

**Buncombe County Planning Board**  
**August 20, 2018**

The Buncombe County Planning Board met on August 20, 2018 in the meeting room at 30 Valley Street. Members present were Gene Bell, Nancy Waldrop, Robert Martin, Joan Walker, David Rittenberg, Dusty Pless, Parker Sloan, Thad Lewis, and Billy Taylor. Also present were Debbie Truempy, Shannon Capezzali, Savannah Gibson, and Joshua Freeman, Planning staff, Nathan Pennington, Planning Director, and Brandon Freeman, County Attorney.

**Call to Order**

Gene Bell called the meeting to order at 9:30 am.

**Approval of Agenda**

Robert Martin made a motion to approve the agenda. The motion was seconded by Dusty Pless and passed unanimously.

**Approval of Minutes (June 18, 2018 and July 16, 2018)**

David Rittenberg made a motion to approve the June 18, 2018 and July 16, 2018 meeting minutes. The motion was seconded by Dusty Pless and passed unanimously.

**Zoning Text Amendment – Public Hearing**

**ZPH2018-00035:** Robert W. Oast, Jr. applied to revise the following sections of the Zoning Ordinance to establish standards and procedures for a “Conservation Planned Unit Development”:

- Sec. 78-581, Definitions, to add definitions for Planned Unit Development - Conservation and Scenic Resource Area;
- Sec. 78-641(a), Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts;
- Sec. 78-644, Steep Slope/High Elevation Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts;
- Sec. 78-645, Protected Ridge Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; and
- Sec. 78-678(b), Conditional Use Standards, to add a new section containing the standards required for a Conservation Planned Unit Development.

Nathan Pennington, Planning Director, provided information about the history and purpose of the Protected Ridge and Steep Slope Overlays, and staff analysis of the application. Debbie Truempy provided information about staff recommendations and the inconsistency with the Comprehensive Land Use Plan.

Bob Oast, Law Firm of McGuire, Wood and Bisette, presented information about the application and answered questions from the Board. Debbie Truempy provided information about how current Hillside subdivision and Alternative Path standards compare to the proposed amendment.

Gene Bell opened the hearing to public comment.

- David Nutter, a resident of Buncombe County, spoke on behalf of Mountain True and the Asheville Design Center. He stated that the proposal is inconsistent with the County's effort to protect environmentally sensitive areas and urged the Board to deny the request.
- Shannon Reese, a resident of South Asheville, provided the Board with photos of Sugar Mountain Resort in Watauga County as evidence of why the County has ridgetop protection standards.
- Karen Knab, of the HOA Board of Lake Mountain Estates near Overlook Road, expressed concern about infrastructure availability, development suitability, and a lack of staff resources for reviewing these types of projects.
- Bonnie Markel, a retired landscape architect, provided her analysis of potential impacts of the proposed amendments on the steep slopes, and liabilities from landslide activity.
- Roger Vaud, president of Blake Mountain Estates HOA, expressed concern and opposition to the proposed text amendments.
- Dana Bell, a citizen of South Asheville, expressed concern about a lack of sufficient infrastructure in steep slope areas, abandoned developments, and landslide potential.
- Dede Styles of Swannanoa provided information about the Cliffs of High Carolina development which was approved several years ago. She stated that after the road was constructed, the Planning Board regretted the visual impact and as a result, restricted the disturbance allowed for future development road corridors.

Bob Oast provided additional information in response to public comments.

The following additional public comment was made.

- Karen Knab stated that developments do not have to take into account access roads when designing their own internal road system.
- Shannon Reese provided information about her experience before the Board of Adjustment, and how legal limitations prevent public opinion from being taken into account.
- Dede Styles raised concern about lighting at night from these types of commercial developments.

Gene Bell closed the public comment period.

David Rittenberg made a motion to recommend denial the application. The motion was seconded by Nancy Waldrop. The Board discussed the application. Billy Taylor expressed support for the concept of conserving large amounts of land. Joan Walker expressed support for conserving large areas through a revised version of the application. Robert Martin expressed concern that the wording allows for too much discretion in the review, and clearer standards would be needed. The motion to recommend denial passed unanimously.

