

Agenda Item

To: Planning Board
From: B.J. Grieve, Planning Director
Subject: OA-02-21: Text Amendments to the Unified Development Ordinance (UDO); Petitioner, Town of Southern Pines Planning Division Staff
Date: May 20th, 2021

I. SUMMARY OF APPLICATION REQUEST:

On July 11, 2019, Governor Roy Cooper signed Session Law 2019-111. This legislation made a variety of substantive changes to North Carolina laws that govern local land development regulations and reorganized most land development statutes into one new chapter of North Carolina General Statute (NCGS). NCGS Chapter 160D became effective January 1, 2021 and local governments were given until July 1, 2021 to revise local land development regulations as necessary to be consistent and compliant with Chapter 160D.

The Town of Southern Pines Planning Department has methodically reviewed the Town's Unified Development Ordinance (UDO) and is proposing a variety of changes to the UDO to comply with the requirements of NCGS Chapter 160D. Planning staff has attempted to restrict proposed changes to only those that are necessary to comply with NCGS Chapter 160D, or those that are necessary to improve the clarity of existing language in the UDO due to changes in NCGS Chapter 160D. A copy of the UDO with all proposed changes shown in red with additions underlined and deletions ~~stricken~~ has been posted on the Town's website for public review since May 4th, 2021.

II. PROJECT INFORMATION:

- a. Physical Address:**
Not applicable to Ordinance Amendment requests.
- b. Owners:**
Not applicable to Ordinance Amendment requests.
- c. Applicant:**
Town of Southern Pines
180 SW Broad Street
Southern Pines, NC 28387

III. APPLICATION REVIEW:

A. Review Process:

Applications for text amendments are reviewed pursuant to UDO §2.17.

B. Application Review Dates:

Application Submitted:	April 12 th , 2021
Application Complete:	April 12 th , 2021
TRC Consultation:	March 30 th , 2021
Notice of Planning Board Public Hearing:	
• Internet:	May 6 th , 2021
• Newspaper:	May 5 th and 12 th , 2021
Planning Board Agenda Meeting:	May 13 th , 2021.
Planning Board Public Hearing:	May 20 th , 2021

C. Criteria for Review:

When reviewing an application for a UDO text amendment, the hearing bodies (Planning Board and Town Council) shall consider and be guided by the following criteria, as set forth in UDO §2.17.10:

2.17.10. Criteria for UDO Text Amendments

In its review of an application for a UDO text amendment, the Hearing Bodies shall consider the following criteria. No single factor is controlling; instead, each must be weighed in relation to the other standards.

(A) Consistency. *The text amendment shall be consistent with the adopted Comprehensive Plan.*

(B) Health, Safety, and Welfare. *The amending ordinance must bear a substantial relationship to the public health, safety, or general welfare, or protect and preserve historical cultural places and areas.*

(C) Public Policy. *Certain public policies in favor of the text amendment may be considered. Examples include a need for affordable housing, economic development, mixed-use development, or sustainable environmental features, which are consistent with the Town, area, neighborhood, or specific plans.*

(D) Other Factors. *The Hearing Body may consider any other factors relevant to a text amendment application under state law.*

(E) Impacts. *The Hearing Bodies shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed amendment on the public at large.*

D. General Staff Comments:

- The history of Session Law (S.L.) 2019-111 that resulted in the revision and reorganization of land development regulation statutes in North Carolina is long and complicated and is outside the scope of this staff report. A good source for reading about the history of S.L. 2019-111 is a bulletin entitled “2019 North Carolina Legislation Related to Planning and Development

