



Date: January 25, 2021

To: Wendell Davis, County Manager
Through: Jay Gibson, General Manager
From: Sara M. Young, AICP, Planning Director
Subject: *Unified Development Ordinance* Text Amendment, Amendments due to NCGS Chapter 160D (TC2000004)

Summary

This text amendment proposes revisions to various provisions of the Unified Development Ordinance (UDO) in order to comply with statutory revisions associated with the new state enabling legislation NCGS Chapter 160D. The amendments are identified as necessary corrections, clarifications, re-organization, or other minor changes to comply with 160D, and also include other technical changes for clarity or to remove redundancies.

Recommendation

That the Board of Commissioners approve an ordinance to Article 1, General; Article 2, Review Authority; Article 3, Applications and Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 8, Environmental Protection; Article 12, Infrastructure and Public Improvements; Article 13, Additional Requirements for Subdivisions; Article 15, Enforcement; and Article 17, Definitions, of the *Unified Development Ordinance*; and approve a consistency statement declaring the request consistent with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest. Information supporting these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

Background

On July 11, 2019, Session Law (SL) 2019-111 combined the current state enabling legislation related to planning, zoning, building code, housing code, and other associated regulations into a single new statutory chapter called 160D. Previously most enabling legislation was listed under Chapters 160A (for municipalities) and 153A (for counties). The new Chapter 160D amended and consolidated these requirements applicable to both municipalities and counties. Further technical and other changes to 160D were approved in June 2020 under SL2020-25. Under that session law, amendments to development regulations related to Chapter 160D must be performed by July 1, 2021.

The Joint City-County Planning Committee received a draft for review and comment on October 7, 2020. No issues were raised with the draft. Concurrent with JCCPC review, both the City and County Attorney's offices reviewed proposed text changes prior to initiating the public hearing process. The Planning Commission recommended approval with a vote of 13-0 on November 10, 2020. The Planning Commission determined that the ordinance request is consistent with

the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report. The Durham City Council will consider this amendment at its January 19, 2021, meeting.

Issues

The proposed amendments are listed in Attachment A to this document, with a summary as follows:

- Article 1, General
 - Technical reference changes related to general statutory authority.
- Article 2, Review Authority
 - Technical reference changes and to the statutory authority for the powers and duties of boards, commissions, and administrative staff.
- Article 3, Applications and Permits
 - New text to address conflicts of interest for interpretations of the UDO, as required by 160D-109(c).
 - New text to require constructive notice for official interpretations that have been issued per 160D-403(b).
 - Revisions to Vested Rights to comply with 160D-108 and 108.1.
 - Clarification of mailed notice distances to comply with adjacent property requirements, and codify current practice of notifying properties on opposite sides of right-of-way when buffer distances terminate within right-of-way.
 - Codification of allowance to review applications pending annexation, but not allowing final approval until annexation is effective.
 - New text requiring recordation of special use permits. NCGS 160D-705(c) allows, but does not require, this. *Subsequent to the Planning Commission hearing: The proposed text was modified to remove the responsibility to be specifically placed upon the applicant.*
 - Allow appeals to Historic Preservation Commission (HPC) decisions to go to superior court instead of the Board of Adjustment, per 160D-947(e). Previously, appeals were required to go to the BOA. New statute allows the appeal of a HPC decision to be consistent with the appeal of a BOA decision, and thus go to superior court.
 - Other various technical references, updates, and corrections.
- Article 4, Zoning Districts
 - Technical reference corrections, changes, and updates.
- Article 5, Use Regulations.
 - Technical reference changes and updates.
- Article 8, Environmental Protection
 - Technical update to adopt Flood Insurance Rate Maps (FIRMs) by reference as allowed per 160D-105.
- Article 12, Infrastructure and Public Improvements
 - Technical update to apply the requirement to comply with adopted plans to approvals in addition to subdivision approval, per 160D-702(a).
- Article 13, Additional Requirements for Subdivisions
 - Technical revisions to the requirement regarding compliance with adopted plans, consistent with the new text in Article 12, above.

- Article 15, Enforcement
 - Technical reference changes and updates.
- Article 17, Definitions
 - Technical reference changes and updates.

Consistency with the *Comprehensive Plan*; Reasonableness and in the Public Interest. The purpose of this set of text amendments is to update the UDO and implement provisions regarding the state enabling legislation found in the new NCGS Chapter 160D, as required by state statute. This is a reasonable undertaking and in the public interest. Furthermore, the amendments do not appear to conflict with the *Durham Comprehensive Plan Vision*, which states:

- “Promote the creation, enhancement and sustainability of a healthy, livable, safe and beautiful community for all Durham citizens.
- Promote a range of choices in transportation, education, housing and economic opportunities to effectively serve a diverse community.
- Promote the identity of our distinct neighborhoods by encouraging design elements and public facilities appropriate to the character of each area.
- Protect our historic heritage, open spaces and natural resources.
- Provide opportunities for high quality growth and development.”

Contact. Michael Stock, AICP, Senior Planner, 919-560-4137 ext. 28227;
Michael.Stock@DurhamNC.gov.

Attachment:

Attachment A: Consistency Statement per NCGS § 153A-341

Attachment B: An Ordinance to Amend the *Unified Development Ordinance* Regarding Amendments due to NCGS Chapter 160D (TC2000004)

Attachment C: Planning Commission comments