

Cashiers Area Community Planning Council

Minutes

January 10, 2022

5:00 p.m.

Albert Carlton Community Library, Community Room

Members	Present	Absent	Members	Present	Absent	Members	Present	Absent
Daniel Fletcher	X		Sonia Morales		X	Dr. Douglas Homolka	X	
David Bond		X	Carole Stork	X		Michael Cox	X	
Glenn Ubertino	X							

Staff Present

Michael Poston- Planning Director
John Jeleniewski- Senior Planner
Anna Harkins- Planner I
Heather Baker- County Attorney
Allison Kelley- Administrative Assistant III

Call to Order

Chairman Michael Cox called the meeting to order at 5:05 p.m. and a quorum was present.

Additions to/Approval of the Agenda

Carol Stork made a motion to approve the agenda as written. Glenn Ubertino seconded the motion, and it carried unanimously.

Approval of Minutes

There were no minutes to approve.

Public Comment

- Mary Palmer Dargan: Ms. Dargan stated months of review of the United Development Ordinance (UDO) has resulted in positive forward motion. The proverbial genie is out of the bottle. This review is working to represent the highest and best future for our community and its environment, and thank you for your hard work today. There is still some work to be done. Develop Cashiers Responsibility is an organization of which I am a member, it consists of a very large group of diverse community members such as homeowners' attorneys, developers, commercial business owners, real estate agents and technical professionals. We recognize that the higher the UDO restrictions are written, the higher quality of life we will see in Cashiers, we are not anti-development, just pro responsible development. Points regarding the proposed UDO update included 1) clarification of parcel ownership, proposed developments should show a site plan that includes adjacent properties; 2) define who owns contiguous properties, such as affiliates and relatives of the developer. The next three points are about preservation of our fragile watershed, its trees and its natural filtration system for stormwater require topographic contour intervals to be spelled out in the UDO. This enables the calculation of slopes on the site plan, and further clarification of existing and proposed slopes should be shown with differential shading between the 15%, 25% or 30% and greater than 35% to graphically understand what is going on. As you all know, rapid erosion occurs in a flash with our heavy downpours, especially if it's saturated for several days. Silt flows into our

trout streams and clogs drains. The more impervious surfaces on a property such as buildings, drives in large parking areas, the faster the water moves across the terrain. Please consider producing the maximum impervious surface limit from 70% and based on topography, not a blanket overlay. Every piece of land is individual as a fingerprint. Please see the exact these examples that are put into a folder for you of Black Mountain Asheville Ordinances. Lastly, I suggest an application including trees over 18 inches to be included in the proposed master plan as she is a landscape architect.

New Business

a) **Public Hearing: Proposed Amendments to the UDO Article IX Section 9.3**

Chairman Cox opened the public hearing at 5:13 p.m.

Mr. Poston summarized the proposed amendments to the Unified Development Ordinance (UDO) that were previously discussed and explained that the amendments aimed to improve processes. Some key points he made:

- The amendments define what should be included in development applications and require community meetings to get public feedback.
- Notification requirements were added, such as mailed notices to adjacent properties and newspaper notifications.
- The amendments update the square footage thresholds that trigger a special use permit, with 4,000 square feet for the Village Center district and 6,000 square feet for the General Commercial district.
- Traffic Impact Analysis requirements were brought in from other parts of the ordinance for larger developments.
- Recommendation from Mr. Fletcher regarding adding the word schematic site plans versus conceptual plans
- Permitted and prohibited uses were updated based on previous discussions, with the understanding that the list will continue to evolve over time.
- Added Maximum Floor Area Ratio (FAR) is 1.5.

Doug Homolka inquired if staff has heard anything that the Jackson County Board of Commissioners are not comfortable with the changes that we are proposing. Ms. Baker stated no, not at all.

Mr. Cox opened the public comment section of the hearing.

