

ACTION REQUEST FORM

DATE: May 22, 2015
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, Director of Planning and Development Services

COUNCIL ACTION REQUEST:

Request for Public Hearing on zoning text amendment proposed by City-County Planning and Development Services staff

SUMMARY OF INFORMATION:

Zoning text amendment proposed by City-County Planning and Development Services staff to revise Chapter B of the *Unified Development Ordinances* to make clarifications to the Historic/Historic Overlay District requirements and to eliminate HRC and CAC review of combined uses in the CI zoning district (UDO-259).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET # UDO-259

STAFF: [David Reed](#)

REQUEST

Zoning text amendment proposed by the Planning and Development Services staff to revise Chapter B of the *Unified Development Ordinances* to eliminate HRC and CAC review of combined uses in the Central Industrial (CI) zoning district and to make clarifications to the Historic/Historic Overlay District requirements.

BACKGROUND

This amendment includes two separate proposed changes to the UDO. The first is in regard to Combined Use which is a land use category defined as a principal building which is used for any combination of dwelling unit(s), including single family, duplex and multifamily, and any other use(s) permitted in the zoning district. The UDO includes language that requires the Historic Resources Commission (HRC) and the Community Appearance Commission (CAC) to review certain combined uses in the CI zoning district but does not establish any standards for that review. Therefore, the review has not served any practical purpose and slows down the review process for uses that are allowed by right in the zoning district.

The other changes proposed in this amendment come from the HRC. The annual retreat of the HRC was held in December 2014 and one of the discussion topics was Procedures and Policies. Upon review of the existing language in the UDO, the HRC directed staff to make clarifications and update policies relating to how applicants are notified about Commission decisions, time limits of Certificates of Appropriateness (COA), and appeals. Another topic of discussion at the HRC retreat were the policies relating to After-the-Fact COAs which have never been codified in the UDO. A new section outlining those policies is proposed as part of this amendment.

ANALYSIS

The elimination of HRC and CAC review of certain combined use projects proposed in the CI zoning district would improve the development review process by eliminating a time consuming step that has no clear standards by which to do the review. Staff could not find any background information on why the requirement was established and cannot justify continuing the requirement.

All of the changes proposed in the Historic/Historic Overlay District requirements are in the Procedures section. The Form of Decision section is proposed to be rewritten to clarify and update the language and eliminates some unnecessary language. The Time Limits section currently includes some requirements that have proven to be unreasonable. At the annual retreat, the HRC voted to recommend new time limits for Certificates of Appropriateness. The proposed language is concise and includes a reasonable time frame for completing any work approved through the COA process. The Appeals section includes minor changes that clarify the intent and make the language more legally sound.

One new section is being proposed to establish procedures in the UDO to handle the review of work that has been initiated or completed without first obtaining a COA. The new section is proposed to be called After-the-Fact Certificates of Appropriateness and would be an addition to the Procedures section in the UDO. Our jurisdiction does not charge submittal fees for the processing of COAs and that has served as a goodwill gesture to encourage property owners to present their plans for review. When work has been done without first getting a COA, there has been no ordinance language addressing the policies that have been established over time. This section sets out the rules for dealing with work that has been initiated or completed without first obtaining a COA and mentions the fee that has already been established and adopted by the elected bodies.

RECOMMENDATION

APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-259
MAY 14, 2015**

David Reed presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

During discussion by the Planning Board, the following points were made:

The fee for After-the-Fact applications for Certificates of Appropriateness is \$75 for the first offense with an escalating cost thereafter. The maximum cost is \$200 per offense for those who continue to begin work on a property without coming in for a Certificate of Appropriateness prior to construction.

If the work was determined to be a zoning violation and corrective action was necessary, the cost for the permit issued through the Inspections Officer will be double the normal cost.

If the violation occurred prior to a change to the Guidelines, the Guidelines existing at the time of violation would apply.

MOTION: Clarence Lambe moved approval of the text amendment.

SECOND: George Bryan

VOTE:

FOR: George Bryan, Melynda Dunigan, Tommy Hicks, Arnold King, Clarence Lambe, Darryl Little, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning and Development Services

UDO – 259
AN ORDINANCE AMENDING
CHAPTER B, ARTICLE II AND CHAPTER B, ARTICLE IV
OF THE UNIFIED DEVELOPMENT ORDINANCES

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article II, Section 2-5.24 of the UDO is hereby amended as follows:

Chapter B – Zoning Ordinance

Article II – Zoning Districts, Official Zoning Maps and Uses

2-5.24 COMBINED USE

- (A) Dwelling Unit LocationNo dwelling unit(s) shall be located at ground level fronting the street.
- (B) NO and NB DistrictsIn the NO and NB Districts a maximum of two (2) residential dwelling units per building are permitted.
- (C) ~~CI District (W)Combined Uses proposed in the CI District shall meet the following review requirements~~
 - ~~(1) Historic Properties Commission.The Historic Properties Commission shall review and comment on the plans for all combined uses proposed for structures fifty (50) years of age or older. A petitioner shall contact the Historic Properties Commission to schedule a review appointment which shall be held at a regular monthly Commission meeting.~~
 - ~~(2) Community Appearance Commission.The Community Appearance Commission shall review and comment on all combined uses proposed on properties which have been divested by a public entity within the previous three (3) years. A petitioner shall contact the Community Appearance Commission to schedule through the standard Technical Advisory and Project Review process a review appointment which shall be held at a regular monthly Commission meeting.~~

