

TOWN OF BOONE
UNIFIED DEVELOPMENT WORKSHOP 1
FEBRUARY 28, 2013 5:11 P.M. UNTIL 8:06 P.M.
MEETING MINUTES

Town Council Members Present: Mayor Loretta Clawson, Lynne Mason, Rennie Brantz, Allan Scherlen and Andy Ball

Planning Commission Members Present: Vice-Chairperson Greg Simmons, Susan McCracken and Tom Purpur

Staff Present: Bill Bailey – Director of Planning and Inspections, Jane Shook – Planner, Christy Turner, Planner and Marlene Crosby-Board Secretary

Others Present: Greg Young, Town Manager and Sam Furguele, Town Attorney and Pilar Fotta, Director of Cultural Resources

CALL TO ORDER

Mayor Clawson called the meeting to order at 5:11 p.m. She welcomed everyone present at this meeting.

Mayor Clawson said that Mr. Bill Bailey, Director of Planning and Inspections Department has requested to postpone the second Unified Development Ordinance Revisions workshop from Wednesday, March 6, 2013 until Monday, March 25, 2013 beginning at 5 p.m. and to add to the next Town Council agenda the changing of the date of the third UDO Revision workshop.

Town Council Member Brantz made a motion to grant these requests, seconded by Town Council Member Mason.

VOTE:

Aye – All (Brantz, Mason, Scherlen)

Nay – None

The vote was unanimous.

Mr. Bailey began by stating that this meeting is a workshop with the purpose of giving out information on the UDO revisions and to receive feedback for the staff to review before the public hearing on this topic. Mr. Bailey said the staff is seeking feedback from everyone especially from the development community.

Mr. Bailey said the staff has not received any emails regarding the UDO Revisions workshop draft. Mr. Bailey said everyone is welcome to email the staff all of their questions or comments. Mr. Bailey said that all questions and comments from this workshop will be outlined for the Planning Commission members and Town Council members for their review.

Mr. Bailey gave an overview of titles one through three, which contains articles one through ten at this workshop.

Mr. Bailey said the entire Unified Development Ordinance has been reformatted to a numerical format that will allow for easier updating. Mr. Bailey said the revisions are an attempt to remove unnecessary and duplicate language throughout the entire document. Mr. Bailey said the entire UDO has been rearranged so the UDO is laid out in a logical format. The new arrangement includes “Titles” which allow the Articles to be grouped by overall topic headings (see below):

Title 1 General Provisions

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Article 2 Administrative Mechanisms

Title 2 Review and Approval Article 3

Permits Article 4

Subdivisions

Article 5 Appeals and Interpretations

Article 6 Board of Adjustment Hearing Procedures

Article 7 Nonconformities

Article 8 Historic Preservation

Article 9 Amendments

Title 3 Enforcement

Article 10 Enforcement

Questions and Feedback

Article 5: Appeals and Interpretations

Q: Planning Commission Member McCracken said what is the expected time to get a response for a text interpretation based on the submission of an application. (Related to Section 5.030.02 Text Interpretation, page 5-6)

A: Mr. Bailey said there is a standard application process that would normally apply to an amendment unless it is spelled out differently. Mr. Bailey said the yellow highlighted text in this draft document needs further discussion. Mr. Furguele said this text change makes the interpretation subject to an application instead of a phone call response, noting that the decision of the application can be appealed. Mr. Furguele said a written response process allows all of the staff to be officially aware of the text interpretation request.

Q: Mr. James Milner asked Mr. Bailey if the text interpretation section was going to be added to appeal to the Board of Adjustment. (Related to Section 5.030.02 Text Interpretation, page 5-6)

A: Mr. Bailey said the text interpretation is in the existing ordinance and it will not be added specifically to this section of the text. There is a section of the current ordinance that says any decision made by the administrator can be appealed. Mr. Furguele said there is a definition in the current UDO on the text interpretation and the proposed text change has made it clearer.

Article 7: Non-Conformities

Q: Mr. James Milner asked Mr. Bailey if the value of the development Included land and structure.

A: Mr. Bailey said it is the entire proposed development which would include the land and the structure.

Q: Mr. Craig Adams asked about the six months' time period to rebuild.

A: James Milner from the audience offered an explanation using the example of a residential home that has burned down with four unrelated people living in it, the owner has to rebuild based on the proposed text as written, they would have to have four unrelated people in that structure again.

Q: Planning Commission Member McCracken asked if there are any exceptions for historic non-conforming structures that were destroyed over 50% of the value.

A: Mr. Bailey said the staff did not address Historic structures in this draft document because the Historic Preservation Commission members are about 75 percent complete on working on the revisions to the design guidelines. When the design guideline revisions are complete, those revisions will be incorporated into the UDO revisions.