- Troy Lucas: Mr. Lucas stated he was with Daniel Communities and was not a resident of Cashiers. He has watched the process for the past year and a half and in his observation of the community as an outsider Cashiers has a very efficient input process in town, because you are such a small community. Regardless of which side of the pendulum you fall on in that process, there is a pretty good feedback loop. He has watched things that are going on in town now and how those conversations start to influence things. In addition, he stated I believe instead of codifying and continuing to codify you really start to force developers to develop in the lowest common denominator and it becomes less interesting, less organic, and less highly designed and more predictable. Versus a process that has a community meeting and things in place that allow the opportunity for input and thoughtful conversation. He stated they are not codified and they may not affect the change, but the Council has been good at making sure that there is some influence there through lots of different leverage points. He stated he encouraged the Council to kind of wrap up this process, let the ULI process to go forward and continue those conversations as a positive momentum in the community starting to happen, he would let that happen. There is always going to be disappointments

on both sides, but if you are willing to continue to talk, he is encouraged by watching that.

- Bill Horton: Mr. Horton stated he wanted to talk about rain and slope as the way it is currently worded it says there needs to be topography that it does not specialize intervals, it would be on the topo maps. He stated he believes it is something that would be important, not only that there be some specification of intervals but they be fairly tight, 5 feet, maybe 10 feet max. We have a very unique kind of topography in this area with this small plateau plus mountains on both sides. If we are going to talk about anything beyond 35% slope, which is really the only slope that is sort of called out now. The USGS, there is many different forms of landslides, but slopes 20 to 40% is theoretically potentially a landslide based on the soil type, rain and water, etc. We really need to be paying attention to the slopes as low as 15%, and he believes there is a lot of logic behind considering calling out slopes and blocks with five-degree intervals, 15 to 20 or 10 degree intervals. Below 35% we need to pay attention to as we have flooding on Frank Allen Road, we have all sorts of neighboring problems related to slope and he believes it is related to that. In addition, he stated impervious surface may not be fair game for tonight, but we almost got double the rainfall that Asheville has significantly more rainfall than Sylva. He stated he believed our impervious surface limits that are currently in there are probably not appropriate for the type of slopes and the kind of rain we are dealing with. We need to think about that as modifying these codes to be really well tuned for our environment in this particular area that we are trying to take care of.
- Richard Ott: Mr. Ott stated he would like to echo what Mr. Horton said in regards to the slopes, and would suggest that we look at Black Mountain and see how they dealt with it, as it is more in keeping with our topography than it is with Asheville. The other issue is that he would like to raise was that he was surprised to see the discussion of having a four-story structure here Cashiers. We know that in Highlands the tallest building is old and has three stories, he asked the Council to consider restricting it to three stories only because it's more in keeping with the overall plan of the Cashiers central district and the topography here. He stated that has to be taken into consideration when you are talking about the difference between three stories and four stories, and to his knowledge there is nothing here that is over two stories and he believes going to four stories is just a little too much.
- Ben Hill: Mr. Hill stated the work of the Planning Commission and the Planning Council has been terrific on this, and the fact that it has been circulated so widely is a real plus, because a lot of people were not familiar with some of the things going on. He addressed the notice requirements amendment and it is currently requirement to notify people within 1,500 feet of the development. His suggestion to the Council that is too small of an arrogant, and it should be expanded. The reason why is that one of the things not being admitted is one of the criteria, the review standards for special use permit. One of those standards is the proposed use and development of the land will be in harmony with the scale, bulk coverage, density and character of the community. He stated he has a feeling that we need to give notice to more in the community more than 1,500 feet because he believes that would bring in more people and more interest as we have already seen from the hillside development experience that really triggered and involved this community. He believes it is a real plus for the community and for the Council. He strongly urged that the Council expand that 1,500 feet to enlarge the range

maybe a mile in order to get community involvement, and the community needs to be involved.