Reserved

Section 2. Chapter B, Article IV, Section 4-7 of the UDO is hereby amended as follows:

Chapter B – Zoning Ordinance

Article IV – Historic/Historic Overlay Districts

4-7.4 PROCEDURES

- (F) Form of DecisionAll formal actions of the Commission shall be set forth in writing. A decision of the Commission shall be effective upon filing the written decision with the Historic Resource Officer of the Commission. The decision of the Commission shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made. In case of approval, the Commission shall transmit to the property owner a Certificate of Appropriateness clearly describing the work that has been approved, and any conditions of the approval. In case of denial, the Commission shall transmit to the property owner a letter stating the findings on which the decision was based. Additionally, the Commission may, as it deems appropriate, make recommendations concerning any exterior or interior (where applicable), features of the proposed project which may be of guidance and help to the applicant in revising the plans and application. The Commission shall also provide the Director of Inspections with a copy of the formal correspondence to the property owner.
- (G) Time LimitsEach Certificate of Appropriateness is issued subject to the following two conditions: (1) If a building permit is required to perform all or any part of the work authorized by a Certificate of Appropriateness, such building permit must be procured within six months from the date the Certificate of Appropriateness was issued and work completed within one year from the date of Certificate of Appropriateness; and, (2) If a building permit is not required for any part of the work authorized by a Certificate of Appropriateness, such work must be completed within one year from the date the Certificate of Appropriateness was issued. Upon failure to comply with the applicable condition, the Certificate of Appropriateness shall expire, subject to its being renewed. If a request is made to renew an expired Certificate of Appropriateness within twelve (12) months of its issuance, Commission staff may renew it. All other renewals of an expired Certificate of Appropriateness may only be made by the Commission. A Certificate of Appropriateness shall be renewed unless it is found that a change has occurred that would allow the work authorized by the expired Certificate of Appropriateness to impair the integrity of an historic landmark, property, or district as a whole or would be incongruous with the special character of an historic landmark, property, or district. No request to renew that contemplates substantive changes to the work authorized by the expired Certificate of Appropriateness may be granted. Such a request may be made by submitting an application for a new Certificate of Appropriateness. Unless otherwise designated by the Commission, all work approved under a Certificate of Appropriateness shall be completed within three

(3) years of the effective date of the Certificate of Appropriateness. If a request is made to renew a Certificate of Appropriateness prior to its expiration, Commission staff may renew it for one (1) additional year. If the work approved under a Certificate of Appropriateness has not been completed within the designated time period, the Certificate of Appropriateness shall expire.

- (L) AppealsAn appeal of a decision of the Commission in granting or denying any Certificate of Appropriateness ~~may~~ shall be taken to the appropriate Board of Adjustment. Appeals ~~may~~ shall be taken by any aggrieved party ~~within~~ by the later of thirty (30) calendar days after the decision of the Commission is effective or after a written copy thereof is delivered in accordance with Paragraph (F) above, and shall be in the nature of certiorari (only evidence presented at the Commission's meeting shall be considered at the appeal). Appeal from the decision of the Board of Adjustment shall be to the Forsyth County Superior Court.

4-7.4.1 AFTER-THE-FACT CERTIFICATES OF APPROPRIATENESS

(A) After-the-Fact Certificate of Appropriateness Applications

An after-the-fact Certificate of Appropriateness application includes any major or minor work projects that have been initiated or completed prior to obtaining the required Certificate of Appropriateness.

(B) After-the-Fact Certificate of Appropriateness Application Fee

To discourage activity without a Certificate of Appropriateness and to assist in offsetting the costs associated with the additional staff work that accompanies an after-the-fact application, an escalating fee system has been implemented. The escalating fee system is based upon the number of after-the-fact Certificate of Appropriateness applications sought by or on behalf of a property owner. The after-the fact Certificate of Appropriateness application fee, as established by the City Council of the City of Winston-Salem and the County Commissioners of Forsyth County, shall be due upon submission of the application.

(C) Application Consideration

All after-the-fact Certificate of Appropriateness applications shall be brought before the Commission for consideration.

(D) Approval of After-the-Fact Certificate of Appropriateness Applications

Unless otherwise designated by the Commission, if an after-the-fact Certificate of Appropriateness application is approved, the applicant shall have ninety (90) days to complete the approved work.

(E) Denial of After-the-Fact Certificate of Appropriateness Applications

If an after-the-fact application for approval of work, completed without a Certificate of Appropriateness, receives a denial from the Commission, the subsequent Certificate of Appropriateness application, if required, shall be considered anew. A subsequent Certificate of Appropriateness application must be submitted to the Commission within

thirty (30) days of the effective date of the denial of the original after-the-fact application. Commission staff shall determine if the subsequent application qualifies as a major or minor work and said application shall be reviewed accordingly.

Section 3. This ordinance shall be effective upon adoption.