

**AN ORDINANCE TO AMEND VARIOUS PROVISIONS
OF THE *UNIFIED DEVELOPMENT ORDINANCE* Regarding
Amendments due to NCGS Chapter 160D
(TC200004)**

WHEREAS, the Durham County Board of Commissioners wishes to amend certain provisions in the *Unified Development Ordinance* by making various technical and minor policy revisions, and technical revisions to comply with various state legislation such as SL2019-111 and the new consolidated enabling legislation in NCGS Chapter 160D; and

WHEREAS, it is the objective of the Durham County Board of Commissioners to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that 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* are amended to make the following changes set forth in the deletions (strikethroughs) and additions (underlining) below:

PART 1

[Amendments pursuant to new enabling state legislation Chapter 160D per Session Law 2019-111.]

Sec. 1.3 Authority

The authority to adopt and enforce this Ordinance is granted by the Charter of the City of Durham, by Chapter ~~§160D160A, Article 19~~ of the North Carolina General Statutes as to the City and County of Durham, ~~and by Chapter §153A, Article 18 of the North Carolina General Statutes as to the County of Durham,~~ and any other applicable general or special statutes of the State of North Carolina including Chapter 4 of Title 15A of the North Carolina Administrative Code.

Sec. 2.1 Governing Bodies

[Paragraphs not listed remain unchanged]

2.1.2 Powers and Duties

The governing bodies shall be responsible for final action regarding the following:

- I. Vested rights determinations that require a public hearing pursuant to Sec. 3.20, Statutory Vested Rights Determination; ~~and~~
- J. The Durham Design Manual and the Landscape Manual for Durham, NC (the Landscape Manual), including any subsequent revisions; and
- K. Any other authority for a final action delegated to the governing body by state statute.

Sec. 2.3 Planning Commission

[Paragraphs not listed remain unchanged]

2.3.5 Powers and Duties

The Planning Commission shall have the following powers and duties.

A. Review Authority

1. The Planning Commission shall be responsible for reviewing and making recommendations ~~(which shall be construed as meeting the certification required by NCGS §153A-344 or NCGS § 160A-387, as applicable)~~ regarding the following:
 - a. Adoption of or amendments to the Comprehensive Plan and related plans;
 - b. Amendments to the text of this Ordinance;
 - c. Applications for zoning map change;
 - d. Applications for historic district designation;
 - e. Adoption of or amendment to redevelopment plans as set forth in NCGS §160A-513; and
 - f. The Planning Department Annual Work Plan.

Sec. 2.4 Board of Adjustment (BOA)

[Paragraphs not listed remain unchanged]

2.4.1 Establishment

The Board of Adjustment is established in accordance with the Interlocal Cooperation Agreement on City-County Planning, ~~and NCGS Chapter 160D§160A-388, NCGS §153A-345,~~ and in accordance with special legislation adopted for the City and County regarding the Board of Adjustment.

2.4.5 Powers and Duties

The Board of Adjustment shall have the following powers and duties.

A. Authority

1. The Board of Adjustment shall be responsible for final action regarding the following:
 - b. Applications for minor special use permits; ~~and~~
 - c. Appeals of administrative decisions, but not including those decisions involving Sedimentation and Erosion Control regulations, stormwater ordinances, or any other code or ordinance that does not grant the Planning Director authority. ~~made by administrative officials interpreting the provisions of this Ordinance; and~~
 - d. Applications for reasonable accommodation.

2.4.6 Decisions

- B. Every quasi-judicial decision of the Board of Adjustment shall be reduced to writing and subject to review by the superior court by proceedings in the nature of a petition for a writ of certiorari pursuant to NCGS § ~~160A-393 or NCGS § 153A-345.1, as applicable~~160D-1402. Any petition for review by the court shall be filed with the clerk of superior court within ~~by the later of 30 days of the effective date of a~~ ~~after the decision of the~~ Board of Adjustment decision is effective, or after a written copy thereof is delivered to the party who has made a request for such decision in compliance with paragraph C. below, whichever is later. When first class mail is used to deliver notice of the decision, three days shall be added to the time to file the petition.

Sec. 2.5 Historic Preservation Commission (HPC)

[Paragraphs not listed remain unchanged]

2.5.1 Establishment

The Durham Historic Preservation Commission (HPC) is established in accordance with the Interlocal Cooperation Agreement for the Historic Preservation Commission and NCGS ~~§160A-400.7~~Chapter 160D. The HPC is designated as the historic preservation advisory and quasi-judicial body for the County and City, and shall have the powers and duties described in this section.