**Public Comment**

Dede Styles thanked the Board for the vote on this important issue.

Billy Taylor expressed interest in reviewing text changes that could address development in the overlays that would be more consistent with the County's goals. Gene Bell requested further discussion at the next meeting.

**Adjourn**

The meeting was adjourned at 10:45a.m.

**BUNCOMBE COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT  
ZONING ANALYSIS**

CASE NUMBER: ZPH2018-00035  
APPLICANT: ROBERT W. OAST, JR.

DEPARTMENT RECOMMENDATION: **DENIAL**

ZONING ANALYSIS: The applicant is requesting the following amendments to the text of the Zoning Ordinance of Buncombe County:

- Revise Sec. 78-581, Definitions, to add definitions for Planned Unit Development - Conservation and Scenic Resource Area;
- Revise Sec. 78-641(a), Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts;
- Revise Sec. 78-644, Steep Slope/High Elevation Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts;
- Revise Sec. 78-645, Protected Ridge Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; and
- Revise Sec. 78-678(b), Conditional Use Standards, to add a new section containing the standards required for a Conservation Planned Unit Development.

Staff's main concerns with the proposed text amendments are that the amendments conflict with the stated purposes of the Overlay Districts and with the Comprehensive Land Use Plan and Updates. The proposed CPUD could be located on a tract at least 100 acres and at least 50% in the Overlay District. The Overlay Districts' intent was to cluster development in those areas of a tract that are **outside** the overlay area. The amendments have the potential to erode sound planning practices in our most environmentally fragile and sensitive areas and set a precedent for preference over reasonable accommodation.

**Inconsistent with the purpose of the Steep Slope/High Elevation Overlay District:**

- Purpose. "The Steep Slope/High Elevation Overlay District is established in recognition that the development of land in steep, mountainous areas involves special considerations and requires unique development standards. This section is intended to limit the intensity of development, preserve the viewshed and protect the natural resources of Buncombe County's mountains and hillsides at elevations of 2,500 feet above sea level and higher, consistent with the recommendations of the 1998 Buncombe County Land Use Plan."
  - The proposed amendment, Sec. 78-678(b)(6.1)(e), states that "no part of any structure... may be constructed on land (i) within the SRA (Steep Slope/High Elevation and Protected Ridge Overlays) and in excess of 35 percent natural slope." By definition, the Steep Slope/High Elevation Overlay applies only to areas 35% slope and above. Even though no structure could be built in the Steep Slope/High Elevation area under the proposed standard, access roads, parking,

utilities, etc. could be located in those most environmentally sensitive areas potentially causing large areas of disturbance and impervious surfaces, increasing stormwater runoff, and impacting the viewshed.