- Robin Walker: Ms. Walker thanked each Council member as they have been very patient throughout this whole process, listened to the community and considered suggestions. She stated she knows it is a long, difficult process sometimes but she thought last meeting was really great that the Council was able to reach a compromise with the 4,000 and the 6,000. She would like to ask if the Council would consider on that same section, instead of changing to three or more units that could be the trigger, if the Council would consider keeping it at two or more units which was what it was under the previous version as she believes that is a good standard. For example, there are lots of things that have developed that have two units attached or something you might see frequently. In addition, she wanted to reiterate what was said about the height and even if that is for another meeting to please consider going back to 35 feet, three-story height. Lastly, she hopes that the Council will consider the traffic carefully and the standards as one of the things you have to look at with a special use review is whether the proposed use will cause undue traffic condition or create a traffic hazard and that is really hard to review as those are kind of technical. She stated the Council should think about what type of information they need to really make that call because it can be difficult, but there are a lot of different types of developments that can create a lot of traffic congestion.
- Craig Pendergast: Mr. Pendergast thanked the Council for taking the time and adding your expertise to the process and listening to the really good expertise that is coming in from the community. He stated the Council has a packet from Develop Cashiers Responsibly of a list of some suggested changes and questions and he hopes they take that into account. He stated he was a lawyer, and lawyers deal with words and both words and ordinances matter. It is important to try to get it as right as possible as ambiguity, vagueness, inconsistency are not anybody's friends, whether it be the County or applicant, it is good to know what it is calling for. Oftentimes things get written particularly at the local ordinance level that are not as clear as they could be and can result in unintended consequences. Mr. Pendergast highlighted the list in the folder provided to the Council and stated number five is really important. It is saying you all need to have a definition of property owner when it comes to dealing with if somebody is going to have to make a special use permit application because they own two or more contiguous properties, in which case, you are totaling up the square footage to consider do they need special use permit? That term owner is gameable by folks, because you can now have one LLC for lot number one, one LLC for lot number two, one LLC for lot number three, and the same person controls each of those LLC's. He stated that suggestion there is define owner to include affiliates and relatives, an affiliate is something that is controlled by the same person effectively, or that it controls them. That is really important as otherwise, you are going to see that as part of the hillside with an application with 50 different owners or lots all on that steep hillside, and they are going to try to avoid the special use permit process that way. Mr. Pendergast highlighted number six and he stated the existing code does not exempt single family residential properties from special use permit. A single house is not going to have to get a special use permit, but if you have two or more that is part of the development, and they total up under this new standard to 4,000 square feet or more in the Village Center, or 6000 square feet. If you exempt single family, that is a change from what is there as it is not for a single house, but it's for a development. He believes it is important to keep that opportunity of this

Council through the special use permit process to have some say so over what happens otherwise, it's kind of anything goes. The suggestion that was already made that DCR supports is changing to a lower height limit is good, but it's probably something to deal with later, since it was not on this particular change. However, he stated we really encourage you to take that up soon before we find a bunch of four-story proposals coming in that you will not be able to stop. He stated regarding number seven, he does not know how it got changed and he was hoping it was just a typo by mistake, but it was that you were considering combined square footage for two or more buildings. The amendment was proposing to only have to be for three or more buildings, that's leaving a doughnut hole as they say, where two buildings just would not be considered for some reason. He stated he does not believe there has been a problem with that, and typically you do not make changes unless there is a problem to fix. He stated he would suggest leave it as is or two. Regarding the transportation study, he is not sure where the 100 peak hour and 3000 daily average trips thresholds came from, but they smell like an urban area that has a much more expansive transportation system than Cashiers and it is not already overburdened. He stated he suggests to reducing those numbers.

Chairman Michael Cox closed the public comment section of the hearing.

Mr. Cox stated I think a good point has been made about quantifying the typography. He stated he remembers speaking to one of the local surveyors here and he believes the County GIS does 4 foot and 20 foot topo lines, but he does not think that is what is standard in surveying. He inquired from staff what is the standard when you hire a surveyor to do a topographic study, is it 2 foot and 10 foot. Mr. Jeleniewski stated 2 foot and 10 foot topo lines are pretty standard for a typical designer you would see in the mountains and the flatter parts of the region, you may go to 1 foot and 5 foot. He stated it is LIDAR information, it is laser data that's collected from aerial scans. In addition, he stated he had 4 foot contours in AutoCAD and he can take a parcel of land and recreate it into 1 foot, 5 foot or 2 foot contours. Mr. Jeleniewski stated it is based on the scanned image or the information that is collected. Mr. Cox stated he would probably go with 10 foot contours because it is a real contour that that builders are actually use to seeing here that they probably have to use to develop. Mr. Poston suggested, that if the Council wants to do that, he would say no greater than 10 foot contours. Mr. Poston asked for a consensus from the Council and the Council all nodded in agreement.

Mr. Ubertino stated a similar discussion around the slope, because he thinks that is a great point too because 15% is something to consider. Mr. Poston stated the reason why we went with 35% version is because it is from the Mountain and Hillside Development Ordinance (MHDO) and that is what we have standards to address the slope. The MHDO regulations start at 35% and that is the level that we have standards that would address that. If the Council wants to take a look at for information purposes what these slopes are they can do that, however as of now we do not have any standards that would trigger any different review. In addition, he stated he believes this is part of that discussion about how you want to handle imperviousness and slope.