2.5.4 Powers and Duties**B. Demolition by Neglect**

For purposes of Sec. 3.18, Demolition by Neglect (City Only), the Historic Preservation Commission is designated a ~~Planning Agency~~planning board under ~~NCGS 160A-361 and GS 153A-345~~§160D-301, authorized to operate as a Board of Adjustment (BOA) and make quasi-judicial decisions under ~~GS 160A-388(a), and GS 153A-321~~NCGS §160D-302 for the administrative determinations described herein.

Sec. 2.7 Durham City-County Planning Department

[Paragraphs not listed remain unchanged]

2.7.1 Establishment

The Durham City-County Planning Department is established in accordance with NCGS ~~§153A-321 and NCGS §160A-361~~160D-402, and serves as the ~~planning agency and the community development agency~~administrative staff for the City of Durham and Durham County. The Department administers this Ordinance for the City and County, unless otherwise specified within this Ordinance.

2.7.4 Powers and Duties

B. The Planning Director or designee shall be responsible for reviewing and making recommendations regarding the following:

10. Applications for vested rights determinations requiring a public hearing pursuant to Sec. 3.20, ~~Statutory~~Vested Rights Determination and NCGS 160D-108.

C. The Planning Director or designee shall be responsible for final action regarding the following:

9. Applications for architectural review; ~~and~~

10. Applications for temporary use permits; ~~and~~

11. Applications for vested rights determinations not requiring a public hearing pursuant to Sec. 3.20, Vested Rights Determination and NCGS 160D-108.

Sec. 2.10 Summary of Review Authority

[Paragraphs and portions of tables not listed remain unchanged]

The following table summarizes review authority under this Unified Development Ordinance.

| Application or Permit | Sedimentation and Erosion Control Officer | Inspections Director | Planning Director | Historic Preservation Commission | Board of Adjustment | Planning Commission | Governing Body | Section |
|------------------------------------------|-------------------------------------------|----------------------|-------------------|----------------------------------|---------------------|---------------------|----------------|-----------|
| Vested Rights Determination ¹ | | R | R, D | | | | <D> | Sec. 3.20 |

R = Review or Recommendation

D = Decision

A = Appeal

<> = Public Hearing Required

* = Except as noted in the relevant Ordinance section

¹ Final decision depends upon the type of vested rights determination per Sec. 20, Vested Rights and NCGS 160D-108.

Sec. 3.1 Interpretation of this Ordinance

[Paragraphs not listed remain unchanged]

3.1.1 Applicability

B. Interpretation Authority

The Planning Director, or Assistant Director in matters involving a conflict of interest, shall make all interpretations of this Ordinance, but shall not make interpretations regarding the following sections:

1. Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, and Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, the County Engineer, or designee, shall be authorized to make all interpretations concerning the provisions of these sections.
2. Sec. 8.4, Floodplain and Flood Damage Protection Standards, the Inspections Director, acting as the Floodplain Administrator, or designee, in consultation with the Planning Director, shall be authorized to make all interpretations related to this section.
3. Paragraph 12.3.1, Street Layout, the Public Works Director or City Transportation Director or designee, as applicable, shall be authorized to make all interpretations concerning the provisions of this section.
4. Sec. 12.8, Stormwater Management, the Public Works Director or County Engineer or designees, as appropriate, shall be authorized to make all interpretations concerning the provisions of this section.
5. All interpretations of matters relating to the North Carolina Building Code shall be made by the Inspections Director or designee.
6. The Planning Director may defer interpretations of this Ordinance to appropriate City and/or County officials.

3.1.5 Constructive Notice

Pursuant to NCGS §160D-403(b), an applicant seeking an interpretation shall take the steps to provide constructive notice of the interpretation on the subject property as follows:

A. Sign

1. A sign visible from each street frontage shall be posted on the property for at least 10 days.

2. The signs shall contain the words “Official Interpretation” in letters at least 6 inches high and shall identify the means to contact a local government staff member for information about the interpretation.

B. Verification

Verification of the posting in compliance with these requirements shall be provided to the staff member responsible for the interpretation.

3.1.53.1.6 Appeal

Final action on an official interpretation of this Ordinance by the Planning Director or designee may be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.2 Common Review Procedures

[Paragraphs and portions of tables not listed remain unchanged]

3.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

N. ~~Statutory~~ Vested Rights Determination

3.2.5 Notice and Public Hearings

A. Summary of Notice Required

1. Notice shall be required for applications for development approval as shown in the table below.

| Procedure | Published | Mailed | Posted |
|--------------------------------------------------|-----------|--------|--------|
| <u>Site-specific</u> Vested Rights Determination | ✓ | ✓ | ✓ |

