



TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL

PLANNING DEPARTMENT

DELIVERED VIA: ☒ *HAND* ☐ *MAIL* ☒ *FAX* ☐ *EMAIL*

To: **David Andrews, Town Manager
Mayor & Town Council**

From: **Tina Moon, Planning Administrator**

Date: **June 9, 2021**

Subject: **Proposed Amendments to the Land Use Ordinance Relating to Chapter 160D**

The following list provides an outline of the substantive changes to the Land Use Ordinance required by the adoption of N.C.G.S. Chapter 160D. Local governments have until July 1, 2021 to amend local ordinances to conform to these new regulations.

1. New language has been added to Article I, General Provisions, to address properties with “split jurisdiction,” where a parcel or parcels are located in more than one jurisdiction.
2. Local governments must have a current comprehensive plan in place by July 1, 2022 (G.S. 160D-501(a)). This requires local governments to adopt a comprehensive plan if they do not have one already or to continue maintaining a reasonability up to date plan. Work on the Town’s comprehensive plan (Carrboro Connects) is underway and scheduled to meet this requirement. New language has been added to Article I, General Provisions, to reference the comprehensive plan and the legislative process for its adoption and review of future amendments.
3. Proportional representation – residents in the ETJ should have proportional representation on advisory boards. The number of ETJ seats should be recalculated after the results of each census and adjusted if necessary to maintain the appropriate ratio. Three boards are specifically identified in chapter 160D as subject to this standard: the planning board, the board of adjustment and the appearance commission. Historic preservation commissions may also require ETJ representation if/when properties located in the ETJ are designed for local historic status (local historic district or local landmark). In Carrboro, the appearance commission serves as the historic preservation commission. (Amendments to Article III, Administrative Mechanisms, have been prepared to address these requirements.)
4. The existing conflict of interest provisions for legislative decisions has been expanded (the review of text and map amendments). The new provisions apply to advisory boards and the Town Council. The conflict of interest provision for quasi-judicial decisions has been revised,

this only applies to the board of adjustment and the Town Council, when considering quasi-judicial matters. There is also a new conflict of interest provision for staff. (Amendments to Article III, Administrative Mechanisms, have been prepared to address these requirements.)

5. Advisory board members are required to take an oath of office before beginning their term. (Amendments to Article III have been prepared to meet this requirement. Staff is reviewing the provisions in Article V in Chapter 3 of the Town Code, relating to advisory boards to determine if additional amendments are needed to fully comply with Chapter 160D. Amendments to the Town Code are not subject to the same legislative public hearing process as amendments to the Land Use Ordinance.)
6. Chapter 160D has provided an opportunity for updating the list of plans used for determining for consistency when making legislative and quasi-judicial decisions. Amendments include adding a new reference for the Carrboro Comprehensive Plan and replacing the Thoroughfare Plan with long-range transportation plans. (Amendments to Article III, Administrative Mechanisms, Article IX, Zoning Districts and Zoning Map, and Article XX, Amendments, have been prepared to update the list of plans used for consistency.)
7. Chapter 160D eliminates the use of the term conditional use permits. Effective with the adoption of the draft ordinance (anticipated for June 22, 2021), all valid conditional use permits will be automatically converted to special use permits. To maintain the distinction between permits subject to Town Council review and permits subject to board of adjustment review, CUPs have been renamed special use permits-A, and special use permits have been renamed special use permits-B. (The opening section of Article IV, Permits and Final Plat Approval, explains this change, but additional references to CUPs becoming SUPs-A have been added throughout the LUO.)
8. Permit approvals and conditions associated with permit approvals must be provided in writing. (A new subdivision, Section 15-59(b)(2), has been added to Article IV.)
9. The standards associated with performance guarantees (bonds) have been changed in Chapter 160D, as noted in the 15-60(b) for subdivisions. Other provisions relating to the use of performance guarantees for zoning permits and special use permits have been updated by reference to 15-60(b). (These amendments are in Article IV, Permits and Final Plat Approvals.)
10. An additional phrase has been added to Section 15-64, Amendments and Modifications to Permits, in subsection (c) to clarify that changes to permits involving use and density cannot be approved administratively as minor modifications.
11. A new Section 15-78.1 has been added to Article IV, Permits and Final Plat Approval, with criteria for the special review of certain classes of subdivisions, these types of subdivision are sometimes referred to as “expedited subdivisions.”
12. A new Section 15-93.1 has been drafted with new standards relating to administrative determinations, in Article V, Appeals, Variances, Special Exceptions, and Interpretations. Administrative determinations are staff decisions, such as the approval or denial of zoning