**Inconsistent with the purpose of the Protected Ridge Overlay District:**

- Purpose. “The Protected Ridge Overlay District is established in recognition that the development of land in steep, mountainous areas involves special considerations and requires unique development standards. This section is intended to limit the density of development, preserve the viewshed and protect the natural resources of Buncombe County’s protected mountain ridges, consistent with the recommendations of the 1998 Buncombe County Land Use Plan and supplemental to the provisions of the Mountain Ridge Protection Act of 1983. Further, in accordance with North Carolina General Statutes §153A-342, this Protected Ridge Overlay District provides for additional requirements on properties within one or more underlying general districts related to the erection, construction, reconstruction, alteration, repair, or use of buildings, or structures within the Protected Ridge Overlay District in addition to the general underlying zoning regulations including, but not limited to, height, number of stories and size of buildings and other structures.”
  - The proposed amendments would permit all uses, except manufacturing and industrial, that are allowed in the underlying zoning districts. The current standards allow only low-density residential uses at a maximum of two dwelling units per two (2) acre lot, reducing the intensity of development.
  - The proposed amendments would permit the same residential density that is allowed in the overlay but would allow the development in our most environmentally sensitive areas which runs counter to the principle of clustering. This principle was developed to protect the most environmentally sensitive areas by concentrating development in the least environmentally sensitive areas of a tract. For example, a 100 acre tract (the minimum acreage required for a CPUD) would allow the concentration of a multi-family complex of 100 units rather than the current standard which intentionally allows only scattered site, low-density residential development.
  - The proposed amendments suggest waiving height limitations through a Conditional Use review “provided that existing site conditions, together with conditions imposed by the Board of Adjustment, provide visual screening and limit visibility of the structure from below” and the structure cannot be “less than 10 feet lower than the average height of the perimeter existing trees screening the structure”. This standard is subjective and would be difficult to enforce as it calls for limiting, not eliminating, visibility from below. Even with mature trees on the perimeter of the site, if they are not evergreen, the structure will be visible part of the year and if perimeter trees are diseased/damaged and removed, the structure would be visible year round. Additionally, the most likely reason to build on the ridgeline is for views and if there are views from the development, then the development will be at least partially visible from below. The current standards limit structure height to an average of 25 feet (35 feet if at least 50 vertical feet

below the ridge) in order to preserve the viewshed. This height was established to minimize the visual impact of structures in the most exposed ridgetop areas.

**Inconsistent with the Buncombe County Comprehensive Land Use Plan and Updates:**

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update **identifies only low-density residential development as appropriate in steep slope areas (greater than 25%) and high elevations (greater than 2,500 feet)**. The Update “suggests” multi-family residential, large lot/lower density planned communities, resorts, and conference centers be located outside steep slope areas and high elevations. Further, the Update “highly suggests” mixed use and higher density planned developments, institutional, public service, and commercial uses be located outside steep slope areas and high elevations.

The proposed text amendments would be detrimental to the community as they **do not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update and would conflict with the stated purposes of the Steep Slope/High Elevation and Protected Ridge Overlay Districts. Therefore, the Buncombe County Department of Planning and Development recommends **denial** of the text amendment request as it is incompatible with the purposes of the Overlay Districts and would permit mixed use and higher density planned developments, institutional, public service, and commercial uses to be located in steep slope and high elevations areas which are our most environmentally fragile and sensitive areas.

## LAND USE PLAN CONSISTENCY STATEMENTS

**The following consistency statements are provided to support the Board's findings to approve or deny an application.**

### **Inconsistent:**

The proposed text amendments are inconsistent with the Buncombe County Land Use Plan and Updates. Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update **identifies only low-density residential development as appropriate in steep slope areas (greater than 25%) and high elevations (greater than 2,500 feet)**. The Update “suggests” multi-family residential, large lot/lower density planned communities, resorts, and conference centers be located outside steep slope areas and high elevations. Further, the Update “highly suggests” mixed use and higher density planned developments, institutional, public service, and commercial uses be located outside steep slope areas and high elevations. The proposed text amendments would be detrimental to the community as they **do not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update and would conflict with the stated purposes of the Steep Slope/High Elevation and Protected Ridge Overlay Districts. Therefore, the amendment request would **not be reasonable nor in the public interest** as it is incompatible with the purposes of the Overlay Districts and would permit mixed use and higher density planned developments, institutional, public service, and commercial uses to be located in steep slope and high elevations areas which are our most environmentally fragile and sensitive areas.

### **Consistent:**

**It should be noted that staff could not identify more tangible goals due to the fact that the amendments represent a number of changes that are deeply divergent from the stated goals and objectives of the Land Use Plan and Zoning Ordinance.**

The proposed text amendments are consistent with the Buncombe County Land Use Plan and Updates. Section 2. Plan Framework of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies the objective to establish land use regulations which allow for a flexible range of development options while still accounting for the needs of Buncombe County. The proposed text amendments meet an objective as identified in the Buncombe County Comprehensive Land Use Plan Update. Therefore, the amendment request would **be reasonable and in the public interest.**