

City Council – Action Request Form

Date: September 15, 2020

To: Mayor, Mayor Pro Tempore, and Members of the City Council

From: Damon Dequenne, Assistant City Manager
Aaron King, Director of Planning and Development Services

Council Action Requested:

Request for Public Hearing on an Ordinance Amending Section 3.2.2 of the Unified Development Ordinances pertaining to Certificates of Appropriateness (UDO-CC5).

Strategic Focus Area: Livable Neighborhoods

Strategic Objective: Allow more time for action by the Historic Resources Commission in times of emergency.

Strategic Plan Action Item: No

Key Work Item: No



Summary of Information:

City-County Planning Board staff, in consultation with the City Attorney's Office is proposing this UDO amendment in response to the COVID-19 pandemic. The UDO currently requires the Historic Resources Commission (HRC) act on Certificate of Appropriateness (COA) applications within 120 days. In-person HRC meetings were temporarily suspended due to the pandemic, causing the commission to miss the 120-day deadline in two instances. This amendment would give the HRC up to 180 days to act on COAs which is already allowed by State Statutes.

Committee Action:

Committee _____

Action _____

For _____

Against _____

Remarks:

UDO-CC5

AN ORDINANCE AMENDING SECTION 3.2.2 OF THE *UNIFIED DEVELOPMENT ORDINANCES (UDO) RELATING TO CERTIFICATES OF APPROPRIATENESS*

Be it ordained by the _____, that the Unified Development Ordinances are amended as follows:

Section 1. Chapter 3, Section 3.2.2 of the UDO is amended as follows:

3-2.2. CERTIFICATE OF APPROPRIATENESS

D. PROCEDURES

5. TIME FOR ACTION

- a. The Commission shall act upon complete applications within one hundred eighty (180) ~~twenty (120)~~ calendar days after the filing, unless an extension of time has been mutually agreed upon between the Commission and the applicant.
- b. Otherwise, failure to act upon a complete application shall be deemed to constitute approval and a Certificate of Appropriateness shall be issued.”

Section 2. This Ordinance shall be effective upon adoption.

**CITY-COUNTY PLANNING BOARD
STAFF REPORT**

DOCKET: UDO-CC5
STAFF: [David Reed](#)

REQUEST

This text amendment is proposed by Planning and Development Services staff to amend the Unified Development Ordinances (UDO) to extend the timeframe in which the Historic Resources Commission (HRC) shall act upon complete applications for certificates of appropriateness (COAs).

BACKGROUND

For many years, the UDO has required the HRC to act on complete COA applications within 120 days of submission. Failure to act within that timeframe would constitute automatic approval of the COA. The HRC has never had any problem holding the required quasi-judicial public hearing on a COA application within the aforementioned timeframe, however.

Unfortunately, the emergence of COVID-19 has greatly limited the HRC's ability to hold regular, in-person meetings. Additionally, the State Legislature recently enacted a new rule requiring that all parties with standing to speak on a quasi-judicial matter agree to holding the public hearing for that matter virtually. In some cases, the number of parties with standing to speak on various COA items could be in the hundreds, and it would therefore be unrealistic to think staff could get agreement from all parties to hold such a public hearing virtually. In many cases, holding an in-person hearing would be the only realistic option for the HRC, although finding an appropriate venue for such a meeting may take longer than usual, depending upon the number of participants expected to attend. As a result of these factors, the Commission and staff are proposing extending the timeframe for acting upon COA applications to 180 days.

The NC General Statutes already allow Historic Resources Commissions up to 180 days to review COA applications, as described in NCGS 160A-400.9 (d): *“All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the ordinance or the commission's rules of procedure”*.

ANALYSIS

As a consequence of several HRC meeting cancellations related to COVID-19, two COA applications have already crossed the 120 day approval threshold and were automatically approved in June. While these applications would likely have received approval from the HRC if public hearings were held on them, the current ordinance provision prevented the Commission from giving citizens an opportunity to speak on the cases. The pandemic has demonstrated the need to provide as much flexibility as possible for handling unexpected situations, and changing the UDO to reflect the 180 day COA approval timeframe allowed by the NCGS would give the HRC

additional time to hold a public hearing, thereby ensuring stakeholders have the opportunity to participate in the COA review process. As such, staff recommends approval of this amendment.

RECOMMENDATION: APPROVAL

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-CC5
AUGUST 13, 2020**

David Reed presented the staff report.

Jack recommended that staff not use the 180-day period as standard practice but use it in emergency situations only, such as this time dealing with COVID.

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

MOTION: Clarence Lambe recommended approval of the ordinance amendment.

SECOND: George Bryan

VOTE:

FOR: George Bryan, Melynda Dunigan, Jason Grubbs, Tommy Hicks, Clarence Lambe, Chris Leak, Brenda Smith, Jack Steelman

AGAINST: None

EXCUSED: None

Aaron King
Director of Planning and Development Services