B. Public Notice Requirements

2. Mailed Notice

a. Mailed Notice Table

The director of the appropriate department or designee shall provide notification as indicated in the notification table below:

| Procedure | Property Owner | |
|---------------------------------------------------------------------|---------------------------------|---------------------------------------------------------------------------------------------------------|
| | Subject Property, if applicable | Distance of Property from Subject Property, including adjacent properties ² (ft.) |
| <i>Comprehensive Plan</i> Future Land Use Map or Tier Map Amendment | ✓ | 600 |
| Zoning Map Change, including an Initial Zoning Map Change | ✓ | 600 |
| Site Plans ¹ | ✓ | 600 |
| Board of Adjustment | ✓ | 600 |

| Procedure | Property Owner | |
|--------------------------------------------------------------------------------|---------------------------------|---------------------------------------------------------------------------------------------------------|
| | Subject Property, if applicable | Distance of Property from Subject Property, including adjacent properties ² (ft.) |
| Governing Body Quasi-Judicial Hearings | ✓ | 600 |
| Historic District Designation; Neighborhood Protection Overlay | ✓ | 100 |
| Historic Landmark Designation and Certificate of Appropriateness (Major Works) | ✓ | All adjacent properties ² <u>properties</u> ³ |
| Historic District Preservation Plan Text Amendment | ✓ | All adjacent properties ² <u>properties</u> ³ |
| <u>Site-Specific</u> Vested Rights Determination | ✓ | All adjacent properties ² <u>properties</u> ³ |

¹ Mailed notice shall be required only for major site plans pursuant to paragraph [3.7.3B](#), Major Site Plans.

² When the extent of the buffer falls within right-of-way, the property adjacent to the opposing side of the right-of-way shall be included for notification.

³ Properties are “adjacent” even if separated by a street, railroad, or other transportation corridor.

E. Required Hearing

1. A legislative public hearing or a quasi-judicial hearing shall be required for development review as shown in the table below.

| Applications for Approval | Historic Preservation Commission | Board of Adjustment | Planning Commission | Governing Body |
|---------------------------------------------------------------|----------------------------------|---------------------|---------------------|----------------|
| <u>Site-Specific</u> Vested Rights Determination ³ | | | | ✓ |

¹ Requires a quasi-judicial hearing.

² Required only if associated with adding or removing a local historic district designation.

³ Or as required in Sec. 3.20, Vested Rights.

3.2.6 Pending Jurisdiction

After a request for annexation into the city has been submitted and accepted as complete, an application per paragraph 3.2.1, Applicability, may be received and reviewed under the receiving jurisdictional regulations pursuant to NCGS §160D-204. No final action shall be made until the change in jurisdiction is official.

3.2.6~~3.2.7~~ Notice of Decision

A copy of a decision regarding an application shall be provided to the applicant and filed in the appropriate department to be available for public inspection during regular office hours.

Sec. 3.5 Zoning Map Change

[Paragraphs not listed remain unchanged]

3.5.1 Description

B. Initiation

A zoning map change may be initiated by the governing body, the Planning Commission, the Board of Adjustment, the Planning Director or designee, a citizen or the property owner or their agent, except as follows:

1. A petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.
2. A petition for a zoning map change that is considered a "down-zoning," as defined per NCGS ~~153A-343 and 160A-384~~§160D-601(d), as applicable, shall only be initiated by the applicable governing body, unless written consent is provided by all owners of property subject to the zoning request.

C. Development Plans

The development plan shall become a part of the zoning map change petition and shall be reviewed concurrently with the zoning map change petition. Subsequent site plans or plats shall not deviate from the plan, unless otherwise allowed, or required under this Ordinance. Deviation may require a zoning map change, as established in paragraph 3.5.12, Deviations from Approved Development Plans. Unless a development plan also functions as a site plan, it is not a site specific development-vesting plan pursuant to Sec. 3.20, Statutory-Vested Rights. The right to develop pursuant to a development plan, whether approved under this Ordinance or any previous ordinance, accrues only for any portion of the plan for which a site plan or preliminary plat is approved, and then only for the period of validity specified in this Ordinance, or where a vested right is established pursuant to Sec. 3.20, Statutory-Vested Rights ~~Determination~~.

3.5.13 Protest Petition Sufficiency and Procedures (County only)

B. Standards

1. The petition must meet the substantive requirements of ~~GS 160A-385(2) or~~ Session Law 2010-80, ~~as appropriate~~, and in particular must be signed by the owners of either:

3. **Other Required Information**

The petition shall contain all information required on the form supplied by the Planning Director or designee, or ~~the City Clerk or~~ the Clerk to the Board of Commissioners, ~~as appropriate~~.

C. Procedure

1. A form for a protest petition shall be available from the Planning Director, or designee, or ~~the City Clerk or~~ the Clerk to the Board of Commissioners, ~~as appropriate~~.
2. Completed petitions shall be submitted to ~~the appropriate Clerk's office (City Clerk or Clerk to the Board of Commissioners)~~ at least four working days prior to the day of the public hearing.
3. The Planning Director, or designee, in consultation with the County Attorney, ~~for the jurisdiction~~ shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the governing body that a petition has been filed and indicate the determination by the Planning Director, or designee, whether the

petition is valid or invalid. The Planning Director, or designee, shall notify the petitioner as to the validity of the protest petition.

