



BUNCOMBE COUNTY

PLANNING & DEVELOPMENT

(828) 250-4830 - PlanningInfo@BuncombeCounty.org
www.buncombecounty.org/planning

ZPH2020-00031 - 160D Text Amendment

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TO: Buncombe County Planning Board

FROM: Nathan L. Pennington, CFM
Planning Director

CC: Brandon Freeman
Senior Attorney I
Buncombe County Legal Department

REGARDING: ZPH2020-00031 - 160D Mandatory Amendments (“Musts”)

Chapter 160D (“160D”) is the culmination of years of work to significantly recodify and modernize city and county development regulations (enabling legislation). Work on this effort began back in 2013. 160D was established under Session Law 2019-111, enacted by the General Assembly in June, 2019 and signed by the Governor in July, 2019. Session Law 2019-111 included two parts with different effective dates.

Part I, which took effect on July 11, 2019, put into effect a number of mandatory changes to the State of North Carolina’s planning/land-use and development related General Statutes (“NCGS”). These changes are already in effect, and are reflected in the Draft Ordinance (attached).

Part II will take effect in July 2021, and associated changes **must be adopted by Buncombe County by July 1, 2021**. Part II requires numerous mandatory changes, and also provides for a number of optional changes. The Draft Ordinance, with a few exceptions, contains only those changes that are mandatory. Optional (“Mays”) changes will be evaluated at later dates and in concert with the comprehensive planning process. It is important to note that many of the identified “musts” are already adhered to either because they are already in effect or because they were part of standards that were already codified in the County’s development ordinances.

160D was drafted with the explicit intent to not make significant substantive changes in land use law, but to modernize and standardize land use law across the State. Part II also consolidates local regulation statutes for counties and municipalities (previously, statutes were divided into two chapters for different types of jurisdictions).

Resources from the UNC School of Government provide an introduction to 160D and the major topics

addressed therein. Further information is available through their checklist of changes which are attached.

General information from the UNC School of Government concerning N.C. Gen. Stat. § 160D can be found [here](#).

The School of Government outlines the following major topic areas, and for the purpose of this text amendment, only the “musts” that are applicable specifically to unincorporated Buncombe County are summarized:

- **Terminology and Definitions** – *update references, align ordinance terminology, and assure definition consistency with state law.*
- **Rules for Boards and Commissions** – *adopt conflict-of-interest standards, keep minutes, and administer oaths of office.*
- **Land Use Administration** – *incorporate staff conflict-of-interest standards into ordinance, maintain paper or digital maps, issue notices of violation in conformance with statutory procedures, must enter premises during reasonable hours, must have consent or administrative search warrant, permit revocation must follow same process as approval, must perform inspections for building permits, must require certificate of occupancy for work requiring a building permit.*
- **Substance of Zoning Ordinance** – *must maintain current and prior zoning maps for public inspection, maintain other effective state and federal maps for inspection (i.e. FIRM’s), must define “minor modifications” by ordinance, must not include modification of use or density, and major modifications must follow standard approval process (CUP’s).*
- **Substance of Other Development Ordinances** – *conform subdivision performance guarantee requirements with statutory standards, allow expedited review of certain subdivision types, exempt farm use on bona fide farms, must not exclude manufactured homes based on age, follow standardized process for housing-code enforcement – repairs and demolition, must frame preservation district provisions as standards rather than guidelines, must process a development agreement as a legislative decision, and local government must be a part to a development agreement.*
- **Comprehensive Plan** – *adopt a comprehensive plan by July 1, 2022 to maintain zoning, plans and updates following legislation decision procedures, reasonably maintain a plan.*
- **Legislative Decisions** – *adhere to applicable procedures for legislative decisions under any development regulation, not just zoning, and adopt any regulation by ordinance and not resolution, provide notice to adjacent owners separated by streets, railroads and other corridors for zoning map amendments, provide notice 25 days prior to hearing and 10 days prior to hearing, refer zoning amendments to the PB, and not have governing board function as PB review board, have PB consider any plan adopted that requires comment and plan consistency, adopt a brief consistency statement – consistent/inconsistent with approved plans, must note on the applicable future land use map when a zoning-map amendment is approved that is not consistent with the map, adopt a statement of reasonableness for zoning map amendments, permit adoption of a legislative decision on first reading by simple majority, prohibit third-party down-zonings, do not combine legislative and quasi-judicial processes*
- **Quasi-Judicial Decisions** – *follow statutory procedures for quasi-judicial development decisions, hold evidentiary hearings to gather competent, material, and substantial evidence to establish facts of case, testimony must be taken under oath and findings of fact and conclusions of law must be written, allow parties with standing to fully participate in hearing, distribute same materials to*

applicant and landowner at the same time, present all materials at hearing and make them part of the record, must not impose conditions that there is no statutory authority to impose, obtain applicant's/landowner's written consent to conditions related to special use permits, and rename conditional use permits or CUP's to special use permits or SUP's, set a 30 day period to file an appeal of any administrative determination under a development regulation, presume that if the notice of determination is sent by mail it is received on the third business day after it is sent, and as mentioned in previous sections – do not combine legislative and quasi-judicial processes and assure minor modifications are defined by ordinance.

- **Administrative Decisions** – *provide development approvals in writing and if provided electronically do so in a way that it is protected from editing, assure that applications for development are made by a person with a property interest in the property or a contract to purchase said property, provide that development approvals run with the land, permit revocations must follow the same process as was used for their approval, administrative decisions of any development regulations must be appealed to the board of adjustment unless otherwise provided in the controlling ordinance, set a 30 day appeal period, require the official who made the decision to appear as a witness in the appeal, pause enforcement actions and fines during the appeal.*
- **Vested Rights and Permit Choice** – *recognize that building permits are valid for six months, recognize the default rule that development approvals are valid for 12 months unless otherwise noted, identify site-specific plans with vesting for 2-5 years and recognize multi-phase developments – long-term projects of at least 25 acres are vested up to seven years, except for specified exceptions, must allow for permit choice if development regulations are changed.*
- **Judicial Review** – *update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts and provide that appeals are filed within 30 days, must not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing.*

Staff is recommending the following changes be considered and incorporated into this specific text amendment:

1. Correct the references to specific departments that administer ordinances (i.e. General Services, Planning, Permits and Inspections, etc.) throughout our development ordinances.
2. Make the Board of Adjustment the Board that hears all variances and appeals, including subdivision variances formally heard by the Planning Board, as recommended by the UNC School of Government (from page 80 of Owens and Lovelady's Quasi-Judicial Handbook):

“To avoid confusion by applicants, board members, and the public regarding the type of process that must be observed, an increasing number of jurisdictions have taken the step of assigning all quasi-judicial decisions for development regulations to the board of adjustment, with all advisory decisions going to the planning board and all legislative decisions to the governing board. This is not required by law but is a judicious step that should be seriously considered.”