TOWN COUNCIL AND PLANNING COMMISSION
SPECIAL PUBLIC HEARING MINUTES
MONDAY, APRIL 22, 2024, 6:00 PM
1500 BLOWING ROCK ROAD AND VIA WEBEX SOFTWARE

COUNCIL MEMBERS PRESENT: Mayor Tim Futrelle, Mayor Pro Tem Dalton George, Eric Plaag, Virginia Roseman, and Edie Tugman

PLANNING COMMISSION MEMBERS PRESENT: Adrian Tait-Chair, Frank Veno-Vice-Chair (via WebEx), and Smith Warren (via WebEx)

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Mike James-Commercial Zoning Administrator (via WebEx), Jessica Mitchell-Advanced Planning Specialist, Brandon Wise-Environmental Specialist (via WebEx), and Brenda Henson-Board Secretary (via WebEx)

OTHER TOWN STAFF/REPRESENTATIVES PRESENT: Allison Meade-Town Attorney

---

Call to Order

Mayor Futrelle called the Town Council to order at 6:01 p.m., and Chair Tait called the Planning Commission to order at 6:01 p.m. The meeting was held in the Town Council Chambers at 1500 Blowing Rock Road and via WebEx.

Moment of Silence

A moment of silence was observed.

PUBLIC HEARING

Case A24-0242 RR Building Height – UDO Text Amendment

Town of Boone Unified Development Ordinance text amendment to modify the maximum building height in the Residential Rehabilitation zoning district.

Case A24-0242 (this case) is a companion text amendment to Case A24-0073 RR to Compact Neighborhood. Case A24-0073 was heard at the March public hearing, and the Planning Commission made a recommendation of approval with recommendations. Case A24-0073 is scheduled to be heard by Town Council on May 8, 2024. During the public hearing for this case, it was agreed that an amendment to modify the building height for the district was needed and that it should be sent to the April 22, 2024 special public hearing.

Ms. Jane Shook, Director of Planning & Inspections for the Town of Boone, presented the case as it was outlined in the meeting packet. She directed Council and Commission members to page 4 of the meeting packet that contained a summary of the number of stories of structures located in the RR zoning district according to Watauga County tax information. There were 16 one-story single-family homes, seven 1-story single-family homes with a basement, one 3-story single-family home, one 1-story two-family home with a basement, one 1.5-story two-family home with a basement, and one 1-story religious assembly with a bell tower.

Ms. Shook provided the revised definitions of attic story and basement story and the new definition of story as shown on packet page 9.

Council Member Plaag asked why the phrase 'with an attic story or a basement' was removed from the Height Table under R1S. Ms. Shook replied that the standards were referenced in Subsection 14.06.03(F), as noted in the Table so the extra wording was removed. Council Member Plaag noted that in the preservation world, an attic story was referred to as a half story. Ms. Meade stated that the term attic story came from the North Carolina Building Code.

Council Member Tugman asked what constituted a basement. Ms. Shook replied that when more than 50% of a portion of a building was below grade it would be considered a basement. Council Member Tugman asked what the new house on North Street would be considered. Ms. Shook responded that the house would be considered a 3-story house, which was currently allowed in residential zoning districts. Council Member Tugman stated that the house was incongruous with the area and the neighborhood was upset.

Ms. Meade noted that per the NC Residential Building Code an attic story includes any story situated wholly or partly in the roof, so designated, arranged, or built as to be used for storage or habitation. If an attic that is accessible by a fixed stairway has a 7' clear height for greater than 50% of the floor area of the story below, then the space shall be considered a story. Council Member Plaag asked that this definition be used in the proposed text.

Council Member Tugman asked if the text could include a height limit in feet instead of stories. Ms. Meade stated that defining the basement and attic stories effectively created a cap on building height.

Ms. Shook reminded everyone that the proposed text was for the RR zoning district only.

Council Member Plaag stated that he was okay with the proposed language but would like to add a height limitation such as the maximum height to the peak of the roof line could not exceed 20' above the average grade for the lower story not including the basement. Ms. Shook replied that a requirement of this type would create the need for homeowners to submit grading plans showing contours and elevations, which would be an added expense to the homeowners. She suggested using the language proposed by the Planning Commission for flag lots that took the median of the adjacent properties and allowed new construction to be one full story above the median of the houses around it. This could also be changed to an attic story instead of a full story.

Mayor Futrelle invited public comment on this case.

Ms. Katie Mack stated she lived in Junaluska and was on the Junaluska Heritage Association. She expressed concern with the narrow streets that did not have sidewalks in her neighborhood. Ms. Mack noted that the new 3-story home on North Street obscured the mural and the Mennonite Church. She stated that it was looming and out of character with the neighborhood. Ms. Mack added that the need for affordable housing could cause more tall buildings to be built.