E. Exemption

The foregoing provisions concerning protest petitions shall not be applicable to any zoning map change that establishes the ~~City's~~ County's zoning designation on property that has been ~~added to~~ relinquished from the City's jurisdiction ~~as a result of annexation~~, except as provided by general or local law.

Sec. 3.6 Subdivision Review

[Paragraphs not listed remain unchanged]

3.6.7 Preliminary Plat Approval

E. Reservation of Public Facility Sites and Lands

3. Public school authorities shall have 18 months from the date of preliminary plat approval to acquire the site by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 18-month period, none of the above actions has occurred, the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for its use.

Commentary: See NCGS §160D-804(f) ~~NC General Statutes 153A-331 and 160A-172.~~

Sec. 3.9 Special Use Permit

[Paragraphs not listed remain unchanged]

3.9.6 Approval of a Minor Special Use Permit

- D. Conditions may be incorporated as part of the approval of the special use permit to assure that adequate mitigation measures are associated with the use or design pursuant to NCGS ~~153A-340 and 160A-381~~ §160D-705(c), as applicable. The conditions shall become a part of the minor special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.16 Recordation

The approved order for the special use permit, once the time period for appeal has expired or once it has been upheld on appeal, shall be recorded at the applicable Register of Deeds.

Sec. 3.10 Sign Permit

[Paragraphs not listed remain unchanged]

3.10.3 Action by the Planning Director

- B. Signs shall be installed in accordance with the approved sign permit within ~~six months~~ one year of the date of official permit approval or the permit shall expire and require a new sign permit application and approval. The Planning Director or designee may extend the validity of the sign permit with documentation that a good faith effort is being made to install and receive final approval of the subject sign(s).

Sec. 3.15 Appeal of Administrative Decision

[Paragraphs not listed remain unchanged]

3.15.2 Application Requirements

- A. A written notice of appeal of an administrative decision shall be filed as an application specifying the grounds for the appeal, and in accordance with other applicable provisions of paragraph 3.2.4, Application Requirements.
- B. The appeal shall be considered filed when the complete application is delivered to the Durham City-County Planning Director. The date and time of filing shall be entered on the notice application.
- ~~A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the City or County Clerk, as applicable.~~
- ~~B. An application for an appeal of an administrative decision shall be filed in accordance with the applicable provisions of paragraph 3.2.4, Application Requirements.~~
- ~~C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the City or County Clerk, as applicable. The date and time of filing shall be entered on the notice.~~

3.15.3 Submission of Application

- A. A person or party with standing shall have 30 days from receipt of the written decision determination to file an appeal, or 30 days from receipt from any source of actual or constructive notice of the decision determination, pursuant to NCGS § ~~160A-388(b1)~~ or NCGS § ~~153A-345.1~~, as applicable 160D-405(d).

3.15.6 Action by Board of Adjustment

- ~~A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken.~~
- ~~B. When hearing an appeal pursuant to a quasi-judicial decision of the Historic Preservation Commission or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS § 160A-393(k).~~

3.15.7 Effect of Appeal

- A. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from, including any accumulation of fines, during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with NCGS ~~160A-393~~ §160D-1402, or during pendency of any civil proceeding authorized by law, including NCGS ~~160A-393.1~~ §160D-1403.1, or appeals therefrom, unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- B. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal, and the Board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.

- C. Notwithstanding the foregoing, appeals of decisions granting a permit-development approval or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

Sec. 3.16 Historic District or Landmark Designation

[Paragraphs not listed remain unchanged]

3.16.2 Designation of an Historic District

B. Historic District Preservation Plan

1. An Historic District Preservation Plan shall include an investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in the proposed historic district and a description of the boundaries of the proposed historic district, in accordance with NCGS §~~160A-400.4(1)~~160D-944; principles and design review criteria (guidelines) for certificates of appropriateness as required in NCGS §~~160-400.9(c)~~160D-947; and a preservation strategy tailored to the individual needs of the specific area.

C. Action by the NC Department of Natural and Cultural Resources

In accordance with NCGS §~~160A-400.4(2)~~160D-944 the NC Department of Natural and Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Natural and Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

3.16.3 Designation of an Historic Landmark

B. Action by the Historic Preservation Commission

1. In accordance with NCGS §~~160A-400.6(2)~~160D-946, the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Office of Archives and History, North Carolina Department of Natural and Cultural Resources.

