

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION  
Meeting Date: June 22, 2021**

**SUBJECT:**

This is a Public Hearing to consider text amendments to the Land Development Standards for compliance with NCGS 160D.

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** E4  
**Department:** Development Services  
**Contact:** Elizabeth Teague, Olga Grooman  
**Presenter:** Olga Grooman, Attorney Anna Stearns

**BRIEF SUMMARY:**

Chapter 160D of the North Carolina General Statutes (NCGS) clarify, consolidate, and reorganize city and county-enabling statutes related to development. These statutory guidelines are currently found in NCGS 160A which will be replaced by this new legislation. Changes to Waynesville's LDS include converting all references from "160A" to "160D," required conflict of interest language, changes in timeframes for permit validity and vested rights, and updating several definitions for consistency throughout the state. Several procedural updates are also proposed in order to align the Town's Land Development Standards with best practices suggested by the UNC School of Government's analysis of 160D. These amendments need to be incorporated into local development and zoning regulations by July 1, 2021, before the Chapter 160D statutes become effective on August 1, 2021.

**MOTIONS FOR CONSIDERATION:**

1. Motion to find that the updates to the Land Development Standards are consistent with the 2035 Comprehensive Land Use Plan.
2. Motion to find that the 160D updates are in the public interest because they bring the Land Development Standards in compliance with the new law.
3. Motion to adopt the attached text amendments to Land Development Standards as presented (or as amended).

**FUNDING SOURCE/IMPACT:**

N/A

**ATTACHMENTS:**

1. Staff Report
2. Draft Ordinance
3. Report from the Planning Board
4. Consistency Worksheet

**MANAGER'S COMMENTS AND RECOMMENDATIONS:**

## Board of Aldermen Staff Report

Subject: NCGS 160D Land Development Standards (LDS) text amendments  
Ordinance Section: Multiple Sections of Land Development Standards  
Applicant: Staff initiated Text Amendment; Development Services Department  
Meeting Date: June 22, 2021

### Background:

Chapter 160D was adopted by the N.C. General Assembly in 2019 to consolidate city and county statutes and create a unified set of land development regulation statutes among all cities and counties in North Carolina. Local municipalities need to be in compliance with 160D by July 1<sup>st</sup>, 2021. The law will be enacted statewide on August 1<sup>st</sup>, 2021.

In developing the proposed text amendments, the Development Services Department followed State Statutes for 160 D and the guidelines and recommendations of the UNC School of Government:

- [https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_160d.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_160d.html)
- <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation/ch-160d-2019>
- Lovelady, A. and Owens, D. (2020) Chapter 160D: A New Land Use Law for North Carolina, University of North Carolina, Chapel Hill.

Staff also participated in training and collaborative discussion through the North Carolina Planners' list serve and the NC Chapter of the American Planning Association. Legal guidance has been provided by Ron Sneed and Anna Stearns. Staff presentations on 160D were made on September 21, 2020, April 19, 2021, and the Town adopted *Waynesville 2035 Planning with Purpose, Comprehensive Land Use Plan*, on September 8, 2020 after several months of Planning Board review and public hearings. The Planning Board held a public hearing on May 26, 2021 and recommends adoption of the attached ordinance.

### Staff Recommended Text Changes:

Text amendments include definitions, substitution of 160A references with relevant provisions from 160D, addition of the conflict of interest standards, updated performance guarantees section, revised permit terms and process types for different development projects in chapter 15, updated vested rights section, revised chapter 16 on violations and civil penalties, and replacement of protest petitions section with public comments to match the language and requirements of 160D.

Staff submits that the attached draft ordinance be recommended to the Board of Aldermen for adoption, with proposed changes to the current Land Development Standards provided **in red**.

## Consistency with the 2035 Comprehensive Land Use Plan

160D-related changes are reasonable and in the public interest because they will keep the Town of Waynesville in compliance with the current General Statutes for land use planning and zoning, and clarify definitions and procedures which should aid in land use decisions. In so doing, these text amendments will assist the Town in carrying out the community vision statement of the 2035 Comprehensive Plan:

*Waynesville will enable the growth of a vibrant, healthy, and successful community – true to our history, small town culture and heritage; responsive to the changing aspirations and needs of all our citizens; purposefully built on the principles of smart growth; mindful of the gift of our rivers and creeks, farmland and mountain vistas; and attentive to the opportunities presented in regional preservation, arts and education, economic development, and land use initiatives.*

Staff also submits that the proposed text amendments to the LDS are consistent with the first goal of the 2035 Comprehensive Plan:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Create walkable and attractive neighborhoods and commercial centers.
- Encourage in-fill, mixed use, and context-sensitive development.
- Promote conservation design to preserve important natural resources. (And to)
- Reinforce the unique character of Waynesville.

## Attachments

1. Draft Ordinance
2. Report from the Planning Board
3. Consistency Statement Worksheet.

## Recommended Motions

1. Motion to find that updates to the Land Development Standards are consistent with the 2035 Comprehensive Land Use Plan.
2. Motion to find that the 160D updates are in the public interest because they are in compliance with the current law.
3. Motion to adopt the attached text amendments to Land Development Standards as presented.

**ORDINANCE NO. O-11-21**

**AN ORDINANCE AMENDING THE TEXT OF THE  
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

**WHEREAS**, the Town of Waynesville has the authority, pursuant to Part 3 of Article 19 of Chapter 160A, now Section III of Chapter 1 of 160D, of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety and welfare; and

**WHEREAS**, the Town of Waynesville must comply with North Carolina General Statutes to maintain Land Development regulations comply with the most up to date version of State authorization statutes known as 160D by July 1, 2021.

**WHEREAS**, the Town of Waynesville Planning Board has reviewed the proposed text amendments to the Land Development Standards (LDS) and recommends that it is consistent with the 2035 Comprehensive Plan and that it is reasonable and in the public interest because:

- Compliance with 160D will continue to “promote smart growth in land use planning and zoning;” (Goal #1);
- It will keep the Town of Waynesville in compliance with General Statutes for land use planning and zoning; and

**WHEREAS**, the Board of Aldermen find this Ordinance is consistent with the Town’s 2035 Comprehensive Plan and that it is reasonable and in the public interest to “make decisions about resources and land use in accordance with North Carolina General Statutes;” and

**WHEREAS**, after notice duly given, a public hearing was held on May 26, 2021 at a special called meeting of the Waynesville Planning Board, and on June 22, 2021 at the regularly scheduled meeting of the Board of Aldermen;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF WAYNESVILLE, MEETING IN REGULAR SESSION ON \_\_\_\_\_ AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:**

That the Land Development Standards be amended as follows in compliance with statutory changes in N.C.G.S. 160D.

1. Amend Section 1.2 Authority as follows:

Specifically, principal authorization comes in the North Carolina General Statutes in Chapter ~~160A (Planning and Regulation of Development)~~ 160D (Local Planning and Development Regulation).

2. Amend Section 1.5 Consistency with All Adopted Plans as follows:

In accordance with G.S. ~~160A-382-383~~ 160D, all development plans shall be in conformance with all adopted plans (...).

