THE CITY OF ASHEVILLE

Staff Report

City Council Meeting Date: October 13, 2020

Subject: 160D Zoning Text Amendment

Staff Resources: Todd Okolichany, Planning & Urban Design Director
Shannon Tuch, Principal Planner
Brad Branham, City Attorney
Jannice Ashley, Senior Assistant City Attorney
Aarin Miles, Assistant City Attorney

Action Requested: Adopt a zoning text amendment related to historic preservation to align the city's Unified Development Ordinance ("UDO") with North Carolina Session Law 2019-111, commonly referred to as "160D".

Background:

- A collaborative effort between North Carolina land use attorneys, the University of North Carolina - School of Government and North Carolina legislators resulted in Session Law 2019-111 "AN ACT TO CLARIFY, CONSOLIDATE, AND REORGANIZE THE LAND-USE REGULATORY LAWS OF THE STATE." adopted July 11, 2019.
- Chapter 160D of the North Carolina General Statutes is the first major recodification and modernization of city and county development regulations since 1905.
- As the law's title states, the purpose of 160D is to clarify and reorganize the land use regulatory laws of the State and to consolidate these laws into one chapter in order to provide a uniform set of statutes applicable to both cities and counties (previously land use/development regulation related laws for cities were found in Article 19 of NCGS Chapter 160A and for counties were found in Article 18 of N.C.G.S. Chapter 153).
- 160D contains a number of legislative changes which a local government ***must*** take action to adopt, but it also contains permissive legislative changes which a local government ***may*** choose to adopt or not.
- Originally, parts of the 160D became effective immediately while most of it was not to become effective until January 1, 2021, however, **on June 19, 2020, the General Assembly enacted legislation-S.L. 2020-25- making Chapter 160D effective immediately.**
- This law provided flexibility to local governments in the timing for adoption of amendments to conform local development regulations to the new statutes.
- **Local governments may enact their amendments now, but they are not required to do so until July 1, 2021.** .
- This zoning text amendment seeks to align the City of Asheville Unified Development Ordinance (Chapter 7) provisions related to Historic Preservation with the new Chapter 160D.
- Chapter 160D provisions related to Historic Preservation can be found in sections 940-951 of the statute (such provisions for cities were formerly found in Chapter 160A-400.1 thru 400.15).
- The 160D changes are fairly minor:
    - 1) ***Must*** follow standard quasi-judicial procedures for preservation certificates of appropriateness. (G.S. 160D-947(c).)-the City has long followed ;
    - **2) *Must*** frame preservation district provisions as "standards" rather than "guidelines" (G.S. 160D-947(c).); and
    - **3) *May*** choose for appeals of preservation commission decisions to go directly to superior court rather than to the board of adjustment. (G.S. 160D-947(e).).

- **Summary of changes:**
    - In regard to the first requirement, the City/County Historic Resources Commission (herein "HRC") has long followed quasi-judicial procedure for the issuance or denial of

certificates of appropriateness, so no real significant amendments were required in this regard.
    - Text has been added in UDO Article II Definitions, “administrative decision”, “quasi-judicial decision”, “quasi-judicial hearing” and Article V sec. 7-5-11 Certificates of Appropriateness, in order to clarify specific quasi-judicial procedures or to clarify which decisions are considered “administrative” or “quasi-judicial” and how those are defined.
    - In regard to the second requirement,the term “guidelines” has been replaced with the term “standards” throughout the historic preservation related sections of the UDO (Chapter 7- Development- of the City Code), Article III, Section 7-3-4 Historic Resources Commission, Article V, Sections 7-5-8(a)(3)(e) and 7-5-8(b)(5) related to Subdivision Plats in Historic Districts and Section 7-5-11 Certificates of Appropriateness, Article VIII, Section 7-8-1(b)(2)b. Historic Preservation Overlay District; and Article VIX, Section 7-9-2 Historic Preservation Overlay District).
    - Finally, in regard to the third 160D provision which is permissive, rather than required.
    - Staff strongly recommends adoption of this provision [see Sec. 7-5-11(b)(8)] which would require appeals of decisions by the HRC to go directly to superior court rather than to the City’s Board of Adjustment (herein “BOA”) because it would allow for :
        - a more streamlined review process for applicants; would act to discourage frivolous appeals, thereby improving the City’s ability to enforce; and
        - it would not place one city quasi-judicial decision-making board, BOA, with its own statutorily required standards of review (i.e. *unnecessary hardship, consistency with spirit of the ordinance*), in the difficult position of reviewing the decision of another city/county quasi-judicial decision-making board, the HRC, that has its own, different statutorily required and adopted standards of review (i.e.*congruity with the special character of the historic district*).
        - *Note:* The BOA would still be responsible for hearing requests for variances from property owners within an historic district.
    - Lastly, there are text amendments throughout that update any references to provisions in G.S. 160A to indicate relevant provisions in Chapter 160D (as required by the statute) as well as revisions made to more clearly mirror the languages of the statute or that simply reflect editing “clean ups” (i.e. mis-spellings, missing words, poor sentence structure).

Comprehensive Plan Consistency:
- This proposal best aligns with the *Living Asheville Comprehensive Plan* theme of **Responsible Regionalism** that seeks to “improve Regional Collaboration, Coordination and Communication” by aligning the city’s development code with state statutes. (p. 288)

Council Goal(s):
- A Well-Planned & Livable Community

Committee(s):
- On August 12, 2020, the Historic Resources Commission was updated on these proposed amendments related to historic preservation and voted unanimously to recommend support of these amendments.
- On August 24, 2020, the Asheville Board of Adjustment (“BOA”) was updated on the proposed amendment regarding appeals of HRC decisions regarding certificates of appropriateness going directly to superior court rather than to the BOA (UDO Section 7-5-11(b)(8) and voted unanimously to recommend support of this amendment.
- This request was reviewed by the Planning & Zoning Commission at their meetings on September 2, 2020 (public hearing) and September 23, 2020 (vote), where it was recommended for approval, 7:0.

Pro(s):
- Proposed changes will align the city’s development standards, practices and procedures with newly enacted North Carolina state law Chapter 160D.
- Clarifies the process for Historic Preservation related quasi-judicial and administrative decisions.
- Streamlines the appeals process for applicants and improves the decision-making and enforcement process for the City.
- Clarifies practices and procedures for the development community.

Con(s):

- None identified.

Fiscal Impact:

- None

Suggested Motion:

- Move to approve the proposed wording amendments to Chapter 7 Articles II, III, V, VIII, VIX and of the UDO and find that the proposed amendments are reasonable, in the public interest and consistent with the city's comprehensive plan in that they promote responsible growth based on holistic decision making and bring City ordinances into compliance with the new North Carolina General Statute regarding land use development, Chapter 160D.

Attachment(s)

- Draft Ordinance
- Planning & Zoning Commission Minutes
- Planning & Zoning Recommendation