Q: Mr. Laughlin from the audience asked is the short timeframe you have to be occupied again aimed at trying to remove the non-conforming use; he said it is not practical to have only twelve months to get permitted and to do the work.

A: Mr. Bailey said you do not have to wait six months to get a building permit. Mr. Bailey said you have one month to get building permit and 11 months to do the work. Mr. Furguele said you should not wait too long to get the building permit because there may be impacts on adjacent property owners.

Additional comments:

Mr. Laughlin said that he thought the short time period is not practical. Mr. Milner said the conflict is you get to continue the use but you have to remove the structure. Mr. Furguele said the structure and the use are different concepts and they can act independently. Mr. Furguele said that the percentages, time limits and the tiers can be changed.

Q: Mr. Matthew Long, General Contractor from Capehart and Washburn, LLC said the renovations could easily exceed the 10 percent of the tax value of a development when you include lighting and landscaping standards, in regards to the tiered system.

A: Mr. Furguele referred to the extent practicable located in C-1, Tier 1 which allows flexibility.

Q: Mr. Milner said that the value of the development is composed of two numbers the land and the building with the land cost being the driving force. He said this is a radical change to how the ordinance is currently written.

A: Mr. Bailey said there have been changes to parking lots that quickly add up to 50 percent of the cost of a development, in addition to the lighting, landscaping and storm water improvements. Mr. Bailey said that if there is a change of use the applicant has to bring the whole site into compliance. Mr. Furguele said that the tiers can be changed or moved around in the proposed text. Mr. Furguele said that 75 percent is full compliance with the ordinance.

Q: A person asked about if you buy a property for \$1.5 million and it is worth \$1 million and you have to stay within the 10 percent or 25 percent threshold, which cost to you have to use.

A: Mr. Bailey said that they use the tax value as the standard but a different value could be demonstrated. Mr. Furguele said the purchase price is the best determination of value but the administrator does not always have access to the purchase price which shifts the burden to the applicant to demonstrate a different value, if needed.

Article 3: Variances

Q: Craig Adams said he would like to see a definition for the word “hardship.”

A: Mr. Furguele said he thinks it is difficult to do because the courts have said a hardship is not just a financial consideration and a hardship is fact specific and there are some indications that the hardship should be related to the land. Mr. Bailey said per the courts to grant a variance there must not be any reasonable use for the land on a lot by lot basis. Ms. Jane Shook, Planner said there is some guidance for granting variances in section 3.11.03 – 3.11.07 of the revised text.

Ms. Shook welcomed all suggestions for changes to be sent to the staff that would improve the draft document.

Planning Commission Member McCracken suggested having a web-based draft document with references to the articles and links. Mr. Bailey explained this Word document has crashed many times due to the volume of it. Mr. Furguele said if feasible the staff may want to create a companion draft document without the red strike throughs that will be easier for the Town Council and others to read through the approval process. Mr. Bailey encouraged everyone to attend the workshops and give their feedback on the draft document.

Article 6: Board of Adjustment Hearing Procedures

Q: Town Council Member Rennie Brantz asked can it be a problem if the record is gone due to the requirement of the statute to only retain documentary evidence for two years.

A: Mr. Bailey said that the staff takes photographs of the evidence for the file and returns the actual evidence to the applicant. Mr. Furguele said he would like to see in the future, a computer file on each property in the town’s jurisdiction to contain the history of it.

Article 7: Nonconformities

Q: Town Council Member Allan Scherlen suggested having a menu of options for the applicants to pick from in Tier 1 or Tier 2, if it was more appropriate for the property.

A: Mr. Bailey said this is a good idea and that the staff will look into it.

Discussion ensued on the formatting of the titles and articles.

Article 2: Administrative Mechanisms

Q: Planning Commission Vice-Chairperson Greg Simmons pointed out an inconsistency in C. Appointment of Members to the Board of Adjustment 2. ETJ Appointments b. ii. and iii. Regarding the words, “if despite” these words are in ii. and not in iii. He said why are the Town Council members being bound by a different standard.

A: Mr. Bailey said this text language came from the state statute.

Q: Planning Commission Vice-Chairperson Greg Simmons pointed out an inconsistency in C. Appointment of Members to the Planning Commission 2. ETJ Appointments b. ii. he said this section of the draft document does not read the same. He said he wanted to make sure this was not on oversight.

A: Mr. Furguele said this needs to be reviewed to make sure it is not an oversight because the board appointments should be uniform.

Q: Planning Commission Member McCracken asked if the word “unwilling” be changed to “fails to appoint”. She said the way these words are stated in the draft document sounds like a value statement.