3. Replace Section 2.1.1 and 2.1.2 Official Land Development Map as follows:

**~~2.1.1—Official Land Development Map~~**

~~A. The Official Zoning Map of the Town of Waynesville shall be known as the Official Land Development Map.~~

~~B. Each land development and overlay district shall be shown on the Official Land Development Map for the Town of Waynesville.~~

~~C. The Official Land Development Map shall be maintained in the Waynesville Planning Department and a copy shall be kept on file with the Town Clerk. The Administrator shall separately maintain the digital files that comprise the map and record all map amendments in a separate metadata file.~~

~~D. The Official Land Development Map, if printed or produced for dissemination shall show the effective date of this ordinance and bearing the words: "Official Land Development Map, Town of Waynesville, North Carolina."~~

**~~2.1.2—Land Development Map as Part of Land Development Standards~~**

~~The Official Land Development Map for the Town of Waynesville, and all district designations, boundaries, figures, letters and symbols shown on such maps are hereby declared to be a part of this chapter.~~

**2.1.1 Official Land Development Map.**

In accordance with 160D-105, the adopted zoning district boundaries and zoning overlays shall be shown on a map of the Town of Waynesville which shall be known as the Official Land Development Map, and such map is hereby incorporated into these Land Development Standards for the Town of Waynesville.

Zoning district maps and a copy of the currently effective version of any incorporated map shall be maintained for public inspection in the Waynesville Development Services Department.

The Official Land Development Map shall be maintained in the Waynesville Development Services Department and a copy shall be kept on file with the Town Clerk. Copies of the Official Land Development Map shall be provided upon request and, when certified by the town clerk in accordance with G.S. 160A-79 or G.S. 153A-50, shall be admissible into evidence and shall have the same force and effect as would the original map.

Zoning district boundaries are automatically amended to remain consistent with the incorporated map upon Board of Aldermen approval of zoning map amendments.

### 2.1.2 Adoption of Other Maps by Reference.

North Carolina flood insurance rate maps, watershed boundary maps, and state surface water maps officially adopted and promulgated by State and federal agencies are hereby adopted and incorporated into these Land Development Standards in their most recently adopted version by reference.

The Town of Waynesville Municipal Services District map, Powell Bill Map, Comprehensive Pedestrian Plan, Parks and Recreation Master Plan, and local and federally designated historic districts and landmarks are hereby adopted and incorporated into these Land Development Standards in their most recently adopted version by reference.

#### 4. Amend Section 2.6.1 Historic Overlay District as follows:

##### **C. Development Standards.**

###### **1. Historic Overlay District- General Requirements**

b. When the provisions of this section and the ~~guidelines standards~~ and regulations established for each individual HOD, impose higher standards than are required for that land development district, the provisions of this section and all the applicable ~~guidelines standards~~ and regulations shall govern.

#### 5. Amend Section 2.7 Conditional Districts as follows:

Conditional districts are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Aldermen in accordance with G.S. ~~160A-382 160D~~.

#### 6. Amend Section 5.2.2 Applicability and Administration as follows:

##### **Adopted Plans or Historic ~~Guidelines Standards~~ to Take Precedence.**

Where specific architectural elements are required as part of an adopted plan or associated with local historic ~~guidelines standards~~, these shall take precedence over the building design requirements of this chapter.

#### 7. Amend Section 6.12.2 Types of Guarantees as follows and separate other information into new Section as 6.12.3:

##### **6.12.1 General.**

~~**C. Terms:** The financial guarantee will be renewable, in one year terms, until 50 percent of building permits have been issued within the applicable phase. When 50 percent of building permits have been issued in a particular phase, the developer may petition the town to take over ownership and maintenance of the streets and infrastructure within the phase.~~

**C. Duration:** The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the

date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration (160D-804.1(1a)).

**D. Extension.** If the improvements are not completed before the guarantee is likely to expire, the Administrator may extend the performance guarantee, or the developer may provide a new performance guarantee, for an additional period. An extension under this section shall only be for a duration necessary to complete the required improvements. If the extension is granted, the amount of the renewed performance guarantee shall not exceed 125% of the improvements yet to be completed. The new amount must be reduced for improvements that have already been completed (160D-804.1(1b)).

### 6.12.2 Types of Guarantees.

#### **A. Surety Performance Bond:**

- ~~3. The duration of the bond shall be until such time as the improvements are accepted by the Board of Aldermen, but shall not exceed two (2) years from date of request.~~
- ~~4. Extensions past two (2) years may be granted by the Administrator at the request of the developer subject to new cost estimates and additional guarantees possibly being required.~~

#### **B. Letter of Credit:**

1. The developer may obtain a letter of credit issued by any financial institution licensed to do business in North Carolina.
2. A satisfactory, irrevocable letter of credit as approved by the town attorney and deposited with the town clerk shall be submitted, containing the following information:
  - a. Indication that the Town is the sole beneficiary,
  - b. The amount (of the letter of credit) as approved,
  - c. Account number and/or credit number that drafts may be drawn on,
  - d. List of improvements that shall be built that the letter is guaranteeing,
  - e. Terms in which the town may make drafts on the account,
  - f. Expiration date of the letter.

#### ~~**C. Cash or Equivalent Security:**~~

(...)

### 6.12.3 Relevant Provisions:

#### ~~**A. Default by Developer:**~~

(...)

#### ~~**B. Release of Guarantee:**~~

(...)

**E.C. Warranty Against Defects:**

(...)

**D. Coverage:**

The performance guarantee shall be used only for the completion of the required improvements. It shall not be used for repairs or maintenance after initial completion (160D-804.1(4)). If the project has common areas that require maintenance, the developer or the entity to which the property has been officially transferred is responsible for maintaining these common areas.

**E. Exclusion:**

Performance guarantees associated with erosion control and stormwater control are not subject to the provisions of this section.

5. Amend Section 12.3.1 Statutory Authorizations, Findings of Fact, Purpose and Objectives as follows:

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3, 5, and 8 of Article 19 of Chapter 160A~~; ~~Articles 7, 9, 11, and 13 of Chapter 160D~~ and the Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations (...).

6. Amend Section 14.3.2 Planning Board Membership and Quorum as follows:

(...) one 1 or more members shall be appointed by the Haywood County Commissioners as set forth in ~~G.S. 160A-362~~ ~~G.S. 160D-307~~ to provide for proportional representation of residents within the Extraterritorial Jurisdiction.

7. Amend Section 14.4.2 Board of Adjustment Membership and Quorum as follows:

The Board shall not pass upon any decision relating to an appeal from a decision, order, requirement, or determination of town officials or an application for a variance or ~~conditional-use permit~~ ~~special use permit~~ when there are less than four-fifths ( 4/5 ) of the board members with jurisdictional authority present.

8. Amend Section 14.5.1 Historic Preservation Powers and Duties as follows:

The Historic Preservation Commission of Waynesville shall have the following powers and duties to be carried out in accordance with the terms of this ordinance of ~~G.S. Chapter 160A, Article 19, Part 3~~ ~~G.S. Chapter 160D, Article 9, Part 4~~ (...).

9. Insert new section to 14.6 Meetings and General Procedures:

**14.6.7 Conflict of Interest Policy.**

- A. **Governing Board.** - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- B. **Appointed Boards.** - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- C. **Administrative Staff.** - No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.
- D. **No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved.** No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.
- E. **Quasi-Judicial Decisions.** - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- F. **Resolution of Objection.** - If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
- G. **Familial Relationship.** - For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. (2019-111, s. 2.4.)