Ms. Peggy Laine stated she was confused by the discussion. She asked why the Junaluska neighborhood was not zoned R1 so it would have the same regulations as other single-family neighborhoods. Ms. Laine stated that what happened in the Junaluska neighborhood should not happen in any neighborhood.

Ms. Diane Blanks stated she agreed with the comments of Ms. Mack and Ms. Laine. She added that the neighborhood was upset by the inappropriate tower of a house that was built in their neighborhood. Ms. Blanks stated that the Town could do better by a community that had been there for 160 years.

Council Member Plaag asked Ms. Shook to explain why the RR district was being renamed. Ms. Shook stated that the Residential Rehabilitation district description needed to be updated because it no longer reflected the character of the district. She noted that the Junaluska neighborhood was a very specific neighborhood with smaller homes on smaller lots that did not meet the standards of the R1 single-family

zoning district. Ms. Shook stated that the building height in the residentially zoned districts had been the same since at least 2004, or longer. She added that the whole idea behind the changes to the building height in the RR was to strengthen the standards within this area to provide more protection.

Ms. Shook asked if there was consensus to move forward with applying a mean height of other houses in the district to determine the maximum height of any new construction. Council Member Plaag stated that he supported the suggestion. Other Council members agreed.

With nothing further, Mayor Futrelle closed the public hearing for this case at 7:03 p.m.

Case A24-0070 Transitional Zone/Neighborhood Protection – UDO Text Amendment

Modify the current transitional zone process requiring board approval (if a transitional zone was triggered) to create administrative standards that apply to all projects adjacent to protected residential areas. The intent of the amendment is to create, revise, and strengthen neighborhood protection provisions within the Unified Development Ordinance (UDO) to ensure compatibility between development intensities and to improve effectiveness and clarity in the application of standards.

Ms. Shook presented the case as it was outlined in the meeting packet. She noted that the transitional zone text was originally adopted in 2010. The Board of Adjustment had heard 38 Special Use Permit requests with transitional zone mitigation, with only one denial. The Planning Commission and Town Council had heard 23 Conditional District Zoning Map Amendments with transitional zone mitigation, with four denials. Ms. Shook stated that the denials were not necessarily related to transitional zone mitigation.

Ms. Shook noted that this text amendment would remove all references to the transitional zone from the UDO and Neighborhood Protection standards would be incorporated. Section 4.07.03 would require applicants who received a zoning permit for any principal use allowed by right on a parcel that was adjacent to a residentially zoned property to post notice of the permit approval at the main access point of the proposed development with language that coincided with North Carolina General Statute 160D-403(b). Ms. Shook stated that the notice must be posted ten days before the commencement of construction to provide neighbors with notice of the construction.

Ms. Shook referred to Section 14.03.07(D)(1) and (2) regarding maximum building heights of structures on non-residential zoned or R3 zoned properties, noting they could not exceed the maximum height set forth for the adjoining residentially zoned property unless they met an additional setback of 1.5' for each foot in height above that maximum height.

Ms. Shook stated that landscaping requirements for the U1 University District would change, requiring the University to comply with the Town's landscaping standards as noted in Section 14.29.05. Additionally, a change was proposed for drive-through facilities to require that they be designed so that menu boards and order windows were no located on any side of the building that faced an adjacent residentially zoned property. As shown in the meeting packet, parking and landscaping standards for Neighborhood Protection areas were created and Article 31 Landscape Standards was revised to be easier to read.

Ms. Shook noted that the staff was not able to complete all of the changes suggested by Town Council to the Table of Principal, Accessory, and Temporary Uses. The additional changes would be presented at a future public hearing. Ms. Shook stated that the Table of Principal Uses had been revised to reflect the replacement of transitional zones with new requirements, such as a Conditional District approval.

There was no public comment on this case.

Council Member Plaag stated that he, Mayor Pro Tem George, and Ms. Shook met multiple times to go through the Table of Principal Uses. He noted that making some of the uses acquire Conditional District approval provided a legislative process to hammer out some of the concerns brought up in the community about things like drive-throughs, car washes, and gas stations. Council Member Plaag stated that the perception was that Council was approving these projects so it made sense to have Council approve them. He added that a lot of the Town's corridors were in a small area planning vision so this amendment would give Town Council some flexibility to help shape the appearance of those corridors.

Ms. Meade cautioned Town Council members that they may inadvertently politicize decisions that were being currently made by staff, or the Board of Adjustment under quasi-judicial or mandatory standards, by having so many uses go through the Conditional District process. Ms. Meade added that she understood that Council felt they were the best place to weigh the public benefits and interest, however she noted the amount of time this could take when their schedules were already extremely full.

Council Member Plaag asked if Conditional District approvals had to meet UDO requirements. Ms. Shook replied that they did. Council Member Plaag stated that the CD process versus the Special Use Permit process gave Town Council the ability to negotiate conditions on projects they felt might have an adverse impact on adjoining neighborhoods or uses, with the project still having to meet UDO requirements. Ms. Meade replied that she was speaking about projects as of right versus CD. Council Member Plaag stated that once the Town got mass and scale more accurately reflected in the ordinance they could revisit the Table and reassess what could be allowed as of right.

Council Member Roseman expressed concern that Town Council would be taking on work that they already had a Board to do. Ms. Shook stated that this text amendment could change how Council functioned. She noted that an applicant would need to know the date of their hearing with Council and Planning Commission and the date of the Council meeting for the final decision. Adjacent property owners would also need this information. Ms. Shook suggested that map amendments could be heard one month and text amendments the next month. She noted that this would mean that Council would meet with the Planning Commission every month.

Council Member Tugman stated that the intention in making this shift was to eliminate the complication of the transitional zones and the confusion they created, to expand protections to neighborhoods, and address issues with development that nobody wanted to see.

Council Member Roseman stated that they would need to be careful when considering cases so they did not set a precedent. Ms. Meade responded that no case, whether it was before the Board of Adjustment or Town Council, was a precedent for another. She stated that the law needed to be applied and interpreted consistently and each case was a unique case.

With nothing further, Mayor Futrelle closed the public hearing for this case at 8:01 p.m.

Case PL05640-040822 Lighting – UDO Text Amendment

Modify UDO Article 25 Community Appearance Standards to reflect lighting industry changes and lighting design best practices. In conjunction with the Community Appearance Commission evaluating current Community Appearance Standards, Planning Staff has evaluated the current lighting standards by meeting with lighting design professionals, dark sky advocates, and local energy providers to discuss current lighting practices and areas of improvement.

Mr. Jessica Mitchell, Advanced Planning Specialist, presented the case as it was outlined in the meeting packet. She noted that the text was originally presented to Council last May and was discussed at the May and July 2023 public hearings. In September the text was discussed by Town Council to provide staff with further direction regarding nonconformity and sunsetting. Ms. Mitchell referred to Section

7.05.02(C) which highlighted an area for discussion that stated *When used, compliance "to the extent practicable" shall exclude any item in which the cost of compliance exceeds ?% of the project cost.*

Ms. Meade stated that renovation costs could cause an owner to rethink doing a project if the cost triggered a tier that required even more costly modifications to be done. She added that the phrase "to the extent practicable" put the staff in an impossible position to enforce.

There was a discussion regarding the cost of lighting changes. Ms. Shook noted that lighting was very expensive, especially if poles had to be replaced. It was suggested that pole heights be placed as a Tier 4 requirement.

Mayor Pro Tem George stated that there was a lot of light pollution and he would like to sunset Kelvins.

Ms. Mitchell asked if it was correct that Tier 3 would be for all other requirements of Article 27 Lighting Standards, except for pole heights, pole heights would be placed in Tier 4, and there would be no percentage of the project cost in Section 7.05.02(C) in the text highlighted for discussion. There was consensus of Council and Commission members for these items.

Ms. Mitchell referred to Section 27.01.03(B)(2) which provided a sunset date of January 1, 2026, for non-compliant decorative lighting. Ms. Meade stated that any type of sunsetting raised the risk of litigation. She suggested, instead of sunsetting, that the lighting referred to in 27.01.03(B)(2) be placed as a Tier 1 requirement. Council members agreed.

Ms. Mitchell noted several other text changes, including revisions to the Outdoor Recreation Lighting. Council Member Plaag asked why the language was revised to say the outdoor recreational facility lighting shall not be at full intensity three hours after the event ends. He stated that seemed vague and suggested that the language specify that the lights either be turned off or require some percentage of whatever full intensity was. Ms. Shook stated that she had spoken with ASU about their stadium lighting and they were unable to dim them. However, they were looking at other possible options. Ms. Shook encouraged this as a topic for a Town/Gown discussion.

There was no public comment on this case.

With nothing further, Mayor Futrelle closed the public hearing for this case at 8:40 p.m.

Adjournment of Town Council

Council Member Roseman made a motion to adjourn the Town Council at 8:40 p.m. The motion was seconded by Council Member Tugman.

Vote: Aye – 4
Nay – None

The motion passed.

_____ _____

Tim Futrelle, Mayor **Brenda Henson, Board Secretary**

_____

Adrian Tait, Planning Commission Chair

PLANNING COMMISSION MEETING

Chair Tait called a break in the meeting from 8:40 p.m. until 8:43 p.m.

Due to the hour, Planning Commission members discussed dates to continue the Planning Commission meeting. A continuation meeting was scheduled for Thursday, April 25, 2024, at 2:30 p.m. via WebEx.

Adjournment of Planning Commission

Chair Tait made a motion to adjourn the meeting at 8:51 p.m. Vice-Chair Veno seconded the motion.

Vote: Aye – 3
Nay – None

The motion passed.

_____ _____

Adrian Tait, Planning Commission Chair **Brenda Henson, Board Secretary**