

**TOWN OF BLACK MOUNTAIN
PLANNING BOARD**

The Black Mountain Planning Board held its regular meeting on Monday, August 23, 2021, at 6:00 p.m. electronically via Zoom.

I. CALL TO ORDER

The meeting was called to order with the following members present:

Chris Collins, Chair
Pam Norton, Vice Chair
Chas Fitzgerald
Kathy Phillips
Shawn Slome
Rick Earley

Absent:

Lauronda Teeple

Staff:

Jennifer Tipton, Senior Admin
Jessica Trotman, Planning Director
Jake Hair, Planner
Anna Stearns, Town Attorney

The meeting was called to order at 6:04 p.m. and duly constituted and opened for business with a quorum of six (6) regular members.

II. ADOPTION OF AGENDA

Chris Collins made a motion to adopt the agenda as presented. The motion was seconded by Chas Fitzgerald and approved by a vote of 6-0.

III. ADOPTION OF MINUTES

Shawn Slome made a motion to adopt the minutes of July 26, 2021, as written. The motion was approved by a vote of 5-0 with Chris Collins abstaining.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Election of Officers

Kathy Phillips nominated Chris Collins for Chair. The motion was seconded by Rick Earley and approved by a vote of 5-0 with Chris Collins abstaining.

Chris Collins nominated Pam Norton for Vice-Chair. The motion was seconded by Rick Earley and approved by a vote of 6-0.

2. Proposed Text Amendment – Food Trucks

Jessica Trotman explained that staff has brought forth a proposed ordinance for food trucks to have some regulations that will help with safety issues. The Town wants to encourage food trucks while also being respectful of the brick and mortar restaurants. The proposed ordinance

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requires that food trucks be permitted, have written permission from the owner of the property, provide confirmation or certification from the Health Department, have a limit of 120 days, cannot be left unattended, cannot have any illicit discharge, cannot leave garbage on the site, must be ten feet away from any structure, and must be fifty feet away from any operational restaurant. Restrooms are not required for food trucks. While food trucks are already required to have commissary kitchens and have specific health and safety requirements through the Health Department, the Town does not have any authority to enforce those requirements. Allowing food trucks as a permanent use will have different questions that will need to be asked and could result in a separate set of regulations. Kathy Phillips said that she did not support the limit of 120 days or the distance of fifty feet from any operational restaurant. Ms. Phillips said that food trucks are attractive to the Town and we do not want to discourage them. Ms. Trotman said that we want to remain cognizant of the expectations of the district and make sure that we are not allowing something that would not otherwise be allowed. Concerns were expressed about the fifty foot distance and that most of the downtown area would be excluded from having food trucks. Ms. Trotman did say that food trucks are meant to be on private property with the permission of the owner and not on public property and are good for areas that don't already have food, such as a brewery. The board asked about allowing long-term or permanent food trucks and Ms. Trotman said that safety concerns would need to be looked at, such as traffic, combustible materials, distances, vehicle traffic, and pedestrians and that the threshold of requirements would have to increase to accommodate long-term or permanent food trucks. The board also asked if the requirements would apply to special events or if someone wanted to have a bake sale in a parking lot or if a Girl Scout wanted to sell cookies in a parking lot. Ms. Trotman explained that special events would be covered by the special event permit and that the regulations would only be for food trucks that are permitted by the Health Department. There will not be any new health regulations but regulations that can be enforced by Town Staff. The board asked that staff remove the 120 day requirement and the distance from operational restaurants and look at adding regulations for long-term or permanent food trucks. Staff will speak with the Fire Inspector on fire code regulations between permanent and temporary food trucks and will bring back that information to the board.

3. Proposed Text Amendment – Sign Ordinance

Jessica Trotman explained that the sign ordinance text amendments are in two sections, the definitions and the actual sign ordinance. The definitions are teased out as they will go in Section 1.2.3 with all of the other definitions. The definitions include premises, sign, and temporary sign. Other definitions may be added if needed.

The proposed sign ordinance will replace the existing sign ordinance in its entirety and will comply with the Supreme Court ruling of Reed v. Gilbert. The proposed ordinance prohibits content regulations and focuses on the location, manner, and time. The proposed ordinance is more modern and graphic than the existing ordinance. Anna Stearns told the board that when reading the proposed ordinance to focus on why we want to regulate signs. Ms. Stearns said that there needs to be a straight line from the regulation to the reason why the regulation was adopted. The Town looked at sign ordinances from Raleigh, Charlotte, Chapel Hill, Winston-Salem, and Buncombe County to help draft the proposed ordinance. While there are still some content-based signs (such as yard sale signs and campaign signs), the goal is to get away from commercial/industrial signs and have regulations based on the property, such as location, size,