10. Amend Section 15.2.3 as follows:

### 15.2.3 Permit/Process Type

Permit/ Process Type	Section	Permit/Process Type	Reviewing Agency	Public Notification (15.3)	Approving Agency	Appeal Process	Permit Period	Permit Extension
Certificate of LDS Compliance	15.6.1	Administrative	Admin.	None	Admin.	BOA	<del>6 months</del> 12 months	<del>6 months</del> Re-submit
Temporary Use Permit	15.6.2	Administrative	Admin.	None	Admin.	BOA	See <del>4.7</del> 4.6	n/a
Certificate of Occupancy	15.6.3	Administrative	Admin.	None	Admin.	BOA	n/a	n/a
Modification of Dimensional Standards	15.6.4	Administrative	Admin.	None	Admin.	BOA	n/a	n/a
Grading Permit	15.7.1	Administrative	Admin.	None	Admin.	BOA	<del>6 months</del> 12 months	Re-submit
Floodplain Development Permit	15.7.2	Administrative	Admin.	None	Admin.	BOA	<del>1-year</del> 12 months	Re-submit
Stormwater Permit	15.7.3	Administrative	Admin.	None	Admin.	BOA	<del>1-year</del> 12 months	Re-submit
Site Plan/Design Review (Minor)	15.8.1	Administrative	Admin.	None	Admin.	BOA	<del>1-year</del> 2 years	<del>1-year</del> Up to 3 years max.*
Site Plan/Design Review (Major)	15.8.2	<del>Quasi-judicial</del> Administrative	Admin.	1,2,4	Planning Board	Superior Court	<del>1-year</del> 2 years	<del>1-year</del> Up to 3 years max.*
Subdivision (Minor)	15.9.1	Administrative	Admin.	None	Admin.	<del>BOA</del> Superior Court**	30 days to file plat	Re-submit
<del>Subdivision (Major)</del>	<del>15.9.2</del>	<del>Quasi-judicial</del>	<del>Admin.</del>	<del>1,2,4</del>	<del>Planning Board</del>	<del>BOA</del>	<del>1-year to Final Plat</del>	<del>6 months</del>
<b>Subdivision (Major)</b>	<b>See 15.9.2, 15.9.3, and 15.9.4</b>							
Subdivision (Major)- Preliminary Plat	15.9.3	Administrative	Admin.	<del>None</del> -1,2,4	<del>Planning Board</del> Admin.	<del>BOA</del> Superior Court**	<del>1-year to final plat</del> 2 years to final plat	<del>6 months</del> Up to 3 years max.*
Subdivision (Major)- Final Plat	15.9.4	Administrative	Admin.	None	Admin.	<del>BOA</del> Superior Court**	30 days to file plat	Re-submit
Special Use Permit	15.10	Quasi-Judicial	Planning Board	1,2,5	Planning Board	Superior Court	<del>1-year</del> 2 years	<del>1-year</del> Up to 3 years max.*
Designation of Historic Landmarks/Districts	15.11.1	Legislative	HPC	1,2,3	Board of Aldermen	Superior Court	n/a	n/a
Certificate of Appropriateness (Minor)	15.11.2	Administrative	Admin.	None	Admin.	HPC	<del>6 months</del> 12 months	Re-submit
Certificate of Appropriateness (Major)	15.11.3	Quasi-Judicial	Admin.	1,2,4	HPC	BOA	<del>6 months</del> 12 months	Re-submit
Appeal of Administrative Decision	15.12	Quasi-Judicial	BOA	1,4	BOA	Superior Court	30 days to Appeal	n/a

<b>Variance</b>	15.13	Quasi-Judicial	BOA	1,4	BOA	Superior Court	30 days to Appeal	n/a
<b>Text Amendment</b>	15.14	Legislative	Planning Board	1,2,3,4	Board of Aldermen	Superior Court	n/a	n/a
<b>Map Amendment (Rezoning)</b>	15.14	Legislative	Planning Board	1,2,3,4	Board of Aldermen	Superior Court	n/a	n/a
<b>Conditional District</b>	15.15	Legislative	Planning Board	1,2,5	Board of Aldermen	Superior Court	May be reseinded after 2 years 2 years	n/a Up to 3 years max.*
<b>Vested Right</b>	15.16	Legislative	Planning Board	1,2,4	Board of Aldermen	None	2-5 years	Up to 5 years total

\* See Section 15.16.3

\*\* 160D-1403(b)

11. Amend Section 15.5 General Requirements for Quasi-Judicial Hearings and Decisions as follows:

15.5- General Requirements for ~~Quasi-Judicial~~ Evidentiary Hearings and ~~Quasi-Judicial~~ Decisions.

A quasi-judicial decision is a ~~process that involves~~ decision involving the finding of facts regarding a specific application of an ordinance and ~~that requires~~ the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include, ~~but are not limited to,~~ decisions involving variances, special use permits, ~~certificates of appropriateness,~~ and appeals of administrative determinations. In accordance with G.S. ~~160A-393-160D-1-2, -1402,~~ decisions on the approval of site plans and subdivisions ~~and~~ are quasi-judicial in nature if the ordinance authorizes (...).

12. Amend Section 15.5.1 Standards of Conduct as follows:

Standards for Conduct of ~~Quasi-judicial~~ Evidentiary Hearings.

An evidentiary hearing is a hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by an ordinance.

C. (...) All decisions shall be based on competent, material, and substantial evidence entered in as part of the record.

13. Amend Section 15.6.1 Certificates of Land Development Standards (LDS) Compliance as follows:

**G. Permit Validity:** Upon the approval of the Certificate of Land Development Standards Compliance, the applicant shall have ~~six (6) months~~ one (1) year to obtain a building permit or otherwise begin the permitted use.

**H. Permit Extension:** ~~The Administrator may grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension.~~ Renewal of an expired certificate shall require the same application procedure as the initial permit. No further development activity shall be performed until the new certificate is issued.

14. Amend Section 15.7.1 Grading Permit (Sedimentation and Erosion Control) as follows:

**H. Permit Validity:** When work under a grading permit is not ~~completed~~ substantially commenced within ~~six (6) months~~ one (1) year following the date of issuance of the grading permit, the grading permit shall be deemed expired.

15. Amend Section 15.7.3 Stormwater Permits as follows:

**G. Permit Validity:** When a stormwater permit is issued in association with a project requiring a building permit, the stormwater permit shall expire upon the expiration or revocation of the building permit. When a stormwater permit is issued for a project that does not require a building permit, the stormwater permit shall expire if work is not initiated within twelve (12) months of the date of issuance of the permit. ~~or if work stops for a twelve (12) month period.~~

16. Amend Section 15.8.1 Site Plan/Design Review (Minor) as follows:

**H. Permit Validity:** Upon the approval of the Minor Site Plan, the applicant shall have ~~one (1) year~~ two (2) years to obtain a building permit.

**I. Permit Extension:** ~~The Administrator may grant a single extension of this time period of up to one (1) year upon submittal by the applicant of sufficient justification for the extension.~~ Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to: the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval. No further development activity shall be performed until the extension approval is issued.

