of incompatible development or to environmental hazards shall be prohibited.
- D.** Innovative and flexible land planning and development practices shall be encouraged to create livable developments which better safeguard land, water, energy and historic resources.
- E.** Factors in determining preferred locations for high density residential development shall include: close proximity to the university, employment or shopping centers; access to major thoroughfares

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and the transit system; the availability of public services and facilities; and compatibility with adjacent land uses.

- F. The affordable housing needs of area residents, particularly elderly and low to moderate income residents, shall be recognized in Town policies and actions regarding residential development.
- G. Compact, full service neighborhoods, offering opportunities for living, working, shopping, and gathering places, shall be encouraged in newly planned developments, as well as for redeveloping areas.
- H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

PLANNING BOARD REPORT/RECOMMENDATIONS

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

Vote 1: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because:

Note 1

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

Note 2

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

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

TOWN COUNCIL ACTION

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

Vote 1: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because:

Note 1

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

Note 2

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

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