~~**D. Action by the NC Department of Natural and Cultural Resources**~~

~~In accordance with NCGS §160A-400.4(2), the NC Department of Natural and Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Natural and Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.~~

~~**ED. Action by the Historic Preservation Commission**~~

1. In accordance with NCGS ~~§160A-400.6(2)~~160D-946, the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
2. The HPC shall hold a public hearing and give notice in accordance to paragraph 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation. It shall recommend to the governing body, denial of designation or approval of designation of the proposed historic landmark.

FE. Action by the NC Department of Natural and Cultural Resources

In accordance with NCGS ~~§160A-400.4(2)~~160D-946, the NC Department of Natural and Cultural Resources shall make an analysis of and recommendations concerning the investigation and report ~~contained in the Historic District Preservation Plan~~. Failure of the NC Department of Natural and Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action ~~on the proposed historic district and Historic District Preservation Plan~~.

GF. Action by the Governing Body

HG. Adoption of an Ordinance of Designation

IH. Historic Markers

KI. Effect of Subdivision or Recombination

3.16.5 Repeal of Historic District or Historic Landmark Designation

- B.** The governing body may repeal an ordinance designating an historic district or an historic landmark. The repeal process shall be consistent with the adoption process prescribed within NCGS ~~§160A-400.6~~160D-946. The governing body's action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office.

Sec. 3.17 Certificate of Appropriateness

[Paragraphs not listed remain unchanged]

3.17.11 Appeal

An appeal of a decision of the Commission in granting or denying any certificate of appropriateness is taken ~~to the Board of Adjustment. An appeal may be taken by any aggrieved party, shall be taken within times prescribed by the Commission's Rules of Procedures, and shall be in the nature of certiorari. Appeal of the Board of Adjustment action may be taken~~ by filing a petition for certiorari with the Durham County Superior Court.

Sec. 3.18 Demolition by Neglect ~~(City Only)~~

[Paragraphs not listed remain unchanged]

3.18.2 Process and Administration

C. Appeal of Director's Determination

1. If the property owner disagrees with the Director's determination, the owner can appeal and may request a de novo hearing before the HPC.

2. The request shall be delivered to the Planning Department, in writing, within 30 days of receipt of the Director's determination.
3. The HPC shall hold a quasi-judicial hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Adjustment (BOA) in a quasi-judicial proceeding shall be used. The Director's determination shall be considered an administrative determination, which has been appealed to the HPC, ~~as the designated Planning Agency under GS 160A-388 or 153A-321 and all procedures applicable to the Board of Adjustment in GS 160A-388 and GS 153A-345 shall apply to such hearings~~ as allowed pursuant to paragraph 2.5.4B, Demolition by Neglect.
4. The HPC's determination to overturn the administrative determination shall be passed by the standards established in paragraph 2.4.6.
 - a. The HPC's written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection.
 - b. It shall be delivered to the appealing party by certified mail, return receipt requested.
5. Appeal from the determination can be taken by filing a petition in the nature of certiorari with the Durham County Superior Court. ~~Appeal to the Courts can be had by certiorari as is provided for an appeal of a Board of Adjustment decision.~~ If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

Sec. 3.19 Text Amendment

[Paragraphs not listed remain unchanged]

3.19.6 Development Moratoria

A. Statutory Procedures

Development moratoria, if necessary, shall be considered and processed in accordance with the special notice provisions, particular findings required statements, and other requirements of NCGS ~~§160D-107, 160A-381(e) and NCGS 153A-340(h).~~

E. Ordinance Findings Required Statements

An ordinance establishing a moratorium shall contain all the required findings set forth in NCGS ~~§160D-107, 160A-381(e) and NCGS 153A-340(h)~~, including but not limited to the conditions that necessitate the moratorium, alternatives, development approvals subject to the moratorium, termination date, and reasonableness of the moratorium period.

F. Extensions

A moratorium shall only be extended upon compliance with NCGS ~~§160D-107, 160A-381(e) and NCGS 153A-340(h)~~ and the existence of new facts and conditions warranting an extension.

Sec. 3.20 ~~Statutory~~ Vested Rights

[Paragraphs not listed remain unchanged]

3.20.1 Applicability

- A. This section establishes a procedure for obtaining a statutory vested right in conformance with NCGS ~~§153A-344.1 and NCGS §160A-385.1~~ 160D-108 and 160D-108.1.
- B. New or amended zoning regulations shall not apply to a property with an established vested right until the vested right expires or is terminated.

C. Statutory Vested Rights

Pursuant to NCGS §160D-108, the following are the types of statutory vested rights that may be claimed:

1. Development or subdivision permit approvals in accordance with NCGS §143-755;
2. A site-specific vesting plan;
3. A multi-phased development pursuant to NCGS §160D-108(f); or
4. A development agreement pursuant to NCGS §160D, Chapter 10.

~~A vested right may be established upon approval of a "site specific development plan."~~

~~In order to qualify as a "site specific development plan," a plan shall be a development plan approved as a site plan or preliminary plat in accordance with Sec. 3.5, Zoning Map Changes; a preliminary plat approved in accordance with Sec. 3.6, Subdivision Review; or a site plan approved in accordance with Sec. 3.7, Site Plan Review.~~

3.20.2 Application Requirements Procedure for Determination

- A.** An application for a common law or statutory vested rights determination shall be submitted to the Planning director or designee in accordance with paragraph 3.2.4, Application Requirements, or as allowed per NCGS 160D-108. Appeal may be taken in accordance with NCGS 160D-108(h).
- B.** Applications shall include, at a minimum, the following information in addition to the standard information required pursuant to paragraph 3.2.4, Application Requirements:
 1. Information on the proposed uses of the property that the applicant wishes to vest;
 2. The length of time for which vesting is requested; and
 3. A listing of those provisions of this Ordinance from which vesting is requested;₂
- ~~**C.** Landowners seeking zoning vested rights on plats, special use permit applications, or other plans that would not normally receive site plan approval, can apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.~~

3.20.3 Duration

- A.** Vesting shall remain valid so long as the development permit remains valid, or as otherwise allowed per this Ordinance. Development permits shall be valid for one year unless otherwise indicated for a longer duration in this Ordinance.
- B.** Except where a longer vesting period is provided by statute or local regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled pursuant to 160D-108(d).
- C.** A vested right shall run with the land in accordance with NCGS 160D-108(i).

3.20.34 Site Specific Vesting Plan

The following is in accordance with NCGS 160D-108.1, and such statute shall apply where there are conflicts.

A. Applicability

1. In order to qualify as a "site specific vesting plan," a plan shall be a development plan approved as a site plan or preliminary plat in accordance with Sec. 3.5, Zoning Map Changes; a plat approved in accordance with Sec. 3.6, Subdivision Review; or a site plan approved in accordance with Sec. 3.7, Site Plan Review.
2. Landowners seeking vested rights on plats, special use permit applications, or other plans that would not normally receive site plan approval, can apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.

B. Action by the Planning Director

Once the application has been determined complete, the Planning Director, or designee, shall schedule a public hearing, give public notice as set forth in paragraph 3.2.5, Notice and Public Hearings, and forward a copy of the application with all related materials to the appropriate governing body.

3.20.4C. Action by the Governing Body

~~A1.~~ The governing body ~~may hold the vested rights~~ shall hold a public hearing ~~at the same time that the site plan is considered for approval~~ as required pursuant to NCGS § 160D-108.1.

~~B2.~~ Approval by the governing body shall confer upon the owner of the property a ~~zoning~~ "vested right" as defined in NCGS ~~§160A-385.1 and NCGS §153A-344.1~~ 160D-108.1(b), effective on the date of approval. The governing body may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

3.20.5 D. Effect of Approved Zoning Vested Rights

~~A1.~~ Following approval ~~or conditional approval~~ of a site specific ~~development vesting~~ plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

~~B2.~~ Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or with this Ordinance.

~~C3.~~ The establishment of a ~~zoning~~-vested right shall not preclude the application of new laws or regulations as is allowed under NCGS ~~§160A-385.1~~ 160D-108. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the City or County. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific ~~development vesting~~ plan upon the expiration or termination of the vested right in accordance with this section.

~~D4.~~ A ~~zoning~~-vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site specific ~~development vesting~~ plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

3.20.6E. Duration

~~A1.~~ A ~~zoning right that has been vested as provided in this section~~ vested right for a site-specific vesting plan shall remain vested for the period specified by the governing body, which shall be a minimum of two years but no more than five years from the date of the vested

rights determination. The expiration and validity of site plans and plats issued pursuant to the vested rights determination that extend beyond the vesting period shall be governed by the provisions of this ordinance. Substantial amendments and modifications to an approved site specific ~~development-vesting~~ plan shall not be accorded "vested rights" unless such changes are processed as a new "site specific ~~development-vesting~~ plan." Each approved site specific ~~development-vesting~~ plan shall contain the following notation: "Approval of this plan establishes a ~~zoning~~-vested right under NCGS §~~160A-385.1 or NCGS §153A-344.1~~160D-108.1. Unless terminated at an earlier date, the zoning vested rights shall be valid until (Insert date)."

~~B2.~~ A building permit shall not expire or be revoked because of the passage of time while a zoning vested right under this section is outstanding.

~~C3.~~ A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to portions of the development that do not have approved and continuously valid site plans and preliminary plats, or buildings and uses for which no valid building permit applications have been filed.