17. Amend Section 15.8.2 Site Plan/Design Review (Major) as follows:

**B. Process Types:** ~~Quasi-judicial (see also 15.4)~~ Administrative

36. **Decisions/Findings of Fact:** Following the public hearing the ~~commission~~ Planning Board may approve, deny or approve with conditions the application for a Major Site Plan. No Major Site Plan shall be ~~granted~~ approved unless the ~~commission~~ Planning Board finds each ~~of it complies with~~ the following ~~findings of~~ facts to be true:

1. The plan is consistent with the adopted plans and policies of the Town;
2. The plan complies with all applicable requirements of this ordinance; and
3. ~~There exists adequate infrastructure (transportation and utilities) to support the plan as proposed;~~  
The plan has infrastructure as required by the ordinance to support the plan as proposed;
4. ~~The proposed plan conforms to the character of the neighborhood, considering the location, type and height of buildings or structures and the type and extent of landscaping on the site; and~~

~~5. The application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.~~

**J. Review Period by ~~Commission~~ Planning Board:** Applications for Major Site Plans shall be acted upon within ninety (90) days after filing, otherwise the application shall be deemed approved and a permit shall be issued. An extension of time may be granted by mutual consent of the ~~commission~~ Planning Board and the applicant.

**L. Permit Validity:** Upon the approval of the Major Site Plan, the applicant shall have ~~one year~~ two (2) years to obtain a building permit.

**M. Permit Extension:** ~~Upon the approval of the Major Site Plan, the applicant shall have one (1) year to obtain a building permit. Failure to secure building permits for the permitted work within this time shall render the compliance void. Any change to the approved plans that has not been authorized by the Administrator shall invalidate the certificate of land development standards compliance and any subsequent building permits.~~ Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval. No further development activity shall be performed until the new approval is issued.

18. Amend Section 15.9.1 Minor Subdivisions as follows:

**F. Appeals.** ~~Notwithstanding the provisions of section 15.12.2 below, when an applicant disagrees with Appeals of the decisions of the Administrator, the applicant may, within thirty (30) days after the receipt of the decision in writing, request that the application be forwarded to the Planning Board for determination at the next regularly scheduled meeting of the Board. The request must be made in writing and delivered to the Town Clerk. shall be heard by the Board of Adjustment in accordance with section 15.12-~~ Appeals of the decision of the Planning Board shall be made to the Superior Court of Haywood County. Such an appeal must be made in writing within thirty (30) days of the receipt of the decision by the property owner.

...

**I.** The minor subdivision process is not intended to permit the avoidance of improvements, infrastructure or other standards imposed for major subdivisions. Therefore, when an application for minor subdivision approval is made by an applicant who has previously obtained minor subdivision approval for an adjacent parcel of land in the previous two years, the application shall be treated as an application for, and conform to the requirements of, a major subdivision set forth below.

19. Amend Section 15.9.2 Major Subdivisions as follows:

The ~~minor~~ major subdivision review process is required for those divisions of land into eight (8) or more lots or which require dedication of public utilities and/or public streets.

**A. Process Types:** ~~Quasi-judicial (See also 15.4).~~ Administrative

**B. Pre-Application Procedure:** It is required that every applicant for a Major Subdivision meet with the Administrator in a conference prior to the submittal of an application. The purpose of this conference is to provide clarification and assistance in the preparation and submission of plats for approval. It is recommended that the applicant provide a sketch plan (15.4.2) and **Environmental survey (15.4.1)** to the Administrator prior to or at the pre-application conference. The provision of a sketch plan will allow the Administrator an opportunity to review the proposal before the applicant expends funds on the preparation of a detailed Subdivision Plan.

**C. Required Application Information:** Environmental Survey (15.4.1) and Preliminary Plat.

~~**D. Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Community Appearance Commission.~~

~~**E. Public Notification:** Level 1, 2 and 4.~~

~~**F. Neighborhood Meeting (15.3.7):** Optional.~~

~~**G. Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.~~

~~**H. Decisions/Findings of Fact:** Following the public hearing the commission may approve, deny or approve with conditions the application for a Major Subdivision. No Major Subdivision shall be granted unless it complies with the following findings of fact:~~

~~1. The plan is consistent with the adopted plans and policies of the Town;~~

~~2. The plan complies with all applicable requirements of this ordinance;~~

~~3. There exists adequate infrastructure (transportation and utilities) to support the plan as proposed; and~~

~~4. The application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.~~

~~**I. Review Period by Planning Board:** The Planning Board shall take action (approve or deny approval) within thirty two (32) days of the public hearing on the matter. Should the Planning Board fail to act on the preliminary plat within the prescribed period, the applicant may seek preliminary plat approval by the Board of Aldermen at the next regularly scheduled meeting of the aldermen.~~

~~**J. Decisions:** If the Planning Board approves the Major Subdivision, the applicant will be directed to proceed to the preparation of a Preliminary Plat (15.4.4). If the Planning Board disapproves or approves conditionally the plat, the reasons for such action shall be stated in writing and entered in the records of the Planning Board. The applicant may make changes and submit a revised plat which revision shall be submitted, review and acted on in accordance with the procedures set forth in this section.~~

~~K. **Appeals:** An appeal from the decision of the Planning Board regarding a Major Subdivision request may be made by an aggrieved party and shall be made to the Superior Court of Haywood County in the nature of certiorari. Any such petition to the Superior County shall be filed with the court no later than thirty (30) days after the applicant receives the written copy of the decision of the Planning Board.~~

~~L. **Permit Validity:** Approval of a Major Subdivision Plan shall be valid for one (1) year from the date of approval. A Preliminary Plat shall be presented for approval prior to the end of this one (1) year period.~~

~~M. **Permit Extension:** The Administrator may grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension.~~

**C. Preliminary Plat Approval:** The Planning Board shall review and either approve or deny the major subdivision applicant's preliminary plat in accordance with the procedure set forth in section 15.9.3 below. Engineering, including a compliant Stormwater Plan (12.5) and Construction Documents (15.4.4) shall be submitted after Planning Board review.

**D. Final Plat:** Once all infrastructure improvements are installed or financially guaranteed as required by Section 6.13 below, the Final Plat shall be presented for approval in accordance with Section 15.9.4 below.

20. Amend Section 15.9.3 Preliminary Plat as follows:

15.9.3. Preliminary Plats for Major Subdivision:

**A. Process Types:** Administrative.

**B. Permit Required Before Any Land-Disturbing Activity:** No ~~such~~ land-disturbing activity shall take place until a Preliminary Plat has been approved.

~~**C. Pre-Application Procedure:** Prior to applying for a Preliminary Plat or and submitting plans, the applicant is encouraged to meet with the Administrator. The purpose of this meeting is to discuss any specific engineering detail necessary for consideration prior to the preparation of the Preliminary Plat.~~

~~**D.C. Required Application Information:** Environmental Survey (15.4.1) and Preliminary Plat (15.4.4) prepared by a registered land surveyor, licensed landscape architect or licensed engineer.~~

**D. Determination of Completeness:** The Administrator shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for a public hearing before the Planning Board.

~~**E. Determination of Conformity:** Following submittal of the application and accompanying data, the information shall be reviewed by the Administrator for compliance with the requirements of this ordinance and with the Manual of Specifications. Provided the application is complete, applications shall be reviewed and acted upon by the staff and notice given the applicant within thirty (30) days of receipt of the application.~~

**E. Public Notification:** Level 1, 2 and 4.

**F. Neighborhood Meeting (15.3.7):** Optional.

**G. Public Hearing:** The Planning Board shall hold a hearing on the proposal. The applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.