Mr. Jeleniewski stated the MHDO already exists, it has a minimum lot size starting at 35% at two acres and then graduates up every percentage point. That standard has been applied to developments and applications in the past that this Council has reviewed. Mr. Poston stated the MHDO first started at 30% and over time we worked with some geologists and individuals with Appalachian Land Surveying and in 2015 we amended the 30% to go to 35%. The MHDO is a County wide ordinance, and based on the discussion from those professionals in the area and where we saw slope failures in the

County that is why that ordinance was adjusted to 35%. Mr. Jeleniewski stated the Board of Commissioners hired Appalachian land consultants to study the whole County for a lot of different things, and they documented existing slides and potential caution areas, etc. He stated that study took about a year and a half, and they developed the report and we have mapping that shows this data information that was collected. In addition, he stated their data showed that a slide started 36% and that is why 35% became the trigger in the MHDO.

Mr. Fletcher inquired where did the change from 2 units to 3 units come from. Mr. Poston stated that came through the last work session and was where the Council was based on staffs notes.

Mr. Cox stated he did not think there is really a doughnut hole, because at two buildings it does not automatically trigger a special use permit. However, if either two buildings are in excess of the size, it triggers it or if you build three buildings of any size, it triggers it. He stated the only thing we are going away from is for example, if you were to build in the General Commercial district, two 2999 square foot buildings, it would not trigger a special use here, because if there were two combined, it would have come out to 5998 square feet. There is not a doughnut hole where if you build two buildings, you could build two empire state buildings, but if you build three you have to come in front of us. In addition, he stated if he is reading the words right no matter what it has to stay under the limits. Mr. Poston stated it is saying that 6000 in this case would be a triggering unit, and when they have three or more buildings or units whether attached or detached.

The Council unanimously agreed for the special use trigger to reduce the number to two or more buildings for both Village Center and General Commercial districts. Mr. Cox inquired if there were any other comments or questions from the Council, and if not, he asked for a vote regarding the three changes that includes not greater than 10 foot topo, and the special use trigger for both the Village Center and General Commercial districts of two or more buildings.

Mr. Poston reported that he believed these changes are consistent with our land use plans, land use recommendations, and that some of these changes are in the small area plan. In addition, he stated our land use plan in the land use section talks about us modernizing and keeping modern ordinance structure, because things change and we need to keep up with that. He stated for those reasons, he believes that these are consistent.

Mr. Homolka made a motion to approve with the following changes, "no greater than 10 foot topos" for the formal submittal requirements and change to "two or more buildings or units whether attached or detached" for the special use triggers for both the Village Center and General Commercial districts. In addition, the motion included that these text amendments are consistent with the adopted land use plan. Mr. Fletcher seconded the motion, and it passed unanimously.

Chairman Cox closed the public hearing at 6:09 p.m.

b) Conditional Zoning

Mr. Poston stated they have brought this concept to the Council this past spring, and conditional zoning is a different type of approval vehicle and structure. This is a process that currently is in the Cullowhee area but it is not quite as robust. He stated it is a tool we believe that are worth adding to all three zoning districts as a process and procedure for evaluating. This process is not a quasi-judicial process, it would be a rezoning of property and every property owner in our regulated districts has a zoning designation and in the Cashiers area it is either Village Center District or General Commercial District. The conditional zoning process allows for a more traditional public

hearing process, this review process is optional and it would be up to a property owner to make that request of whether they want to go through the quasi-judicial process or the conditional zoning process. The conditional zoning process also allows for a little more negotiation between the County and developers in keeping the community character in mind and more discussion about development impacts and how we might go about mitigating those impacts.

The Board of Commissioners are the only ones that have the authority to enter into contracts. However, the conditional zoning is a legislative process and it would still start here at this level with a recommendation, then go to the Planning Board, and then to the Board of Commissioners with recommendations for final disposition of making that decision. However, if you can come to an develop agreement with the developer, you may you may be able to address and mitigate some of those concerns the community and Council have that you would not necessarily be able to do as easily in a quasi-judicial process. The biggest change with conditional zoning is that it allows a lot more community input throughout the process.