permits or the interpretations of language in the Land Use Ordinance. Administrative determinations can be appealed.

13. Language in Article VI, Hearing Procedure for Appeals and Applications, has been amended to add the word “evidentiary” in key locations throughout the article to emphasis the evidentiary nature of quasi-judicial proceedings.
14. A new Section 15-107 has been added to Article VI, Hearing Procedures for Appeals and Applications, which outlines detailed criteria relating to ‘standing.’
15. The provisions on vested rights, site specific development plans have been expanded and reorganized to include provisions on permit choice and multi-phase developments. In previous iterations of the draft amendments, the provisions on permit choice and multi-phase developments were included in Article IV. This language has been reorganized and relocated to Article VIII where it is part of sections 15-128.2 (vested rights and permit choice) and 15-128.3 (vested rights and site specific developments) to more closely align with the language in 160D. Some additional refinement may still be needed to distinguish regulations relating to vested rights from those pertaining to nonconforming situations. Staff will continue to review Article VIII with the Town Attorney and bring forth future amendments if necessary.
16. The adoption of Chapter 160D eliminates the use of conditional use zoning, the mechanism by which applicant applies for a rezoning and conditional use permit simultaneously. As of the adoption of the ordinance, all (valid) existing conditional use districts will be automatically converted to conditional districts with an associated special use permit-A. Article IX, Zoning Districts and Zoning Map, has been substantially rewritten to repeal Section 15-141.3, Conditional Use Zoning Districts and existing conditional use districts have been restructured as conditional districts. These include the Village Mixed Use District (VMU), the O/A conditional district and the M-3 conditional district. Similarly, the B-4 conditional use district has been eliminated; the B-4 conditional district remains unchanged.
17. Additional language relating to amendments and minor modifications for conditional zonings has been added to 15-141.4(g) and 15-141.4(h) in Article IX. This language has been revised since the earlier iterations of the draft amendments to better align with the requirements in Chapter 160D. Similar language is also provided in the discussion of VMUs in 15-141.2(g)(5). Changes to conditional zoning districts involving use and density cannot be approved administratively as minor modifications.
18. New regulations in chapter 160D requires a stay of fees, during an appeal process, this includes the assessment and collection of fees. New language has been added to Article VII, Enforcement and Review, under Subsection 15-114(b)(3) to address this change.
19. A new Section 15-118, on statutes of limitations has been added to Article VII, Enforcement and Review.
20. A substantive change to the language in Article XXI, Neighborhood Preservation, is the requirement to replace the term “guidelines” with “standards,” in reference to design standards used to evaluate proposed changes to properties in local historic districts. A related change is the

emphasis on the quasi-judicial nature of the review of certificates of appropriateness (COA), and the role of the Appearance Commission to follow quasi-judicial decision-making processes when acting as the Historic Preservation Commission.

Other Amendments to the Land Use Ordinance to address administrative matters

1. New language has been added to Article XX to require that petitioners seeking a rezoning to hold a neighborhood information meeting.
2. References to the Board of Aldermen have been changed to the Town Council.
3. References for a conditional use permit or special use permit have been replaced with special use permit-A and special use permit-B, respectively.
4. Language has been updated for gender neutrality.
5. Minor clerical errors have been addressed.