

**TOWN OF BLACK MOUNTAIN
PLANNING BOARD**

The Black Mountain Planning Board held its regular meeting on Monday, March 25, 2024, at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

I. CALL TO ORDER

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

Pam Norton, Vice Chair
Joe Laudenslayer
Rick Earley
Lauronda Teeple
Kathy Phillips
Chas Fitzgerald

Absent:

Chris Collins, Chair

Staff:

Jennifer Tipton, Senior Admin
Jessica Trotman, Planning Director
Russell Cate, Planner I/Zoning Administrator
Brian Gulden, Town Attorney

The meeting was called to order at 6:02 p.m. and duly constituted and opened for business with a quorum of six (6) members.

II. ADOPTION OF AGENDA

Joe Laudenslayer made a motion to adopt the agenda as presented. The motion was seconded by Kathy Phillips and approved by consensus.

III. ADOPTION OF MINUTES

Pam Norton made a motion to adopt the minutes of February 26, 2024, as written. The motion was seconded by Lauronda Teeple and approved by a vote of 6-0.

IV. NEW BUSINESS

1. Rezoning Request – 65 Fortune Street

Russell Cate gave a brief summary of the staff report. Givens Highland Farms owns property at 65 Fortune Street that is currently zoned UR-8. The property abuts the OI-6 zoning district, which the rest of the Givens Highland Farms campus is zoned and they would like for the zoning to be consistent for their properties. The property is 1.65 acres with a minimal slope.

Jim Boyer, 200 Tabernacle Road, is the Director of Facility Services for Givens Highland Farms. Mr. Boyer stated that they are looking to have the same zoning designation for this parcel as the rest of their campus. Givens Highland Farms is not in favor of higher density and the development is consistent with town needs. Mr. Boyer stated that there are no current plans or plans in the immediate future to expand housing to that area and that they are looking at adding a carport to house the housekeeping golf carts.

Planning Board Regular Meeting
March 25, 2024

Brian Gulden explained that with a simple rezoning request, the board has to consider all uses and no approval can be contingent on allowing or disallowing uses. The board cannot make or ask the applicant to exclude uses. The board has to look and determine if the rezoning request is reasonable and consistent with the comprehensive plan.

Joe Laudenslayer said that he likes the greater setbacks in OI-6 but has concerns with some of the allowable uses.

Pam Norton said that the surrounding parcels are all residential.

There is not another zoning district that can be considered because that would be considered a spot zone. Jessica Trotman said that the applicant does have the option of seeking conditional zoning.

The board agreed 6-0 that the overall size of the tract of land proposed for rezoning is reasonable compared to the size of the zoning district in which the subject property is located.

The board agreed 6-0 that the proposed rezoning is consistent with the comprehensive plan or elements thereof.

The board agreed 5-1 (Joe Laudenslayer disagreeing) that the impact to the adjacent property owners and the surrounding community is reasonable, and the benefits of the rezoning shall outweigh any potential inconveniences or harm to the community.

The board agreed 6-0 that the allowed uses within the proposed zoning district are not similar or comparable to the permitted uses as currently zoned.

Joe Laudenslayer made a motion to not recommend the rezoning of 65 Fortune Street from UR-8 to OI-6. There was no second for the motion.

Chas Fitzgerald made a motion to recommend the rezoning of 65 Fortune Street from UR-8 to OI-6 and that the overall size of the tract is reasonable, the proposed rezoning is consistent with the comprehensive plan, the impact to adjacent property owners and the surrounding community is reasonable, and that the allowed uses are not similar or comparable to the those permitted as currently zoned. The motion was seconded by Rick Earley and approved by a vote of 5-1 with Joe Laudenslayer voting against the motion.

2. Cryptomining Information

Jessica Trotman stated that Russell Cate had put together some information about cryptomining and Brian Gulden would talk about moratoriums and prohibited uses. Mr. Gulden explained that moratoriums are put on development regulations to give time to research and create or revise development regulations. They are not used to prohibit a use indefinitely. Moratoriums cannot be renewed, but can be extended with reasonable grounds. Courts have found that municipalities need to find a like use and if it finds that the authority has abused this, the courts typically rule in favor of free use of the property. Municipalities also cannot outright ban a use. Regulations have to be put in place. Ms. Trotman suggested

Planning Board Regular Meeting
March 25, 2024

considering all data centers rather than just cryptomining. The Planning Board asked that staff draft regulations for data centers to be a special use with measurable requirements and noise capped at 55 decibels.

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

Brenda Thornburg, 49 Fortune Street, said that she owns three properties surround the property Highland Farms is looking to rezone and it will absolutely change the use of the neighborhood. Ms. Thornburg said that there is a commercial gardening center being operated, trucks coming in and out every day, and the additional uses of OI-6 will affect the neighborhood.

Julia Burr, 71 Fortune Street, said that there was a two-week period where dump trucks were going in and out for eight hours a day. Ms. Burr says that they have been moving dirt and that there is a giant dirt pile and it is a construction site. Ms. Burr feels that the rezoning is not consistent.

Jessica Klarp, 71 Fortune Street, said that Highland Farms has filled containers with construction materials and that there is abandoned material there as well. Subcontractors cut through the property. Ms. Klarp said that the amount of debris makes it look like a rat's nest and that will not change and also feels that the rezoning is not consistent.

Delores Spielman, 43 Fortune Street, said that the noise is a big problem and she wanted to second what had already been said by previous neighbors.

Rick Spielman, 43 Fortune Street, asked about the process and public comment. Jessica Trotman explained that a public hearing is noticed for everyone in the town to come and speak and this meeting had not been advertised as such, so others in town did not have the opportunity to come and speak.

Sam Hobson, 48 Fortune Street, asked how you deal with an entity that you do not trust. Mr. Hobson thinks that the development will eventually come through Fortune Street. Mr. Hobson said that they will tell you one thing but then do another.

VII. COMMUNICATION FROM PLANNING BOARD

VIII. COMMUNICATION FROM STAFF

The School of Government will be hosting a legislative decisions workshop in May at the Biltmore campus of Western Carolina. Jennifer Tipton will send an email out with the date and time and the town will pay the registration fee for those wanting to attend.

VX. ADJOURNMENT

Pam Norton made a motion to adjourn the meeting at 7:33 p.m. The motion was seconded by Rick Earley and approved by a vote of 6-0.

Planning Board Regular Meeting
March 25, 2024

Prepared by:

Chris Collins
Chris Collins, Chair

Jennifer Tipton
Jennifer Tipton, Senior Admin