3.20.7F. Termination

A ~~zoning~~-vested right as provided in this section shall terminate when any one of the following circumstances apply:

~~A1.~~ At the end of the applicable vesting period;

~~B2.~~ With the written consent of the affected landowner;

~~C3.~~ Upon findings by the governing body by ordinance and after public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific ~~development-vesting~~ plan;

~~D4.~~ Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest;

~~E5.~~ Upon findings by the governing body by ordinance and after public hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the governing body of the site specific ~~development-vesting~~ plan; or

~~F6.~~ Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that preclude development as contemplated in the site specific development plan.

3.20.85 Annexation

A. Property that is annexed shall retain any vested rights throughout the original vesting period subject to the limitations of paragraph B below.

B. A property owner petitioning for annexation shall submit a signed statement declaring any existing vested right with respect to the properties subject to annexation, if the owner wishes to maintain the vested right. The failure to sign such a statement shall terminate any such vested right.

3.20.96 Limitations

Nothing in this section shall be deemed to create any vested rights other than those established under NCGS §~~160A-385.1 or NCGS §153A-344.1~~160D-108 and 108.1. In the event that ~~either~~ NCGS §~~160A-385.1 or NCGS §153A-344.1~~160D-108 is repealed, the provisions of this section are no longer effective ~~to the jurisdiction involved~~.

Sec. 4.1 General

[Paragraphs not listed remain unchanged]

4.1.3 Official Zoning Map

- A. The location and boundaries of zoning districts shall be as shown on a geographic coverage layer entitled “Zoning” that is maintained as part of the City's and County's geographic information system (GIS) under the direction of the Planning Director, or designee. This depiction of zoning boundaries as shown on the GIS system shall constitute the Official Zoning Map for the City's and the County's zoning jurisdiction, and is adopted into this Ordinance by reference. The City or County Clerk, as applicable, may upon validation by the Planning Director, or designee, certify a paper copy of the Official Zoning Map, or portions of the map, as a true and accurate copy of the Official Zoning Map, or a portion thereof, under the authority of [NCGS §160A-79\(b\)](#) and [NCGS §153A-50](#).

Sec. 4.10 Historic Districts Overlay (-H)

[Paragraphs not listed remain unchanged]

4.10.5 Downtown Historic District Overlay**E. Height**

3. The HPC may limit height below the maximum allowed in order to find that the proposal is consistent with the ~~Downtown Durham Historic District Preservation Plan~~[adopted Historic Properties Local Review Criteria, as amended](#).

Sec. 4.11 Watershed Protection Overlay

[Paragraphs not listed remain unchanged]

4.11.1 Purpose

- B. Watershed protection regulations shall be adopted by the City of Durham and Durham County in accordance with the requirements of the North Carolina Environmental Management Commission, Title 15A NCAC 2B .0100, .0200 and .0300, (adopted pursuant to NCGS §143-214.5) and in accordance with NCGS ~~§160A-381 through 383, and NCGS §153A-340 through 342~~[Chapter 160D](#).

Sec. 5.1 Use Table

[Paragraphs not listed remain unchanged]

5.1.2 Use Table

| USE CATEGORY | | SPECIFIC USE | | RESIDENTIAL | | | | | | NONRESIDENTIAL | | | | | | | | PLANNED | | | | | DESIGN | | | NOTES: |
|---------------------------|-----------------|-----------------------------------------------------------------------------------------------------------------|--|-------------|----|------|----|------|----|----------------|----|----|----|-----|--------------------|----|---|---------|----|----|----|----|--------|----|-----|--------|
| | | | | RR | RS | RS-M | RU | RU-M | RC | CI | CN | OI | CG | SRP | SRP-C ³ | IL | I | PDR | UC | CC | IP | MU | DD | CD | CSD | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | |
| AGRICULTURAL USES | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Agriculture (County Only) | Bona fide farms | Bona fide farms shall be permitted in accordance with NCGS 153A-340(b) , §160D-903 . | | | | | | | | | | | | | | | | | | | | | | | | |

Sec. 5.5 Temporary Uses

[Paragraphs not listed remain unchanged]

5.5.2 Specific Temporary Uses**N. Temporary Healthcare Structures****1. General**

- a. Temporary healthcare structures shall comply with the provisions for such structures pursuant to NCGS § ~~160A-383.5 or § 153A-341.3~~160D-915, as amended.

2. Permitted Timeframe

- b. Removal of the structure shall comply with NCGS § ~~160A-383.5 or § 153A-341.3~~160D-915, as amended.

Sec. 8.4 Floodplain and Flood Damage Protection Standards

[Paragraphs not listed remain unchanged]

8.4.2 Applicability

This section shall apply to all Special Flood Hazard Areas, Future Conditions Flood Hazard Areas, and nearby effected flood hazard areas within the City and County of Durham as identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 6, 2019 for Durham County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance and any revision thereto pursuant to NCGS§ 160D-105. The Special Flood Hazard Areas, Future Conditions Flood Hazard Areas, and nearby effected flood hazard areas also include those defined through standard engineering analysis for private development or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood data generated as a requirement of paragraphs 3.21.2B.11 and 12, Duties and Responsibilities.