Ms. Stork inquired why would a property owner not want to use conditional zoning. Mr. Poston stated some projects are more complex than others. For instance, a straight forward application that would trigger a special use permit is a 4500 square foot building in the Village Center. The next step in this discussion is to kind of broach this with the Commissioners as this process is not something that we have done a lot of but could be an effective tool for especially for larger developments. In addition, he stated he did not know that this is the right tool for every development that comes down the pike, and he believes they would still see some quasi-judicial types of development. However, for larger scale developments it may allow more flexibility in how we address and mitigate that outside of a quasi-judicial procedure.

Mr. Cox inquired is there a stated trigger for Cullowhee for conditional zoning. Mr. Poston stated it is not really a trigger, and to move this option we will have to develop it and you would have to make a request to go to conditional zoning. In Cullowhee, we have not had a conditional zoning request because the process is not as well defined as what we would do. He believes conditional zoning can be a beneficial tool as we move forward with larger scale development, especially regarding things that the County does not solely control such as transportation and other things. Mr. Poston stated this is a newer tool and forms of this has been going on for 34 years in the state of North Carolina, mostly in urban areas and that has transitioned over the years where we start to see a lot more jurisdictions and smaller jurisdictions making use of these procedure options. In addition, he stated so far, we have received some positive feedback from the other two planning councils, and we are looking for feedback from this Council as we start to think about this concept.

Mr. Poston stated if the conditional zoning decision were to be appealed it would be to Superior Court. Ms. Baker stated it is very rare and unlikely that you would see a conditional zoning decision made at the County Commissioner level appealed to Superior Court. For a quasi-judicial case it is not that unusual, because if this Council was is in a quasi-judicial process and the decision is made, one side is not going to be happy, either parties with standing is not going to be happy or the applicant developers, and that is a pretty quick avenue. However, because of the process that you go through for conditional zoning, the standards are not so clear and there is a lot of room for community input, negotiation, and there is very little to appeal when you get to that point and you do not see that very often. She stated this is not the driving force, although it is across the state, you are seeing a lot more municipalities and more counties go to conditional zoning. There have been changes made in legislation to the quasi-judicial process that basically say, if this Council does not do everything exactly right through the process, that not only

if you get appealed to Superior Court on a decision by either side, then the County can be responsible for attorney fees if they find that you have not followed the process exactly, which is almost impossible to do. Therefore, a lot of counties, governing boards, towns, municipalities are getting away from quasi-judicial and going to conditional zoning because it is a liability issue as well. In our particular case, that is a side effect and as a county attorney she is happy about that effect, but the reason that got staff to start talking about conditional zoning was the desire for more community input.

Mr. Homolka stated he was still concerned that this process is removing the community from a position of having a say. Mr. Cox stated he believed it would give the community more power and the Council less power. He stated he appreciated that we have this board and then our decisions matter. However, at the same time, he saw what a straitjacket the quasi-judicial process was, and how, as counsel people we have to stand separate from everybody and stand as a judge. With the conditional zoning process, we would actually be able to talk to people and ask what is their opinion. The conditional zoning process would be for larger projects, and the Council would have to decide what that larger project is. The Council asked staff to continue to work on this, bring back language with some buy in from the County Commissioners and a reasonable trigger.

c) ULI Scheduling

Mr. Poston stated the meeting is an open forum and we will have to notice the ULI meetings as a public meeting because we anticipate the majority of the Council to be present and a quorum. There would be no agenda no discussion of any business, the meeting would be called to order to allow ULI to do their presentation and then they would adjourn the meeting.


Monday, January 24, 2022 at 5:00 p.m. at the Village Green is the kickoff meeting for the ULI process. Friday, January 28, 2022 at 9:00 a.m. at the Village Green ULI will be sharing their initial thoughts and results of the process. He believes the final document would be received around six to eight weeks.


Glenn Ubertino made a motion to call for the special meetings on January 24, 2022 at 5:00 p.m. and January 28, 2022 at 9:00 a.m. located at the Village Green. Doug Homolka seconded the motion, and it passed unanimously.

Adjournment

With no further business to discuss, Doug Homolka made a motion to adjourn. Glenn Ubertino seconded the motion, and the meeting adjourned at 6:31 p.m.

Respectfully Submitted,


Allison Kelley
Administrative Assistant


~~Michael Cox~~
Cashiers Planning Council Chairman