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and time. Chas Fitzgerald asked about removing string lights from being prohibited as a lot of restaurants use those for their outdoor dining area. Mr. Fitzgerald also asked about the size allowance for crown signs and feels that eight feet tall on a building seems excessive. Kathy Phillips asked about the digital signs and if they would be grandfathered in. Ms. Stearns explained that grandfathering what is existing is the cleanest method and then whatever is new or replaced would have to comply with the new requirements. Chris Collins asked that the requirement for keeping signs out of the right-of-way be kept and that staff still be allowed to remove temporary signs. Mr. Collins also questioned the spacing for ground signs. Amortization, where non-conforming, pre-existing signs would have to comply with new regulations after a certain amount of time, is possible but it is very complicated and with the passing of 160D, the town is now liable for attorney's fees for the opposing party. Ms. Stearns suggested having the ordinance be cut and dry and allow for grandfathering until such time that a change for the sign is requested, such as a change in use or an update to the sign. There was a question about murals and it was explained that murals are not signs, however, sometimes signs can be murals. Murals and/or artwork in downtown is still subject to Historic review. Whether or not a sign is a mural or a mural is a sign will depend on the definition. Ms. Trotman recommended that the board read over the proposed ordinance and send any comments or questions to her before the next meeting. Staff will update the draft and bring back to the board at the next meeting.

4. Training with Town Attorney

Anna Stearns began the training by explaining the differences between legislative, quasi-judicial, and administrative decisions. Legislative decisions are policy making decisions by the Town Council and can have political ramifications. Examples include text amendments and development agreements. Quasi-judicial decisions involve a judicial process and ask if the applicant is entitled to what they are asking for. Examples include variances and special use permits. Administrative decisions are typically made by staff as they objectively apply the ordinance. State statutes require that the Town have a Planning Board if they have zoning regulations. Ms. Stearns went over the duties that are granted to the Planning Board by the statutes, including reviewing and commenting on proposed text and map amendments, written recommendations for adoption of regulations, and advise and comment whether proposals are consistent with the comprehensive plan and other adopted plans as applicable. Town Council may assign additional duties to the Planning Board. Ms. Stearns went over the sections in the Land Use Code that spell out the duties of the Planning Board. Ms. Stearns spoke about the open meetings law and particularly email communications and to not reply all when responding to an email. Ms. Stearns spoke about the differences between public hearings and public comments. Ms. Stearns spoke about the conflict of interest requirements and those are laid out in both the ordinance and in the Boards and Commissions Handbook. Ms. Stearns then spoke briefly about the comprehensive plan, zoning decisions, subdivisions and street closings. There two Legislative Board Workshops being offered by the UNC School of Government and most board members have already signed up for one of the sessions. These workshops will be led by Adam Lovelady and will provide some additional information for members. Ms. Stearns said that citizens may speak to applications and the applicant may take that feedback and change their application but members cannot point back to those comments to approve or disapprove an application. Ms. Stearns also spoke about the Code of Ethics policy and reminded everyone that they are to remain transparent. Ms. Stearns also spoke about the attendance requirements. Ms. Stearns reminded the board that they are representatives of the Town and must be an impartial

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arbiter of the Town so that the public can have confidence in the board. The comprehensive plan is required to have zoning regulations and sets out the goals, policies, and programs to help guide the development of the town. Zoning decision comments and recommendations must be made in writing and the Town Council can always consider a zoning decision regardless of the board's recommendation. Street closings are a recommendation only but the final decision is a legislative decision. In order to close a street, it must not be contrary to the public interest and it must not deprive any owner of ingress or egress. The Town may reserve easements that are in the public interest, such as utility easements. Shawn Slome asked if the Town could do a comprehensive conversion to easements but retain the right for ingress and egress on the rights-of-way and alleys. Ms. Stearns said that is not possible as each closure is on a case by case basis and a document has to be recorded with a description of the area to be closed. At that time, the property is then added to the tax base while all rights-of-way and alleys that are not opened or closed remain untaxed. Ms. Stearns spoke again about emails and that it is possible for a couple of members to email each other but it cannot be enough members that it would constitute a quorum as then it would have to be noticed as a public meeting. Ms. Stearns advised members against discussing applications outside of the meetings and to come to the meetings ready to hear the applications. Ms. Stearns said that members are obligated to vote unless there is a conflict of interest and that if a member refuses to vote but does not have a conflict of interest then that vote is required to be in the affirmative. Ms. Stearns said that she is unsure if it is legal to broaden the financial conflict of interest for the Planning Board as they are only a recommending body. Ms. Stearns advised members that if they have any questions, to speak to staff first and then staff can email her or Ron Sneed if needed.

VI. COMMUNICATION FROM PLANNING BOARD

None.

VII. COMMUNICATION FROM STAFF

None.

VIII. ADJOURNMENT

Chas Fitzgerald made a motion to adjourn at 8:03 p.m. The motion was approved by consensus with a vote of 6-0.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin