

Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met in person at 3:30 p.m. on Thursday, January 5, 2023.

Call to Order/Roll Call

Chairman Jones called the meeting to order at 3:30 pm.

Voting Members Present: M. Jones, J. Kluttz, K. Jones, F. Gammon, B. Skelly, H. Whittaker, T. Taylor

Voting Members Absent: A. Hallman & T. Finlay

Non-Voting Members Present: Commissioner Munger, J. Simoneau, T. Barron, E. Sloop, and J. Glass

Non-Voting Members Absent: None

Approval of Minutes

Item 2A. Consider approval of the December 15, 2022, Regular Meeting Minutes

Motion: J. Kluttz made a Motion to Approve the December 15, 2022, minutes. H. Whittaker seconded the motion.

Vote: The motion passed unanimously (6-0-1) with T. Taylor abstaining because he was not in attendance.

Public Comments

Commissioner D. Boone, 317 Southland Drive thanked (the members with terms expiring) T. Finlay, T. Taylor & B. Skelly for their service on the Board.

Action Agenda

Item 4A: Consider recommendation on petition TA22-12, a Town Board sponsored text amendment to Article 4, Urban Workplace and Shopfront Building Types to clarify how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director stated that staff's recommendation remains the same and staff is available to answer any questions the Board may have. Staff shared with the Board the alternate language provided by F. Gammon to the Board.

F. Gammon commented that he has drafted the proposed language after speaking with the members of this Board for whom he has phone numbers, as well as Commissioners with the goal of getting this amendment moved along in the approval process.

Motion: F. Gammon made a Motion to Approve TA22-12 move forward to Public Hearing, Planning Board recommendation and Town Board decisions as written with the following change, delete first floor diagram wording in section two and section three and replace with,

“100% commercial use of first floor area; however, up to 40% residential and/or non-residential floor space may be allowed. Any additional residential or non-residential floor space shall require conditional rezoning.” The HOAB feels that the rewording of the proposed amendment provides multiple zoning districts adaptability allowing mixed-use building to be configured for success based upon their specific site locations. The recommendation is based on the amendment being consistent with LU-6, LU-7, LU-10, EV-1, EV-2, D-1, D-10 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment clarifies first floor residential and commercial area requirements.

E. Sloop commented for clarity that the proposed language is contradictory because commercial use is non-residential use.

K. Jones seconded the motion.

F. Gammon provided comments on the motion he put forth stating that he requested the Planning Department consider if there is a different need for floor space requirements within the Town Center district, based on a discussion he had with A. Hallman. Also, that the Planning Department address the concerns the Commissioners raised at the Public Hearing which included comments from Commissioner Boone to consider orienting first floor commercial use space on primary streets. F. Gammon stated he did not add this to the motion at this time because he believes it needs to be fully researched for the best application across multiple zoning districts and varied street styles. F. Gammon then shared, Commissioner Phillips mentioned not regulating commercial spaces on first floor for the disabled and elderly since most of these types of buildings do not have elevators and that while there are age restricted accommodations there may be a need for an elderly or disabled resident to reside near a place of care or family member where single or multi-storied housing where accommodations do not exist. Lastly, Mr. Simoneau's comments that requiring an applicant to return to the Town Board would add a month to the process. This is valid, but it's currently taking 4+ months for approval and I provide Birkdale and Northstate as examples.

J. Kluttz asked about the concerns brought up by E. Sloop.

F. Gammon commented that he is open to amending the motion. He wrote it as 100% commercial use not commercial which is the defined term in the Zoning Ordinance. There is other commercial not defined in our commercial use which is non-residential.

M. Jones commented that there are uses that are neither commercial or residential that non-residential incorporates. Staff confirmed there are some uses that are not under commercial use or residential use such as a school. M. Jones commented that if we don't have non-residential in the amendment then those uses would not be allowed in that first floor.

H. Whittaker asked staff to review what led to the proposed language. Staff stated we were originally comfortable with non-residential. There was a desire of the Town Board to have more

commercial uses for the first floor and staff was asked to prepare an amendment. Staff proposed the amendment with up to 50% residential or commercial use because it was the sense that this is what the Town Board wanted and that is why non-residential use is not included in what staff proposed.

F. Gammon asked E. Sloop if after hearing the reasoning there were remaining concerns. E. Sloop stated that as worded there is an internal conflict since all commercial is non-residential. F. Gammon said he is willing to amend it and asked if there are commercial areas that could be put on the first floor that is non-residential that is not listed in commercial use. E. Sloop stated that there are non-residential uses that are not commercial that could go there and it is her understanding that the desire of the Town Board was to indicate the use would be commercial so she is not sure this wording meets the goals of the Town Board. Additionally, she would not recommend stating that a developer could request a modification of the ordinance. The developer has the option to seek a conditional rezoning but we do not call that out in every single instance so she would not recommend doing that in this instance either.

F. Gammon commented that he is willing to remove non-residential from the motion at this time so that the item can move forward and could be added in the future if valid.

Amended Motion: “100% commercial use of first floor area; however, up to 40% residential floor space may be allowed. Any additional residential or non-residential floor space shall require conditional rezoning.” K. Jones seconded the amendment.

K. Jones expressed concerns over removing non-residential as an option stating that a small start-up church would not be allowed.

F. Gammon commented that he would prefer the statement be written out that a conditional rezoning is required for any alterations. Staff commented that because it is not written out in every other instance it raises the question of why it is not listed elsewhere.

M. Jones stated he understood that the Town Board wants to focus on commercial and our Ordinances currently allow 100% of first floor to be non-residential. As originally written up to 100% is the interpretation of commercial on the first floor but then you can have the ability to have 40% of your residential or non-residential uses. So, we are making it more restrictive on the first floor not allowing non-residential uses if we remove that.

K. Jones followed up and said that is where she had concern because daycare is allowed under commercial, but a small start-up church would not be allowed because they are non-residential and she would like them to have the same opportunities. Staff stated that as originally proposed they stuck with the term non-residential and there were some concerns from this committee and Town Board so we are comfortable leaving it commercial use.

M. Jones commented that the 40% residential or non-residential allows for some flexibility and does not restrict the non-residential uses in the first floor of the building. Without that

statement there is effectively a minimum of 60% commercial required. For this reason A M. Jones asked F. Gammon if he would withdraw his amendment. F. Gammon agreed and withdrew his amendment. K. Jones seconded withdrawing the amendment.

M. Jones commented that there is a motion on the floor, but it does not include the interpretation aspect that would provide a more comprehensive solution. F. Gammon commented that he supports the things M. Jones has written but he would prefer to see it as a separate text amendment. M. Jones asked if F. Gammon would amend his motion that HOAB will sponsor that as a separate text amendment. Staff confirmed we will handle the interpretation piece next, and no amendment is necessary.

J. Kluttz asked if Staff was fine with the motion and asked why we do not suggest it. Staff responded that our recommendation is to remain at 50% commercial while acknowledging that the proposed motion could get you to 60% commercial, so it is close, but because the simpler you make it to develop here the more attractive you make it. Through the research of neighboring communities, the goal is to not create a regulation that is a disincentive. The second reason Staff is not comfortable with what is being proposed is because of the wording outlining the conditional rezoning exception. In staff's opinion the only difference between the proposed amendment and staff's wording appears to be an increase of 10% of commercial use and staff would simply word that differently.

F. Gammon asked what happens when you are not building in Town Center, you are building in a node, and you want to come back to the Town Board and say you want to build 40% commercial and 60% residential and non-residential. The flexibility is there for any building in any zoning. E. Sloop expressed concern about the numbers not adding up and there being conflict in the statement.

Following discussion as to what the percentages would allow and how this could be interpreted, M. Jones recommended the motion first state, "Up to 40% residential and/or non-residential floor space, or commercial use only." Staff stated that the wording works for staff.

B. Skelly commented that this wording still does not appear to resolve the conflicting issue as stated by E. Sloop. It appears that the same could be accomplished by adjusting staff's proposed wording to 60% commercial. Staff asked if the wording could be adjusted to, "Up to 40% residential and/or non-residential (not including commercial uses), or commercial use only."

F. Gammon stated he thinks commercial use should be mentioned first as this is the primary goal. He offered a rewording of, "Commercial Use or up to 40% residential of the first-floor area." Staff confirmed that avoids the non-residential confusion. He asked if the Board agreed that met the objective. M. Jones said he could live with it.

K. Jones asked for confirmation that a developer could still go through conditional rezoning and commercial on the first floor could be reduced to 20%. Staff confirmed that is always the case

but it is a four and a half month process and the applicant would be opening themselves up to all different things in that process.

Commissioner Munger followed up on the statement made by B. Skelly that adjusting staff's proposed wording to 60% commercial would in his opinion achieve the intent of what the Board is discussing while resolving the legal intent issues that have been raised.

Revised Amended Motion: "Commercial Use or up to 40% residential of the first-floor area."

Vote: The revised amended motion passed (5-2) with H. Whittaker and B. Skelly opposed

Staff introduced the Rules of Construction which are located in the Subdivision Ordinance section 2.2 and Zoning Ordinance article 12.1 which M. Jones sent out to the Board with his suggested changes and was included in the agenda packet.

M. Jones reviewed his recommended changes, highlighted in yellow of the document in the agenda packet, and explained why he thinks this would assist with the consistency of interpretation of the Ordinances. He then reviewed the rules of interpretation that Adam Lovelady wrote and explained that this would create a set of guidelines or buffers that everyone can operate in to make sure things are being consistently interpreted.

Commissioner Munger asked what the impetus was to bring this before the HOAB. M. Jones responded it was comments from the Town Board pre meeting that the Northstate project would not have been supported if the specific amount of square footage had been laid out. The interpretation of the motion and the results made him think that we should look at this to see if there is a consistent and clear process for interpretation so that conditions that the Town Board imposes, the intent of those conditions are accurately put into place. Commissioner Munger asked if there was a specific request by Town Board, Staff or Town Attorneys to have this reviewed. M. Jones confirmed there was not.

H. Whittaker asked M. Jones what is being decided here. M. Jones said the Board is deciding if they want to incorporate this into the text amendment TA22-12 to make a more comprehensive solution. M. Jones stated that as he saw it the problem wasn't really our text in our ordinance it was the process of interpretation of conditions imposed by the Town Board. Staff responded that the issue was how you treat shared space. The Town Board said you can do less than 50%, basically 34% non-residential. The ordinance that this Board just made a recommendation on said that shared space is not going to count towards commercial. If it is shared and has any component of residential it goes to residential. When the Northstate floor plan came in for staff review, staff went to the maker of the motion for clarity on interpretation which meets the legal requirements from School of Government but did not meet the expectation of the Town Board so in the future if there is ambiguity staff will go to the entire Board.

E. Sloop encouraged the Board to review the four pages of notes she replied to the Board with regarding the many legal reasons not to codify these points for interpreting ordinances and case law into our Ordinances. The takeaway that Professor Lovelady put into this conference was not to go change your rules of construction but to review your ordinances for areas of ambiguity and fix those areas of ambiguity. E. Sloop stated that she did research of other jurisdictions in North Carolina and she could not find any other jurisdiction that has codified these rules of thumb or guiding principles for ordinance interpretation.

Additionally, certain motions that the Town Board makes create vested rights so if you try to go back and ask for guidance on what the intent was for that motion it doesn't make a difference because a vested right was created and exists so the best practice would be not going back after the fact and asking for clarification it would be to make sure the motions are very clear on the night they are made and that all Board members and Staff understand the intent on that night. The Town Board was given best practices in motion making and they opted not to create a policy so she does not feel that a unilateral suggestion to put forth a text amendment that was not suggested or put forth by this entire Board but by a single member is the route we should be taking. M. Jones commented that the Board will need to decide to move forward with this or not.

M. Jones then pointed out that in the document before the Board, A. Lovelady recommends based on case law not relying on statements from individual Board members for interpretations. He then asked E. Sloop if she has sent out a memo to make sure that staff is complying with the visual properties case, the case law associated because if we exceed our authority on case law or statute we can be put in legal peril. E. Sloop responded she has not sent staff a memo, but she did reply to these points in the four pages she wrote to this Board for this meeting and staff has that same information.

M. Jones referred to the highlighted portion of page 29 of the agenda packet and the notes that E. Sloop provided the Board and read from the case law to be clear on what the court thinks on that aspect from the visual properties versus the Village of Clemmons case. He then asked E. Sloop if she thinks it would be a good idea to inform staff that this is how the ordinances should be interpreted otherwise we are going to into trouble or we should just codify it because then everyone knows. It is a good idea to codify things because we have to regularly amend things and law and legislation are constantly fluid.

Commissioner Munger referred to page two of the Code of Ethics, section B and stated that in his opinion at this point the Chair is serving his own personal public interests and he has crossed several boundaries today which is unacceptable behavior and should be noted for the record. M. Jones asked what boundaries he has crossed. Commissioner Munger responded by referring to the section B again.

Commissioner Munger stated that the HOAB was founded to handle issues that staff, the attorney or the Town Board specifically ask the HOAB to address. It appears that this topic is a personal agenda as staff and the attorney have stated that there is no point in doing this which

comes off to Commissioner Munger as something self-serving and is specifically addressed in the Code of Ethics.

M. Jones commented that this Board has a duty to ensure compliance with Town authority, the legal aspects, case law, constitutional limits and this is in that realm which is why he has brought it up. To make sure that our Ordinance is compliant and protect the public from unnecessary litigation expenses so that taxes are not raised for the residents when some simple changes to our Ordinance to make sure we are consistent in the way things are interpreted.

Commissioner Munger commented that we disagree, and he would refer to the legal department to determine if this topic is necessary for the HOAB to consider and to make a recommendation for the HOAB to consider this.

F. Gammon requested a five-minute recess. M. Jones asked if there was any objection. The Board voted unanimously (7-0) to recess.

The Board reconvened at 4:46 p.m. M. Jones made a statement apologizing for speaking over any fellow Board members or staff. M. Jones commented that he is passionate about protecting the public interest and tax payers of the Town and he invests a great deal of time towards that interest. If that is not coming off then he apologizes. In the best interests of this Board and Staff and for the public interests he would like all to work in a more collaborative fashion instead of one that is possibly adversarial.

M. Jones asked if the Board has any questions or would like to consider something like this into a recommendation with text amendment TA 22-12, table discussion or drop the matter.

Motion: F. Gammon made a Motion to Table this discussion for further study and at which time it needs to come back in collaboration with the Planning Department that it come back. K. Jones seconded the motion.

Vote: The motion to table passed unanimously (7-0).

Item 5A: Take questions about table for UNC School of Government checklists

K. Mielenz, Planner I commented that the table staff was asked to put together has been completed and was included in the agenda packet and she is available to answer any questions that the Board may have.

M. Jones asked on the section, “amend development regulations to align appeals subdivision plat decisions with clarified statutory rules” associated with Senate Bill 768. That particular bill was signed into law on July 8, 2022 but it appears the text amendments referenced there were the year prior so he is not sure this has been addressed and taken care of. If staff could review and confirm that it has been taken care of there seems to be a date difference. E. Sloop confirmed that the ordinances are in compliance with these changes.

Item 5B: Discussion on Sub-Committees

M. Jones stated that there has been discussion about creating sub-committees to address ambiguous terms or surveys. In the past this Board had a traffic impact analysis committee. There is limited time during regular meetings and a sub-committee may be almost a work session to really dive into some of these issues and work out details and ask questions. Permanent sub-committees to address two areas, 1. Ordinance issues and 2. Planning process could be considered. He opened the discussion up to the Board.

Motion: M. Jones made a Motion to Approve forming two sub-committees with members to be determined that focuses on ordinance related issues that can provide additional research and guidance to this Board as well as one that can focus on planning processes. K. Jones seconded the motion.

B. Skelly said she would like to know if the Town Board thinks that there is a need for these sub-committees or if this Board would be voting to move this forward to determine if the Town Board thinks these sub-committees are needed.

Commissioner Munger commented that he does not see a need for these sub-committees.

J. Kluttz commented that he agrees that becoming less adversarial is going to be important and he is not sure that forming sub-committees that do not include Town Staff and Town Board is heading in that direction. He does not think we need to form any sub-committee that is not heading towards being collaborative.

K. Jones commented that she thought the sub-committees could help staff who does not have time to do this type of research and they could present their findings to staff for them to review and decide to bring forward or not.

M. Jones commented that we have a very limited amount of time during the meetings and this would allow the Board to vet out items for discussion such as mixed use buildings.

H. Whittaker commented that he is undecided and would like to see more information regarding what is being proposed and the problem he sees with a sub-committee is that if you are just going to direct those questions to staff same as this Board is doing now then you are still going to get into the same discussion and have the same questions. He is not in favor of setting themselves up to do what staff gets paid to do but he can also see some value in it.

M. Jones commented that with such a mixed response from the Board he will withdraw his motion and the Board can revisit this at a future date if it makes sense to the Board.

Item 5C: Discuss petition TA22-16, a request by the Huntersville Planning Department amending the Town Zoning Ordinance to place standards for a single multi-family home on one lot.

J. Simoneau, Planning Director stated that one issue identified by staff as a concern is one apartment building on one lot can get quite large and can be adjacent to lower density existing development. This amendment is to address the buffer requirements. This amendment is amend Article 3 to move the multi-family homes as a use permitted by right and put it as a use permitted with conditions in the NR, NC, TC, and HC zoning districts. In Article 9.64 would be amended to show different setbacks based on the circumstances involved with one building/one lot. In part B it also indicates how much buffer and screening would be required within that setback. Subsection 2 states that if it is part of a major subdivision it will be subject to this amendment. Staff reviewed the proposed amendment and provided examples of how this would have affected recently approved projects.

F. Gammon asked staff what current zones are by-right zoning for multi-family. Staff replied TC, NC, NR, and HC which are all included in the proposed amendment.

F. Gammon commented that he supports this amendment and the transparency of having this discussed in public forum with public comment. It will not stop multi-family development but the Town Board will be looped back in the discussion and not surprised by by-right development.

Motion: B. Skelly made a Motion to Approve TA22-16 as written. H. Whittaker seconded the motion.

Vote: The motion was approved (6-1) with M. Jones opposed.

Other Business

F. Gammon made a closing comment that he enjoys coming to these meetings and he continues to learn. He encouraged the Board members to attend the other Board meetings and commented this is a good Board and this is a great opportunity for the public to get involved, learn and serve their community.

Adjourn

Motion: H. Whittaker made a Motion to Adjourn. T. Taylor seconded the motion.

Vote: The motion passed unanimously (7-0).

Approved this ____ day of _____ 2022.

Chairman or Vice Chairman

Board Secretary