**H. Decisions/Findings of Fact:** Following the public hearing the board may approve, deny or approve with conditions the application for a Major Subdivision. No Major Subdivision shall be approved unless the commission finds each of the following facts to be true:

1. The plan is consistent with the adopted plans and policies of the Town;
2. The plan complies with all applicable requirements of this ordinance; and
3. The plan has infrastructure as required by the ordinance to support the plan as proposed.

**~~F.I. Substantial Changes:~~** Substantial Changes from the approved ~~major subdivision plan preliminary plat~~ shall require additional review by the Planning Board. Substantial changes shall include, ~~but not be limited to~~ redesign of streets, increasing the number of lots, altering the design of more than twenty (20) percent of the lots, and/or reducing the number of lots by twenty (20) percent. ~~All other changes shall be considered minor modifications subject to review by the Administrator.~~

**~~H.J. Appeals.~~** ~~Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with section 15.12.~~ An appeal of the decision to approve or deny a Preliminary Plat or a substantial change to an approved Preliminary Plat may be made by an aggrieved party to the Superior Court of Haywood County no later than thirty (30) days after the applicant receives the written copy of the decision.

**K. Permit Validity:** Unless substantial work has commenced or a building permit has been obtained, approval of a preliminary plat expires two (2) years from the date such approval was granted.

**L. Permit Extension:** The applicant may apply for an extension of the approval period. The Planning Board may approve an extension of the time required to file the final plat up to a total of five (5) years from the date the initial application was approved where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. No further development activity shall be performed until the new approval is issued.

21. Amend Section 15.9.4 Final Plats as follows:

15.9.4. Final Plat for Major Subdivision:

**G. Appeals:** ~~Appeals of the decisions of the Administrator shall be heard by the Board of Adjustment in accordance with Section 15.12.~~ An appeal of the decision to approve or deny a Final Plat or to approve or deny a substantial change to an approved Preliminary Plat may be made by an aggrieved party to the Superior Court of Haywood County no later than thirty (30) days after the applicant receives the written copy of the decision.

**J. Permit Validity:** Final plats for major subdivisions ~~that have been granted approval~~ must be recorded within thirty (30) days following approval or the approval becomes invalid. No lots shall be sold prior to approval by the town and recording of the Final Plat for the subdivision.

**K. Permit Extension:** ~~The Administrator may grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension. Re-submit.~~

22. Amend Section 15.10.3 Effect of Decisions as follows:

**B. Permit Validity:** ~~6 months~~ two (2) years to obtain building permit. Such permit shall remain valid as long as a valid building permit exists for the project.

**C. Permit Extension:** ~~6 months—one time only.~~ The applicant may apply for an extension of the approval period. The Planning Board may approve an extension of the time required to file the final plat up to a total of five (5) years from the date the initial application was approved where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. No further development activity shall be performed until the new approval is issued.

23. Amend Section 15.11.2 Certification of Appropriateness – Minor Works for Local Landmarks and Local Historic Districts as follows:

**A. Applicability:** Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the local landmark property and/or locally designated historic district as a whole.

**E.** Once an application containing all needed elements is submitted, the Administrator shall review the application and approve or deny it based on compliance with the standards contained in this chapter and in any applicable Design Review Guidelines or other standards that may apply.

**I. Permit Validity:** ~~6 months~~ one (1) year.

**J. Permit Extension:** ~~None—must~~ Re-submit.

24. Amend Section 15.11.3 Certification of Appropriateness – Major Works for Local Landmarks and Local Historic Districts as follows:

**B. (...)** This advice shall be on the commission's Design Review Guidelines or other standards that may apply, the nature of the area where the proposed project will take place, and other relevant factors.

F. (...) No Certificate of Appropriateness shall be granted unless the commission finds that the application complies with the principles of the **Design Review Guidelines** adopted by the commission for review of changes and new construction.

I. **Delay in Demolition of Local Landmarks and Buildings within Local Historic Districts:** An application for a certificate of appropriateness authorizing the demolition, removal or destruction of a designated local landmark or a building, structure or site within a local historic district may not be denied except as provided below:

~~K. L. Permit Validity: 6 months—one (1) year.~~

~~L. M. Permit Extension: None—must Re-submit.~~

25. Amend Section 15.12.1 Applicability as follows:

This process is hereby established to provide an appeal process for parties aggrieved by any order, requirement, decision or determination, **other than the decision to approve or deny a minor subdivision plat**, made by an administrative officer charged with enforcing the provisions of this ordinance. **For appeals of decisions regarding minor subdivision plats, see 15.9.1(F).**

26. Amend Section 15.13.3 Formal Review as follows:

A. **Action by the Board of Adjustment:**

1. Upon receipt of the request for a variance from the Administrator, the board of adjustment shall hold ~~a quasi-judicial~~ **an evidentiary** hearing on the request.

27. Amend Section 15.14.2 Review by Planning Board as follows:

B. **Additional Public Notification for Large Scale Amendments:** (...) When this occurs, the town may use the expanded published notice provisions found in the North Carolina General Statutes at Section ~~160A-384~~ **160D-601**.

28. Replace Section 15.14.3 Protest Petitions as follows:

**~~15.14.3 Protest Petitions:~~**

- ~~A.—**Qualification of Protest:** In accordance with G.S. 160A-385(a)(2) a valid protest petition must be signed by the owners of either twenty percent (20%) or more of the area included in the proposed change, or five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way is not to be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less.~~
- ~~B.—**Effect of Protest Petition of Board of Aldermen Vote:** With a valid protest petition, the amendment shall not become effective except by favorable vote of three-fourths (¾) of all the members of the Board of Aldermen.~~

~~C. **Duly Signed Petition Required:** No protest against any proposed amendment shall be valid or effective unless it is on a form provided by the Town actually bearing the signatures of the required number of property owners and stating that the signers do protest the proposed change or amendment. All such petitions shall be filed in the office of the Town Clerk for validation at or before 12:00 noon not less than 3 working days prior to the date of the hearing.~~

~~D. **Withdrawal of Protest Petition:** Any qualified property owner who signed the protest petition may withdraw their protest against a proposed zoning amendment any time prior to the meeting at which the rezoning will be considered.~~

### 15.14.3. Public Comment

Zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting (160D-603).

#### 29. Amend Section 15.14.4 Consideration by the Board of Aldermen as follows:

**B. Additional Public Notification for Large Scale Amendments:** (...) When this occurs, the town may use the expanded published notice provisions found in the North Carolina General Statutes at Section ~~160A-384~~ 160D-601.

#### 30. Amend Section 15.14.5 Plan Consistency as follows:

In accordance with G.S. ~~160A-383~~ 160D-604(d); -605(a); -701, all such amendments shall be made in accordance with the **Comprehensive Land Development Use** Plan and any other officially adopted development plan.

#### 31. Amend Section 15.15 Conditional Districts as follows:

Conditional Districts (Section 2.6) are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Aldermen in accordance with G.S. ~~160A-382~~ 160D.