Regulation” that is available for download from the UNC School of Government.¹

- S.L. 2019-111 originally was effective on January 1, 2021 and also required that local regulations be revised to conform with Chapter 160D by that date. While many provisions of S.L. 2019-111 still become effective on January 1, 2021, the deadline for local regulations to conform with the new Chapter 160D- was extended by S.L. 2020-25 to July 1, 2021 due to COVID-19.
- Town of Southern Pines planning staff began the process of updating the Unified Development Ordinance (UDO) soon after S.L. 2019-111 was passed by attending training workshops, professional conference sessions and remote meetings hosted by the UNC School of Government throughout 2020. Planning staff also studied publications provided to local governments by the UNC School of Government via the Chapter 160D microsite² from 2019 to present. Publications include various legal bulletins, interpretive guidance documents (covering six specific topics in Chapter 160D) and multiple blog posts from professional staff with expertise in various topics. UNC School of Government also published a 255-page book entitled “Chapter 160D: A New Land Use Law for North Carolina” and distributed copies of this book at regional workshops.
- One particular publication provided by UNC School of Government, upon which planning staff relied while reviewing and drafting revision to the UDO, is entitled “G.S. Chapter 160D Checklist of Changes to Local Ordinances, Policies, and Practices.”³ This 15-page publication is organized in the form of a checklist for local governments and includes approximately 150 items to review in local ordinances. The approximately 150 items are organized in a manner that corresponds to topics and explanations provided in the 255-page Chapter 160D book referenced above. Items are further prioritized as *must* change items, *may* change items and *be aware of* items. Staff re-formatted this checklist as an Excel spreadsheet, and used this spreadsheet to review the UDO.
- Planning staff began writing draft revisions to the text of the UDO in January of 2020, working primarily from the UNC School of Government’s 160D checklist. Planning staff worked through the checklist and either revised the corresponding section or sections of the UDO or documented a reason why no change is needed at this time. In crafting language for draft revisions, planning staff followed some basic internal policies:
 - Only revise that which must be revised right now in order for the UDO to conform with the new Chapter 160D requirements.

¹ <https://www.sog.unc.edu/publications/bulletins/2019-north-carolina-legislation-related-planning-and-development-regulation>

² <https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation/ch-160d-2019>

³ <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/160D%20Checklist%20Aug%202020%20update.pdf>

- Keep amendments as simple as possible. For example, rather than re-writing entire sections to achieve “perfect” language, try to make smaller changes to achieve acceptable (and defensible) language.
 - Whenever professional judgment was necessary to draft a revision, document the rationale for the proposed draft revision so that the public, Planning Board and Town Council could review planning staff’s thoughts.
 - When a topic was identified that may be ripe for an amendment in the UDO but is not required to conform with Chapter 160D, planning staff added these topics to a separate list. The community may work on these other topics as interest and resources permit in the future.
- Planning staff completed a first draft of Chapter 160D UDO revisions on March 18, 2021. Each draft revision was depicted in a single copy of the UDO using Word’s “Track Changes” feature (whereby all changes are shown in red, proposed additions are underlined and proposed ~~deletions are striken~~. All amendments were furthermore cross-referenced using margin notes to the corresponding item in the UNC School of Government’s Chapter 160D checklist.
 - Given the complexity of the required Chapter 160D revisions, the Town of Southern Pines utilized the “Code Scan” review service offered by the UNC School of Government. Professional staff at the UNC School of Government reviewed planning staff’s first draft Chapter 160D revisions and provided comments. The Code Scan review took two weeks to complete, and planning staff received comments on the first draft revisions on April 2, 2021. Using comments received from the Code Scan review, planning staff made another round of revisions to the UDO. Each of the additional revisions were noted using margin comments so that the source of the revision was documented. UNC School of Government’s Code Scan comments are an internal document, but are certainly available for public review during regular business hours at the Planning Office.
 - Once all revisions were completed, a copy of the UDO showing all proposed changes and all margin notes was posted to the Town website on May 4th, 2021.⁴ A copy of the UNC School of Government 160D checklist with all staff notes was also posted to the Town website. Furthermore, electronic copies of the same documents were emailed to Town management, the Town Attorney, members of the Town’s Technical Review Committee, and all agencies to which referrals are normally mailed.

Commented [BG1]: This is an example of a margin note in Word.

The documents that have been prepared and posted, along with the links to various UNC School of Government resources contained in this staff memo,

⁴ <https://www.southernpines.net/230/Planning-Pending-Applications>

should provide the public, Planning Board and ultimately the Town Council the information and explanation needed to adequately consider the proposed Chapter 160D revisions to the UDO.

E. Outside Agency Comments:

- A request for comment was emailed to representatives from the Regional Land Use Advisory Commission (RLUAC), North Carolina Department of Transportation (NCDOT), U.S. Fish and Wildlife Service, Moore County Airport, and representatives of the Town of Southern Pines on May 5, 2021. As of the completion of the staff report on May 13, 2021, no responses have been received. Any agency responses, particularly a RLUAC response in light of NCGS §160D-601(b), will be provided to the Planning Board at the public hearing or provided to the Town Council at the Town Council hearing if received after the Planning Board hearing.

