Zoning Text Amendment - 160D

Asheville City Council

March 9, 2021

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What is 160D?

- A chapter in the NC General Statutes adopted as part of Session Law 2019-111 and which became effective June 20, 2020
- Replaces existing 160A (municipal) and 153A (county) chapters
- Purpose is to *Clarify*, *Consolidate*, and *Reorganize* the land use laws of the state
- A collaboration between NC land use attorneys, the UNC-SOG & NC legislators

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Timing of 160D

- Currently effective but local governments have until July 1, 2021 to make any necessary amendments to be in alignment with 160D
- Staff will bring forward a series of amendments to modify the City of Asheville's UDO to be consistent with 160D.
- This is the third in a series of amendments and addresses discretionary decisions by staff.

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Discretionary Decisions - Two Options

Remove authority to grant discretionary decisions

- Or -

Develop clear, objective criteria to evaluate requests

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Examples - remove discretionary language

(i) *Permit validity.* Upon the approval of a zoning permit, the applicant shall have one year to obtain the required building permit(s). Failure to commence building permits within this time shall render the zoning permit void. ~~The planning and development director may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Upon issuance of a building permit(s),~~ the zoning permit shall remain valid as long as a valid building permit exists for the project. Any unapproved change in the approved plans shall render the zoning permit invalid.

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Examples - remove discretionary language

(10) *Sidewalk standards.* Sidewalks shall be provided as required by and pursuant to the requirements for sidewalks as set forth in section 7-11-8 of this chapter. ~~In general, sidewalks shall be a minimum of ten feet wide or the city engineer may approve an alternative width based on context of street and block. Narrower sidewalks may be approved in cases where there is insufficient space for a larger sidewalk.~~

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Examples - add objective criteria

(e) *Fee in lieu of construction.* Where a new sidewalk is required to be constructed, a fee in lieu of that sidewalk may be paid if one or more of the following conditions apply:

(1) The sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk without reducing existing transportation facilities such as travel lanes, on-street parking, bike lanes, and the adaptive reuse or preservation of an existing building or structure prevents extending the sidewalk onto private property. In these instances, compliance to the maximum extent practicable is required and a fee is paid for the balance of sidewalk not constructed.

(2) The sidewalk is a part of a publicly funded project that includes sidewalks and

(3) [. . . .]

(4) - (7)

Examples - add objective criteria

(d) *Table of Permitted Uses.* The table is a summary listing of uses that are fully defined in section 7-2-5.

(1) Any use not listed is not allowed unless the planning and development director determines that the use is similar to a listed use. When determining whether a proposed use is similar to a listed use, the planning and development director will consider the following:

a. The actual or projected characteristics of the proposed use.
b. The relative amount of site area or floor area and equipment devoted to the proposed use.
c. Relative amounts of sales.
d. The customer type.
e. The relative number of employees.
f. Hours of operation.
g. Building and site arrangement.
h. Types of vehicles used and their parking requirements.
i. The number of vehicle trips generated.
j. How the proposed use is advertised.
k. The likely impact on surrounding properties.
l. Whether the activity is likely to be found independent of the other activities on the site.

(2) Where a use is determined not to be similar to any listed use, a text amendment is required prior to establishment of that use.

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Examples - add objective criteria

(1) *Setbacks.* The planning and development director is authorized to approve requests that deviate from required setbacks set forth in article VIII of this chapter as follows:

a. ~~by up to~~ *All zoning districts*. The flexibility is needed to accommodate an addition that is less than 50% of the pre-existing gross floor area. In these instances, a deviation of ten percent ~~of the required setbacks~~ or 24 inches, whichever is greater, may be granted upon ~~determination~~ determining that one or more of the following conditions exists:

~~a.~~ i. ~~There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to:~~ the lot does not meet the dimensional standards established for the zoning district in which it is located~~; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.~~

~~b.~~ ii. The structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.

~~c.~~ iii. The part of the proposed structure that would encroach into the minimum setback area is less than 50 percent of the width of the affected building façade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as a chimney).

~~d.~~ iv. The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life-safety code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety code requirements.

~~d. The proposed structure will allow the preservation of significant existing vegetation.~~

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