A: Mr. Furguele gave the history of the Board of Commissioners saying there used to be an understanding not written in the UDO that the BOC would appoint one of the two qualified candidates sent before them. The BOC was unwilling to appoint the members that were sent to them by the Town Council. Mr. Furguele said the only statutory requirement is for the candidate to be qualified.

Q: Planning Commission Member McCracken asked about the open meetings law regarding the Planning Commission, Community Appearance Commission, Historic Preservation Commission, Tree Board and the Board of Adjustment. She said there is not as much detail written for the Board of Adjustment.

A: Mr. Bailey said it is because the Board of Adjustment is a Quasi-Judicial board and a lot of their laws are found in the Rules and Procedures book.

Q: Planning Commission Vice-Chairperson Greg Simmons asked if not enough qualified ETJ residents can be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county.

A: Mr. Furguele explained the direction of the Town Council and the part that the Board of Commissioners played in this decision. Mr. Furguele said that we should not have to go outside the ETJ to find qualified people to serve on the town's boards and commissions. Mr. Bailey said by state law the ETJ members have to be proportionally represented in the town. Mr. Furguele said the staff will examine this wording to make sure there are no inconsistencies.

Article 1: General Provisions

Q: Town Council Member Lynne Mason asked what does this sentence mean "protect and balance private property rights; and" she said this is not clear to her.

A: Mr. Furguele said this refers to next door neighbors.

Q: Planning Commission Vice-Chairperson Greg Simmons pointed out the word "city" needs to be changed to "town."

A: Mr. Bailey said the staff will make this change.

Q: Planning Commission Vice-Chairperson Greg Simmons pointed out that the term "town" should be added to this section to read: The term "town" as used alone shall refer to the Town of Boone, North Carolina.

A: Mr. Bailey said the staff will make this change.

Planning Commission Vice-Chairperson Greg Simmons suggested removing the words himself and herself and alternating between feminine and masculine

Article 4: Subdivisions

Q: Town Council Member Lynne Mason asked why is major subdivision listed before minor subdivision.

A: Staff said they would look at revising so that the subdivision information is in logical order.

Article 7: Nonconformities

Q: Town Council Member Lynne Mason asked about the 180 days and then going to six months for the discontinuance of Nonconforming Uses.

A: Mr. Furguele these are two different standards. Mr. Furguele advised against changing the 180 days and they are not continuous. Mr. Furguele said the six months are continuous. Mr. Bailey said one of the reasons that the staff left the 180 days in the proposed text was because they wanted the days to be counted. Mr. Furguele said this is the current standard and we have no license to change the standard.

Q: Planning Commission Member McCracken talked about when the use is resumed within 12 months, she wondered if the building permit could be applied for within six months and completed within a certain period of time.

A: Mr. Furguele said yes this could be done because as long as a building permit is issued and some work has been done on the project, a building permit can be kept open indefinitely. Mr.

Bailey said if the insurance money could be received quickly they could have their building permit within one month.

Q: Town Council Member Lynne Mason agreed with Member McCracken because there needs to be time for getting the building permit and for the insurance process.

A: Mr. Furguele said that the town does want nonconforming uses changed to conforming uses.

Q: Town Council Member Lynne Mason asked if the staff has a number of non-conforming uses.

A: Mr. Bailey said the staff does not have a count and the staff does not have the GIS capability to locate this information. Mr. Furguele said non-conformity is based on a complaint and it goes through a hearing process. It is good to hear from the neighbors of the property because they might know more about it.

Town Council Member Rennie Brantz asked if the proposed language is allowing more flexibility for non-conforming properties. Mr. Bailey said we yes depending on what the non-conformity is. Mr. Furguele said the change in use is loosening and the tier system is tightening.

Town Council Member Lynne Mason talked about the lighting issue. Mr. Furguele said they learned how small the costs are for lighting based on a high project cost, when talking with Mr. Brian Johnson, Urban Design Specialist.

Mr. Bailey said the staff will present the revised lighting standards in a separate form to the Town Council at the 2013 Planning Retreat.

Planning Commission Vice-Chairperson Greg Simmons asked if the section excluding lay testimony is a new section. Mr. Furguele said it is new because the general public does not have this knowledge and the general assembly passed it.

OTHER COMMENTS BY TOWN COUNCIL OR PLANNING COMMISSION OR STAFF

Mr. Bailey reminded everyone that the second UDO Revisions workshop will be on Monday, March 25, 2013.

ADJOURNMENT

This workshop meeting was adjourned at 8:06 p.m.

Loretta Clawson, Mayor

Marlene Crosby, Board Secretary