



TOWN OF BLACK MOUNTAIN

160 Midland Avenue ♦ Black Mountain ♦ N.C. ♦ 28711

Phone: (828) 419-9300 ♦ Fax: (828) 669-2030

MEMORANDUM

To: Town of Black Mountain Planning Board
From: Jennifer Tipton, Senior Admin
Re: Agenda Packet for April 22, 2024
Date: April 22, 2024

The **Town of Black Mountain Planning Board** will meet on **Monday, April 22, 2024, at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

Please find the following items for your information and use at the meeting:

1. The proposed agenda;
2. Draft minutes from March 25, 2024;
3. Proposed Text Amendment for Data Processing Centers.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@tobm.org or (828) 419-9371.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9371 or by email at jennifer.tipton@tobm.org.

CC: Jessica Trotman, Planning Director
Russell Cate, Planner 1/Zoning Administrator



PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING
REUNIÓN ORDINARIA

Monday, April 22, 2024, at 6:00 p.m.
Lunes 22 de Abril de 2024, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, April 22, 2024, at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C.

La Junta de Planificación de Black Mountain se reunirá para su reunión mensual regular el **lunes 22 de Abril de 2024 a las 6:00 p.m.** en el Ayuntamiento, 160 Midland Avenue, Black Mountain, N. C.

The meeting is open to the public.
La reunión está abierta al público.

Jennifer Tipton
Senior Admin

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La ciudad de Black Mountain se compromete a proporcionar instalaciones, programas y servicios accesibles para todas las personas en cumplimiento con la Ley de Estadounidenses con Discapacidades (ADA). Si necesita ayuda o un alojamiento en particular para esta reunión, comuníquese con Jennifer Tipton al (828) 419-9371 o por correo electrónico a Jennifer.tipton@tobm.org.

Posted to the Town Bulletin Board 03/28/2024

www.townofblackmountain.org



**Planning Board Regular Meeting
April 22, 2024**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Determination of Quorum

II. ADOPTION OF AGENDA

- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of March 25, 2024, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Proposed Text Amendment – Data Processing Centers

VI. COMMUNICATION FROM PLANNING BOARD

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

**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:

, Chair

Jennifer Tipton, Senior Admin

Amendment 1 – Definition

This is a proposed definition, which will be a separate text amendment.

Proposed Definition: Data Processing Facility: A building, dedicated space within a building, or group of structures located on one or more acres of land used to house a large group of computer systems and associated components, such as telecommunications and data processing systems, to be used for the remote storage, processing, or distribution of large amounts of data. Examples of such data include, but are not limited to, computationally-intensive applications such as blockchain technology, cryptocurrency mining, weather modeling, genome sequencing, etc. Such facilities may also include air handlers, power generators, water cooling and storage facilities, utility substations, and other associated utility infrastructure to support operations. May also be referred to as a “Data Center”. This definition shall not apply to smaller data processing facilities that are located on less than one acre of land and where such facilities are accessory or incidental to another primary use.

Amendment 2 – Table of Permitted Use

Add Data Processing Facility with a “S” to the HI district on the Table of Permitted Uses.

Amendment 3 – Add to Chapter 7 of the Land Use Code.

Note please also add to the draft Unified Development Ordinance once it is approve by Council

**Town of Black Mountain Special Use Permit Ordinance for Data Processing Facilities
(define using APA guidance to include data centers and cryptocurrency mining facilities of any size)**

Section 1: When Required

Data processing facilities are permitted in the Heavy Industrial (HI) district of the Town of Black Mountain. However, they must be approved by a special use permit.

Section 2: Height Restrictions

Systems, equipment, and structures within data processing facilities (excluding electric transmission lines and utility poles) shall not exceed 35 feet in height.

Section 3: Use Separation

All equipment and structures within data processing facilities shall be a minimum of fifty feet from the boundary of the facility as delineated on the site plan, and one-quarter mile (1,320 feet) from any church, school, or residence.

Section 4: Submittal Requirements

- a. A narrative describing the proposed data processing facility including an overview of the project;
- b. A site plan showing the proposed location and dimensions of all equipment, existing and proposed structures, screening, fencing, property lines, access roads, turnout locations, ancillary equipment, and the location of any places of worship, school, or residence within one-quarter mile (1,320 feet) of the perimeter of the facility;
- c. A study prepared by an acoustical engineer that describes the anticipated noise level of the facility and any proposed mitigation efforts such as sound walls, baffles, ventilation silencers, additional separation from surrounding uses, etc.;
- d. Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town of Black Mountain to ensure compliance with this ordinance; and
- e. Signature of the property owner(s) and the owner/operator of the facility (if different than the property owner).

Section 5: Structural Requirements

- a. The facility shall meet all requirements of the North Carolina State Building Code.
- b. Any electric wiring shall be located underground, except where wiring is brought together for interconnection to system components and/or the local utility power grid.

Section 6: Access

All roads providing access to the data processing facility shall be of sufficient width to accommodate emergency vehicle access as determined by the Town of Black Mountain Fire Marshall.

Section 7: Security Fencing

Security fencing, a minimum of eight feet in height, shall be provided along the entire perimeter of the data processing facility.

Section 8: Screening

The entire perimeter of the data processing facility shall be screened from adjoining properties by a vegetive buffer of at least 25 feet.

Section 9: Utility Notification

No grid-connected data processing system shall be installed until evidence has been provided by the operator that installation of the system has been approved by the electrical utility provider. Off-grid systems shall be exempt from this requirement.

Section 10: Signage

No signage shall be permitted on the perimeter fence of the scale data processing facility, with the exception of one (1) sign not to exceed 32 square feet that displays the name, address, and emergency contact information of the facility as well as appropriate warning signs.

Section 11: Noise

The amount of noise generated by the data processing facility shall not exceed 55 decibels at any property line.

Section 12: Abandonment

It is the responsibility of the property owner to notify the Town of Black Mountain and to remove all obsolete or unused systems. Any structure or equipment associated with the data processing facility that is not operated for a continuous period of one -hundred -and -eighty (180) days shall be considered abandoned, and the Town may require the owner to remove such structures and equipment within 90 days after notice from the Town. If the abandoned structure or equipment is not removed within 90 days, the Town may remove it and recover its costs from the owner. If the owner of the abandoned structure or equipment cannot be located or is no longer in business, the requirements of this section shall be the responsibility of the landowner on whose property the structure or equipment is located.