#### 32. Amend Section 15.15.2 Formal Review as follows:

- D. The applicant will have a reasonable opportunity to consider and respond to any conditions and site-specific standards proposed by either the Planning Board or the Board of Aldermen prior to final action. In accordance with G.S. ~~160A-382(b)~~ 160D.

33. Replace Section 15.16 Vested Right as follows:

~~15.16- Vested Right.~~

~~15.16.1 Purpose and Applicability.~~

~~The zoning vested right is a right which is established pursuant to NCGS 160A[OG1] 385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan. Obtaining a zoning permit or preliminary plat subdivision approval through the vested rights procedure gives the applicant the right to start construction of the development as approved an additional two (2) to five (5) years to begin and/or complete work as appropriate.~~

~~15.16.2 Vested Right Procedures.~~

~~A.—Process Type: Legislative.~~

~~B.—Pre Application Procedure: The applicant shall meet with the planning department prior to submitting an application to inquire about specific zoning requirements and obtain the proper application forms. The applicant shall be advised of all necessary information and requirements of the vested rights procedure[OG1].~~

~~C.—Required Application Information: Master Plan (15.4.3).~~

~~D.—Determination of Completeness: The Administrator shall review the application and accompanying site plan for compliance with the requirements of this chapter and other applicable regulations and schedule the matter for a public hearing before the Board of Aldermen.~~

~~E.—Public Notification: Level 1, 2 and 4.~~

~~F.—Formal Review: Following a public hearing, the Board of Aldermen shall take one of the following actions:~~

~~1.—Approve the vested rights request. The Administrator is then directed to issue a vested rights zoning permit.~~

~~2.—Approve the vested rights request subject to conditions which are necessary to protect the public health, safety and welfare. The Administrator is then directed to issue the vested rights zoning permit subject to the changes in the site plan to be made by the developer.~~

~~3.—Table the vested rights request pending the submittal of additional information.~~

~~4.—Deny the vested rights request.~~

~~G.—Appeals: None.~~

~~15.16.3 Vested Right Duration—Effect of Approval.~~

~~A.—**Maximum Term:** A zoning right that has been vested as provided in this section shall remain vested for a period of two (2) to five (5) years as approved by the Board of Aldermen.~~

~~B.—**Building Permit/Preliminary Plan Required:** Upon issuance of a building permit/preliminary plan approval, the expiration provisions for those permits shall apply, except that neither shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding. A zoning vested right shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed. {062}~~

~~C.—**Town May Terminate Vested Rights Early:** The town may terminate the zoning vested rights upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of all financing and all architectural, legal and other fees incurred after approval by the town.~~

~~D.—**State or Federal Regulation Not Bound by Vested Right:** The zoning vested right may be terminated upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan. In such a case the Board of Aldermen may, by ordinance, after notice and a hearing, modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.~~

~~E.—**Shall Run with the Property:** A zoning vested right is not a personal right but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.~~

~~F.—**Vested Right Not Exclusive:** 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 this chapter.~~

## **15.16 Permit Choice and Vested Rights.**

### **15.16.1 Permit Choice.**

- A. If an applicant submits a complete application for a development permit or approval and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose whether the application will be judged under the previously existing or modified rule (160D-108(b)).
- B. When a development requires the issuance of multiple permits, the applicant may, for a period of up to 18 months, choose for each permit whether to proceed under the rule that existed at the time of application for the initial permit or under a modified rule.
- C. For the purposes of this subsection, an erosion and sedimentation control permit or a sign permit do not count as an initial application for a development permit.

### **15.16.2 Vested Rights: Generally.**

- A. Pursuant to NC G.S. 160D-108, a zoning vested right is the right to undertake and complete the development and use of property as it was approved despite a subsequent change in applicable regulation. If the development regulation changes after the application has been approved, the project may continue under the old rule as initially approved.
- B. A statutory vested right is established when:
  1. A site-specific vesting plan is approved; or

2. A final plat is approved for the initial phase of a multi-phase development; or
3. A development agreement is approved pursuant to NC G.S. Chapter 160D, Article 10; or
4. When a development permit has been issued for all other types of development.

### 15.16.3 Vested Right Terms.

#### A. Duration:

Type of Permit/Right	Term
Building Permit	6 months
Development Approval	12 months
Site-Specific Vesting Plan	2-5 years
Multi-Phase Development	7 years from first site plan approval
Development agreement	Per agreement negotiated pursuant to NCGS 160D, Article 10
Development discontinuation	2 years

A vested right for a site-specific vesting plan remains vested for a period of 2 years from the date of the first development approval or permit issued for the site. Pursuant to 160D-108.1(e)(2), the Administrator may provide an extension for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the Administrator and shall be made following the same application procedure as the initial approval.

**B.** A development permit or approval expires and the vested rights terminate at the time specified in subsection A, unless the work authorized by the permit has substantially commenced. For the purpose of this section, the **substantial commencement** of work shall be determined by the Administrator based on any of the following:

1. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis that has not been discontinued for longer than 30 days; or
2. The development has created substantial on-site infrastructure; or
3. The development has received and maintained a valid building permit.

**C.** Pursuant to NC G.S. 160D-108, even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months.

#### 15.16.4 Definitions:

For the purpose of this section, the following definitions apply:

- A. **Development-** as defined in Section 17.4 of this ordinance
- B. **Development permit-** an administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:
  - 1. Zoning permits.
  - 2. Site plan approvals.
  - 3. Special use permits.
  - 4. Variances.
  - 5. Certificates of appropriateness.
  - 6. Plat approvals.
  - 7. Development agreements.
  - 8. Building permits.
  - 9. Subdivision of land.
  - 10. State agency permits for development.
  - 11. Driveway permits.
  - 12. Erosion and sedimentation control permits (NC G.S. 143-755(e)(1)).
- C. **Multi-phase development-** a development containing 25 acres or more that is both of the following:
  - 1. Submitted for development permit approval to occur in more than one phase
  - 2. Subject to a master development plan with committed elements showing the type and intensity of use of each phase (NC G.S. 160D-108(j)).
- D. **Site-specific vesting plans-** for the purposes of this chapter, the following types of development approvals are site-specific vested plans:
  - 1. Any development for which a special use permit is required;
  - 2. Major subdivisions;
  - 3. Major and minor site plans;
  - 4. Conditional zoning.

#### 15.16.6. Relevant provisions:

- A. **Run with the Property:** A zoning vested right is not a personal right but shall attach to and run with the applicable property. All successors to the original landowner may exercise such right under the same conditions and for the same time that the original applicant could have exercised such right.
- B. **Town May Terminate Vested Rights Early:** The town may terminate the zoning vested rights upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of all financing and all architectural, legal and other fees incurred after approval by the town.
- C. **Not Exclusive:** 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 this chapter.
- D. **Hazard:** The town may terminate the zoning vested right if it determines after a public hearing that natural or man-made hazards are on or in the immediate vicinity of the property, and if not corrected, these hazards would pose a serious threat to the public health, safety, and welfare.