~~This section shall apply to all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas within the City and County of Durham as identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated December 6, 2019, for Durham County, and its accompanying flood maps, such as the Flood Insurance Rate Map(s) (FIRM) for the City of Durham and Durham County dated May 2, 2006; February 2, 2007; April 16, 2007; June 4, 2007; August 2, 2007; May 16, 2008; October 19, 2018; or December 6, 2019, as applicable. These maps are adopted by reference and declared to be a part of this ordinance, and all revisions thereto after January 1, 2021. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted. Also adopted by reference and declared to be a part of this ordinance are associated Physical Map Revisions and Letters of Map Change issued by FEMA as of December 6, 2019. The Special Flood Hazard Areas and Future Conditions Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood data:~~

- ~~A. Generated as a requirement of paragraphs 3.21.2B.11 and 12, Duties and Responsibilities;~~
- ~~B. Preliminary FIRMs where more stringent than the effective FIRM; or~~
- ~~C. Post-disaster Flood Recovery Maps.~~

Sec. 12.1 Improvement Requirements

[Paragraphs not listed remain unchanged]

12.1.1 General

A. Applicability

The requirements of this Article shall apply to all development, unless expressly exempted by the language of the sections below.

G. Consistency with Adopted Plans

Development shall comply with adopted public plans for the area in which it is located. This includes plans for public facilities such as rights-of-way, parks and open space, schools, and other similar facilities.

Sec. 12.11 Performance Guarantees

[Paragraphs not listed remain unchanged]

12.11.2 Form and Conditions of Performance Guarantee

B. Conditions

A performance guarantee shall be conditioned upon the performance of all work necessary to complete the specified improvements and the delivery of all necessary encroachment agreements, with said performance and delivery to be done by a specified completion date as allowed per NCGS ~~160A-372(g)(1a)~~ § 160D-804.1.

Sec. 13.2 Consistency with ~~Public Plans and Policies~~Adopted Plans

Subdivision of land shall ~~be consistent~~comply with adopted public plans ~~and policies~~ for the area in which it is located. This includes ~~general policy regarding development objectives for the area as reflected in the Comprehensive Plan, as well as specific policy or~~ plans for public facilities such as rights-of-way, parks and open space, schools, and other similar facilities.

Sec. 15.3 Remedies – Enforcement Action

[Paragraphs not listed remain unchanged]

15.3.1 General

Enforcement may be by any one, all, or a combination of the remedies described below or in other sections of this Ordinance or otherwise authorized by common law or statute. Such statutes include but are not limited to NCGS § ~~153A, Sections 123, 324, 334, and 361 et. seq. and § 160A Sections 175, 365, 375, 389, and 421 et. seq.~~153A-123, 160A-175, and 160D-404 and -807.

15.3.8 Stop Work Order

A. When the violation pertains to construction or alteration of a structure, a stop work order may be issued in accordance with NCGS § ~~160A-421 and NCGS § 153A-361~~160D-404 or the NC Building Code. All zoning requirements pertaining to the location and siting of structures are considered local building laws for application of NCGS § ~~160A-421 and NCGS § 153A-361~~160D-404.

Sec. 17.3 Defined Terms

Developer: Pursuant to NCGS 160D-102, a person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property

~~A. The person, firm, corporation or legal entity that has financial or operational control over the land disturbing activity; or~~

~~B. The person, firm, corporation or legal entity in possession or control of the land when he/she directly or indirectly allowed the land disturbing activity, has benefited from it, or has failed to comply with any provision of this Ordinance.~~

Development: Pursuant to NCGS 160D-102, any of the following:

a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.

b. The excavation, grading, filling, clearing, or alteration of land.

c. The subdivision of land as defined in G.S. 160D-802.

d. The initiation or substantial change in the use of land or the intensity of use of land. ~~Any human caused change to improved or unimproved real estate that requires a permit or approval from any agency of the City or County of Durham, including but not limited to, constructing or changing buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations and storage of equipment or materials.~~

Initial Zoning Map Change: A zoning map change that establishes the City's zoning authority over newly annexed territory, per NC General Statute ~~160A-360(f)~~160D-202(g), or establishes the County's zoning authority over newly relinquished territory, per NC General Statute ~~160A-360(f1)~~160D-202(h).

Vested Rights: The right of property owner to develop ~~according to the terms of an approved site specific development plan or building permit even if the zoning or zoning district requirements are changed prior to development~~ in accordance with NCGS 160D-108 and the provisions of this Ordinance.

PART 2

That the Unified Development Ordinance shall be renumbered, including references, as necessary to accommodate these changes.

PART 3

That this amendment of the Unified Development Ordinance shall become effective *February 1, 2021*.