ACTION REQUEST FORM

DATE: September 19, 2012
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, FAICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Text Amendment proposed by Planning staff

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by Planning staff to amend Chapter B, Article IV of the Unified Development Ordinances to add language to clarify the intent of Article 4-9.8 (Historic/Historic Overlay Districts) relating to undue financial hardship solely in cases of demolition by neglect (UDO-234).

PLANNING BOARD ACTION:

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

DOCKET #: UDO-234
STAFF: David Reed

REQUEST

The subject request would add language to clarify the intent of Section 4-9.8 (Historic/Historic Overlay Districts) relating to undue financial hardship solely in cases of demolition by neglect.

BACKGROUND

Chapter B Article 4 of the UDO contains the Historic/Historic Overlay District Requirements. In 2005, a text amendment was adopted (UDO-141) that established regulations relating to demolition by neglect of historic landmarks or structures within Historic (H) or Historic Overlay (HO) districts. These regulations became Section 9 of Chapter B, Article 4.

Demolition by neglect occurs when a structure designated as a Local Historic Landmark or is within the Historic or Historic Overlay zoning districts has severely deteriorated as described in Section 4-9.3 of the UDO. Upon making a finding of demolition by Neglect through the procedure outlined in Sections 4-9.4, 4-9.5 and 4-9.6, the Zoning Officer issues an order to the owner requiring the necessary repairs and corrections.

Section 9.8 establishes safeguards from undue financial hardship in cases of demolition by neglect. While processing a Certificate of Appropriateness (COA) case which is also in Article 4 but not in Section 9, it was pointed out that the language in Section 9.8 refers to “this article” rather than “this section”. Because UDO-141 was adopted with that wording, the safeguards from undue financial hardship intended to apply only in cases of demolition by neglect could also be interpreted to apply to everything in Article 4.

Safeguards from undue financial hardship should not be applied generally to COA cases and should be reserved for exceptions relating to the demolition of properties according to Richard Ducker in the Coates’ Canons: NC Local Government Law Blog. The City Attorney’s Office advises that the application of this financial hardship safeguard be clarified to better reflect the more narrow application intended when it was enacted.

ANALYSIS

The proposed changes clarify the intent of the section and will serve to eliminate a broader interpretation of the language than is intended.

RECOMMENDATION

Approval
David Reed briefly explained the text amendment.

PUBLIC HEARING

FOR: None
AGAINST: None

WORK SESSION

MOTION: Clarence Lambe moved approval of the zoning text amendment.
SECOND: Wesley Curtis
VOTE:
FOR: Wesley Curtis, Arnold King, Clarence Lambe, Darryl Little, Barry Lyons, Lynne Mitchell, Brenda Smith, Allan Younger
AGAINST: None
EXCUSED: None

A. Paul Norby, FAICP
Director of Planning
ORDINANCE
UDO-234
AN ORDINANCE AMENDING
CHAPTER B OF THE UNIFIED DEVELOPMENT ORDINANCES
TO AMEND LANGUAGE RELATING TO SAFEGUARDS
FROM UNDUE ECONOMIC HARDSHIP

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 IV of the UDO is amended as follows:

Chapter B – Zoning Ordinance
Article IV – Historic/Historic overlay Districts

4-9 DEMOLITION BY NEGLECT OF LOCAL HISTORIC LANDMARKS
OR STRUCTURES WITHIN HISTORIC (H) OR HISTORIC OVERLAY
(HO) DISTRICTS

4-9.8 SAFEGUARDS FROM UNDUE ECONOMIC HARDSHIP IN CASES OF
DEMOLITION BY NEGLECT

(A) When a claim of undue economic hardship is made owing to the effects of this
article Section 4-9, pertaining solely to Demolition by Neglect, the Zoning Officer
shall notify the Commission within three (3) business days following the hearing on
the complaint. The Commission shall schedule a hearing on the claim at its next
regular meeting, within the limitations of its procedures for application deadlines.

(B) When a claim of undue economic hardship is made owing to the effects of this
Article Section 4-9, pertaining solely to Demolition by Neglect, the burden of proof
shall be upon the Owner and any Parties in Interest to provide evidence during the
hearing upon the claim, describing the circumstances of hardship, which shall
include:

(1) Nature of ownership (individual, business, or nonprofit) or legal
possession, custody, control, and a description of the property.

(2) Financial resources of the Owner and any Parties in Interest,

(3) Cost of repairs.
(4) Assessed value of the land and improvements.

(5) Real estate taxes for the previous two (2) years.

(6) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the Owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.

(7) Annual debt service, if any, for the previous two (2) years.

(8) Any listing of the property for sale or rent, price asked, and offers received, if any. For income-producing property:

(1) Annual gross income from the property for the previous two (2) years.

(2) Itemized operating and maintenance expenses for the previous two (2) years, including proof that adequate and competent management procedures were followed.

(3) Annual cash flow, if any, for the previous two (2) years.

In the event that any of the required information is not reasonably available to the Owner and any Parties in Interest, the Owner and any Parties in Interest shall describe the reasons why such information cannot be obtained.

Section 2. This ordinance shall become effective upon adoption.