E. **State or Federal Regulation Not Bound by Vested Right:** The zoning vested right may be terminated upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site-specific vesting plan. In such a case the Board of Aldermen may, by ordinance, after notice and a hearing, modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

34. Amend Section 16.1.2 Notice of Violation as follows:

- A. Whenever the Administrator has reasonable cause to believe that a person is violating any of the provisions of this ordinance or any plan, order, or condition issued pursuant to this chapter, that official shall immediately notify ~~that person of the violation~~ each of the following, as applicable:
1. the holder of any development approval for the property;
  2. the landowner; and
  3. the person undertaking the work or activity that is the cause of the violation.
- B. ~~Such notice of violation shall be in writing and shall be served by personal delivery or certified or registered mail, return receipt requested.~~

The notice of violation shall be delivered by personal delivery, electronic delivery, or first-class mail. The notice of violation may also be posted on the property.

35. Delete Section 16.2.3 Criminal Penalties and renumber subsequent Sections:

~~Pursuant to GS § 14-4, any person, firm, or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount consistent with the General Statutes.~~

36. Add the following to Section 17.3 Definitions, Use Type:

**Dwelling-** any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

**Dwelling- Accessory.** A ~~smaller, secondary~~ dwelling unit either detached or attached, such as a garage apartment or cottage, designed for occupancy by one or two persons ~~not exceeding 750 square feet of gross floor space~~ and located on a lot with an existing single-family dwelling. Said units shall not exceed one per lot.

37. Amend and add to Section 17.4 Definitions, General as follows:

**Building.** ~~Any structure built for support, shelter or enclosure for any occupancy or storage.~~ A structure with a roof and walls built for permanent use. When used in reference to a residential structure, any one- or two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for habitation for living, sleeping, cooking, or eating purposes or any combination thereof, including accessory structures (NC Building Code: Residential Code Sec 202)

**Administrative decision.** A decision made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in Chapter 160D of the NC G.S. and the Town of Waynesville Code of Ordinances.

**Quasi-judicial decision.** A decision involving the finding of facts regarding a specific application of an ordinance and that requires the exercise of discretion when applying the standards of the ordinance. The term includes, but is not limited to decisions involving variances, special use permits, or certificates of appropriateness. (160D-102(28)).

**Legislative decision.** The adoption, amendment, or repeal of a regulation under NC G.S. Chapter 160D or Town of Waynesville Code of Ordinances. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of the NC G.S. 160D.

**Development.** Any man-made change to improved or unimproved real estate, including, but not limited to: ~~buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.~~

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The clearing, excavation, dredging, grading, filling, paving, drilling operations, mining, or alteration of land.
- c. Storage of equipment or materials.
- d. The subdivision of land as defined in this ordinance.
- e. The initiation of substantial change in the use of land or the intensity of use of land.

For stormwater calculation, development shall be considered any land disturbing activity that increases the amount of built upon area or otherwise decreases the infiltration of precipitation into the soil.

38. Amend Section 17.5 Definitions, Flood Damage Prevention as follows:

**Development.** Any man-made change to improved or unimproved real estate, including, but not limited to: ~~buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.~~

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The clearing, excavation, dredging, grading, filling, paving, drilling operations, mining, or alteration of land.
- c. Storage of equipment or materials.
- d. The subdivision of land as defined in this ordinance.
- e. The initiation of substantial change in the use of land or the intensity of use of land.

For stormwater calculation, development shall be considered any land disturbing activity that increases the amount of built upon area or otherwise decreases the infiltration of precipitation into the soil.

**ADOPTED** this      Day of June, 2021.

TOWN OF WAYNESVILLE

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J. Gary Caldwell, Mayor

ATTEST:

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Eddie Ward, Town Clerk

APPROVED AS TO FORM:

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Ronald Sneed, Town Attorney





**CONSISTENCY STATEMENT WORKSHEET**

Date: June 22, 2021  
Description: Text Amendments to Land Development Standards pertaining to 160D

In accordance with NCGS 160D-604(d); -605(a); -701, the Town of Waynesville Board of Aldermen find that in regards to a Text Amendment to the Land Development Standards

The Board hereby adopts the following statement(s) :

The text amendment is **approved and is consistent with the Town’s comprehensive land use plan** because: \_\_\_\_\_

\_\_\_\_\_

The text amendment and is **reasonable and in the public interest** because:

\_\_\_\_\_  
\_\_\_\_\_

The text amendment is **rejected because it is inconsistent with the Town’s comprehensive land plan and is not reasonable and in the public interest** because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

In addition to approving this text amendment, this approval is **also deemed an amendment to the Town’s comprehensive land use plan**. The change in conditions taken into account in amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest, are as follows: \_\_\_\_\_

\_\_\_\_\_

Board Member \_\_\_\_\_, made a motion, seconded by \_\_\_\_\_

The motion passed \_\_\_\_\_. ( *vote results here* )

\_\_\_\_\_  
J. Gary Caldwell, Mayor, Date

\_\_\_\_\_  
Eddie Ward, Clerk, Date

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION  
Meeting Date: June 22, 2021**

**SUBJECT:**

This is a Public Hearing for June 22, 2021 to consider additional changes to the Town of Waynesville Code of Ordinances for compliance with NCGS 160D.

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** E5  
**Department:** Development Services  
**Contact:** Elizabeth Teague, Olga Grooman  
**Presenter:** Olga Grooman, Attorney Anna Stearns

**BRIEF SUMMARY:**

In addition to the Land Development Standards, there are additional changes that need to be made to the Town Ordinances to bring it in compliance with NCGS Chapter 160D. This includes converting all references from "160A" to "160D" and updating required conflict of interest language within Article 4, inspections. Because these citations are in Ordinance Chapters other than the Land development Standards, staff is bringing them forward as a separate ordinance.

**MOTIONS FOR CONSIDERATION:**

1. Motion to adopt the attached text amendments to the Town Ordinance as presented (or as amended).

**FUNDING SOURCE/IMPACT:**

N/A

**ATTACHMENTS:**

1. Draft Ordinance

**MANAGER'S COMMENTS AND RECOMMENDATIONS:**

**ORDINANCE NO. O-12-21**

**AN ORDINANCE AMENDING THE TEXT OF THE  
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

**WHEREAS**, the Town of Waynesville has the authority, pursuant to Part 3 of Article 19 of Chapter 160A, now Section III of Chapter 1 of 160D, of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety and welfare; and

**WHEREAS**, the Town of Waynesville must comply with North Carolina General Statutes to maintain Land Development regulations comply with the most up to date version of State authorization statutes known as 160D by July 1, 2021.

**WHEREAS**, the Board of Aldermen find this Ordinance is consistent with the Town's 2035 Comprehensive Plan and that it is reasonable and in the public interest to "make decisions about resources and land use in accordance with North Carolina General Statutes." and

**WHEREAS**, after notice duly given, a public hearing was held on June 22, 2021 at the regularly scheduled meeting of the Board of Aldermen;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF WAYNESVILLE, MEETING IN REGULAR SESSION ON \_\_\_\_\_ AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:**

That the Ordinance be amended as follows in compliance with statutory changes in N.C.G.S. 160D.

1. Amend PART I.- CHARTER, Article VII.- TRANSITIONAL PROVISIONS , Section 7.8 Building Permits as follows:

State Law Reference- Building Permits, G.S. § ~~160A-417~~ 160D- 403; -1108 et seq.

2. Amend Chapter 10 Buildings and Building Regulations as follows:

Footnotes:

**State Law reference**— Municipal authority to regulate the construction of buildings, G.S. ~~160A-411, 160A-412~~ 160D- 402; -404; -1102; -1104; state building code applicable throughout the state, G.S. 143-138(e).