IV. ATTACHMENTS:

Instead of creating a Planning Board packet of nearly 500 pages, a copy of the UDO showing all proposed revisions, the UNC School of Government's 160D Checklist with all planning staff comments and the entire NCGS Chapter 160D, Articles 1-14, is available for download at the following website:

<https://www.southernpines.net/230/Planning-Pending-Applications>

One attachment is provided with this staff report:

1. Draft Planning Board Resolution Adopting a Statement of Plan Consistency

V. PLANNING BOARD ACTION:

The Planning Board shall consider the criteria for text amendments found in UDO §2.17.10, including consistency with the Comprehensive Long Range Plan. Per NCGS §160A-383(c), the Planning Board shall provide a written recommendation to the Town Council that address plan consistency and other matters as deemed appropriate by the Planning Board. The Planning Board may wish to use the following motions for guidance:

I move that after considering the criteria for text amendments found in in UDO §2.17.10, the first of which is consistency with the Comprehensive Long Range Plan, the Planning Board finds that:

1. The requested text amendments are consistent with the Comprehensive Long Range Plan and the Planning Board adopts the Resolution that is included as Attachment A in the staff report for OA-01-21;
2. The requested text amendments are consistent with the Comprehensive Long Range Plan and the Planning Board adopts the Resolution that is included as Attachment A in the staff report for OA-01-21 with the following edits or additions to Attachment A...
3. The requested text amendments are not consistent with the Comprehensive Long Range Plan and the Planning Board adopts the Resolution that is included as Attachment A in the staff report for OA-01-21 with the following edits or additions to Attachment A...

And, therefore, I move to:

1. Recommend approval of OA-01-21 to the Town Council (if desired, state any additional reasons you support the proposed amendment, besides those already listed in Attachment A).
2. Recommend approval of OA-01-21 as amended by the Planning Board to the Town Council (if any changes were made to the proposed revisions, list the reason(s) the text was amended by the Planning Board);
3. Recommend denial of OA-04-20 to the Town Council (state the reasons the Planning Board is recommending denial, besides those that may have already been amended into Attachment A in the third motion above).
4. Other...

ATTACHMENT A



**PLANNING BOARD
RESOLUTION TO ADOPT A STATEMENT OF CONSISTENCY
FOR ORDINANCE AMENDMENT APPLICATION
OA-01-21**

WHEREAS, Section 160D-701 of the North Carolina General Statutes specifies that zoning regulations shall be made in accordance with a comprehensive plan and shall be designed to protect the public health, safety and general welfare; and

WHEREAS, Section 160D-604 of the North Carolina General Statutes specifies that the Planning Board shall, with any ordinance amendment or zoning map amendment, advise and comment on whether the proposed action is consistent with the adopted comprehensive plan and on other matters as deemed appropriate by the Planning Board, and that the Planning Board shall provide this in the form of a written recommendation to the Town Council; and

WHEREAS, the Planning Board conducted a public hearing on May 20th, 2021 to listen to public comments, ask questions of the Town's planning staff and to consider of ordinance amendment application OA-01-21.

NOW, THEREFORE BE IT RESOLVED that the Planning Board finds and recommends to the Town Council that the revisions to the Unified Development Ordinance (UDO) that have been prepared by planning staff to comply with the recently revised and reorganized North Carolina land development statutes are reasonable, in the public interest and are generally consistent with the Town of Southern Pines Comprehensive Long Range Plan (CLRP). Whereas many revisions to the Town of Southern Pines UDO will implement a specific portion of the community vision and/or will help achieve specific goals and policies of the CLRP, the proposed revisions are intended to ensure that the UDO remains a legally-defensible document that will continue to guide growth and provide a framework for local land development regulations. Implementing the CLRP, and doing so in a manner that is compliant with North Carolina statutes governing local use of development regulations, is certainly reasonable and in the public interest and consistent with the CLRP.

ADOPTED this the 20th day of May, 2021.

Gary Carroll, Chairman

ATTEST:

Cindy Williams
Secretary to the Planning Board