3. Amend Article III PERMITS as follows:

Footnotes:

**State Law reference**— Building permits, G.S. ~~160A-417~~ 143-138; 160D- 403; -1108 et seq.

Section 10.76 Required; application.

(c) No permit ~~issued under G.S. 143-136 — 143-143.2 or 143-151.26 — 143-151.36~~ shall be required for any construction, installation, repair, replacement or alteration costing ~~\$5,000.00~~ \$15,000.00 or less (. . .)

**State Law reference**— Similar provisions, G.S. ~~160A-417~~ 160D- 403; -1108 et seq.

Section 10-80. Time limitations on validity.

**State Law reference**— Similar provisions, G.S. ~~160A-418~~ 160D-403(c); -1109.

Section 10.81.- Changes in work after issuance.

**State Law reference**— Similar provisions, G.S. ~~160A-419~~ 160D-403(d); -1110.

Section 10.82.- Revocation.

**State Law reference**— Similar provisions, G.S. ~~160A-422~~ 160D-403(f); -1113.

8. Amend Article IV.- INSPECTION DEPARTMENT as follows:

*Footnotes:*

State Law Reference- *Building inspection*, G.S. ~~160A-411~~ 160D- 402(b); -404(c); -1102.

Section 10-116.- Organization.

b). ~~On and after the applicable date set forth in the schedule in G.S. 160A-411, no~~ The Town of Waynesville ~~town~~ shall **not** employ an inspector to enforce the state building code as a member of the town inspection department who does not have (...).

Section 10-118. – Conflicts of interest.

~~No member of the inspection department shall be financially interested in the furnishing of labor, material or appliances for the construction, alteration or maintenance of any building within the town's jurisdiction or any part or system, or in the making of plans or specifications, unless he is the owner of the building. No member of the inspection department shall engage in any work which is inconsistent with his duties or with the interests of the town.~~

~~No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.~~

~~No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.~~

Section 10-123. Remedies.

**State Law reference**— Similar provisions, G.S. ~~160A-432~~ 160D-1123.

4. Amend Article V- UNSAFE BUILDINGS as follows:

Footnotes:

**State Law Reference-** Unsafe buildings, G.S. ~~160A-425~~ 160D-1116 et. seq.

Sec. 10-156- Inspection; notice to owner to correct.

(Code 1987, § 150.35)

**State Law reference**— Similar provisions, G.S. ~~160A-425~~ 160D-1116.

Sec. 10-157- Condemnation of especially dangerous buildings.

(Code 1987, § 150.36)

**State Law reference**— Similar provisions, G.S. ~~160A-426~~ 160D-1117.

Sec. 10-158- Failure of owner to take corrective action.

(Code 1987, § 150.37; Ord. No. 26-98, 8-25-1998; Ord. No. 5-05, 3-8-2005)

**State Law reference**— Similar provisions, G.S. ~~160A-428, 160A-429~~ 160D-1121.

Sec. 10-159- Appeal by owner.

(Code 1987, § 150.38)

**State Law reference**— Similar provisions, G.S. ~~160A-430~~ 160D-1123.

Sec. 10-160.- Enforcement procedures against owner.

(Code 1987, § 150.39)

**State Law reference**— Similar provisions, G.S. ~~160A-431~~ 160D-1124.

Sec. 10-161.- Enforcement.

(Ord. No. 10-10, 7-27-2010)

**State Law reference**— Similar provisions, G.S. ~~160A-432~~ 160D-1125.

5. Amend Chapter 38.- HOUSING as follows:

**State Law Reference-** Minimum housing standards, G.S. ~~160A-441~~ 160D-1201 et seq.

Sec. 38-1. – Findings and purpose.

(a) Pursuant to G.S. ~~160A-441~~ 160D-1201, it is found and declared that ~~there exist in the town dwellings which are a dwelling shall not be~~ unfit for human habitation due to dilapidation; (...).

(b) In order to protect the health, safety and public welfare of the residents of the town as authorized by G.S. ~~160A-441~~ 160D-1201 through ~~160A-450~~ 160D-1212, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. ~~160A-444~~ 160D-1201.

Sec. 38-2. – Jurisdiction.

**State Law Reference-** Territorial Jurisdiction, G.S. ~~160A-360~~ 160D-200; -202; -903.

6. Amend CHAPATER 38 – HOUSING, ARTICLE II. – ADMINISTRATION AND ENFORCEMENT as follows:

Sec. 38-38.- Enforcement Procedure.

(c) *Failure to comply with order.*

(1). (...) the codes administrator shall submit to the board of aldermen at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing that owner comply with the order of the codes administrator, as authorized by G.S. ~~160A-446(g)~~ 160D-1208(e).

(2). (...) dwelling or dwelling unit to be repaired, altered, improved, vacated, closed, removed, or demolished, as provided in the original order of the codes administrator, and pending removal or demolition, to place a placard on that dwelling as provided by G.S. ~~160A-443~~ 160D-1203 and section 38-40.

(d) *Appeals from orders of the codes administrator.*

(1) (...) or by a court of record upon petition made pursuant to G.D. ~~160A-446(f)~~160D-1208(d) and subsection (e) of this section.

(e) *Petition to superior court by owner.* (...) to petition the superior court for a temporary injunction restraining the codes administrator pending a final disposition of the cause, as provided by G.S. ~~160A-446(f)~~160D-1208(d).

**State Law Reference-** Similar Provisions, G.S. ~~160A-443~~ 160D-1203.

Sec. 38-40.- In rem action by codes administrator; placarding.

(a) (...) or upon adoption by the board of aldermen of an ordinance authorizing and directing him to do so, as provided by G.S. ~~160A-443(5)~~ 160D-1203 and (...).

(b) (...) property is located and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. ~~160A-443(5)~~ 160D-1203.

Sec. 38-41.- Costs a lien on premises.

As provided by G.S. ~~160A-443(6)~~ 160D-1203, the cost of any repairs, alterations or improvements, or of vacating and closing, or removal or demolition, caused to be made or done by the codes administrator pursuant to section 38-40 shall be a lien against the real property upon which such cost was incurred. The lien shall be filed, having priority, and be collected in the same manner as the lien for special assessments established by G.S. 160A-216 through 160A-238.

7. Amend Chapter 50- SUBDIVISIONS as follows:

Footnotes:

State Law Reference- Subdivision regulations G.S. ~~160A-371~~160D-801 et seq.

8. Amend Chapter 62 – Vegetation, ARTICLE II.- TREES AND SHRUBS, DIVISION 2.- COMMUNITY APPEARANCE COMMISSION as follows:

Sec. 62-71.- Established; membership and terms.

(a) There is hereby established a community appearance commission (referred to in this division as the "commission") under the authority of G.S. ~~160A-451~~ 160D-304.

Sec. 62-76.- Powers and duties.

The commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this division and G.S. ~~160A-452~~ 160D-960.

**ADOPTED** this 8th Day of June , 2021.

TOWN OF WAYNESVILLE

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J. Gary Caldwell, Mayor

ATTEST:

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Eddie Ward, Town Clerk

APPROVED AS TO FORM:

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Ronald Sneed, Town Attorney