

## STAFF REPORT

DOCKET # UDO-256

STAFF: [David Reed](#)

### REQUEST

This text amendment is proposed by City-County Planning and Development Services staff to amend chapter D of the *Unified Development Ordinances* (UDO) to revise the regulations pertaining to Minor Subdivision Exceptions

### BACKGROUND

Minor subdivisions are those divisions of land which do not involve any dedication of public right-of-way and comply with the lot size and area requirements of the UDO and any other applicable local or state land regulatory ordinances and meet certain criterion. Minor subdivisions are approved at the staff level.

The Subdivision Regulations contain language that allow for an appeal to the Planning Board of any staff denial of a minor subdivision. In 1998 the Planning Board approved a text amendment (UDO-45) that expanded the staff authority to approve certain minor subdivisions that were being routinely approved by the Planning Board through the appeal process. After UDO-45 was adopted, the number of appeals decreased significantly.

During the most recent appeal (MS 2013-02), it was brought to the attention of staff that the appeal process does not provide any due process for neighbors with concerns about the case. Staff met with both the City and County attorneys and consulted with the UNC School of Government to determine the most appropriate appeal process.

### ANALYSIS

To provide due process for administrative decisions, a quasi-judicial procedure is appropriate. Because the Planning Board is not set up as a quasi-judicial board, the appeals should be made to the Zoning Board of Adjustment which is set up to hear this type of appeal. The UDO already provides for the review of decisions made by the Director of Inspections or his/her designee (UDO Chapter B 6-1.4 (C)). Staff recommends the Subdivision Regulations be amended to require subdivision appeals follow the same process. The changes proposed will eliminate appeals to the Planning Board and direct appeals to the Zoning Board of Adjustment. One additional change proposed to the Standards for Approval better clarifies the standards by which a staff exception can be made by tying it to existing city and state standards.

### RECOMMENDATION

**Approval**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-256  
FEBRUARY 12, 2015**

**PUBLIC HEARING**

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Clarence Lambe moved approval of the zoning text amendment.

SECOND: Paul Mullican

VOTE:

FOR: Melynda Dunigan, Arnold King, Clarence Lambe, Darryl Little, Paul Mullican,  
Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None

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

**UDO-256**  
**AN ORDINANCE AMENDING**  
**CHAPTER D OF THE *UNIFIED DEVELOPMENT ORDINANCES***  
**TO REVISE THE REGULATIONS PERTAINING TO THE APPEAL OF PLANNING**  
**STAFF DENIAL OF SUBDIVISION**

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

**Section 1.** Chapter D, Article 1 of the UDO is amended as follows:

## **Chapter D – Subdivision Regulations**

### **1. General Provisions and Administration**

- (K) Appeal of Planning Staff Denial of Subdivision  
The denial of any subdivision controlled under any section of these regulations by Planning staff as an administrative decision may be appealed to the Zoning Board of Adjustment. Appeal requirements shall be the same requirements specified in Chapter B, Section 6-1.4(C). Planning Board. ~~The appeal request must be submitted to the Planning staff by the filing deadline of the next meeting of the Planning Board. Application requirements include a survey or drawing to scale of the appeal request, a letter explaining the reasons for the appeal request, and a fee payable to the City of Winston Salem. If the application is complete, the appeal request will be placed on the next meeting of the Planning Board. The Planning staff will present a report and recommendation on the appeal request to the Planning Board at the meeting. The owner or owner's agent shall have a total of twelve (12) minutes to present the appeal request and the reasons for such request to the Planning Board. If the appeal request is denied, the Planning Board shall state the reasons under which the appeal request is denied. The Planning Board may require conditions of approval as deemed necessary.~~

**Section 2.** Chapter D, Article 3 of the UDO is amended as follows:

### **3. Minor Subdivisions**

- (B) Standards for Approval  
The following are the standards for approval of minor subdivisions:
- (1) Minor subdivisions may be approved provided that the subdivision:
    - (a) Does not violate any adopted plan, policy, or ordinance of the jurisdiction;

- (b) Does not create any new public streets;
  - (c) Does not block or impede the extension of a public street located within a subdivision recorded on a final plat in the office of the Register of Deeds or a public street shown on a preliminary subdivision plat which is on file in the office of the Planning Board unless such extension is determined by staff to be unnecessary under one or more of the following circumstances:
    - (i) The road cannot physically be extended due to topography based on the current city or state standards;
    - (ii) The road cannot be logically extended due to current lotting patterns;
    - (iii) If staff determines improvements at the end of the street are needed, staff may require a standard or temporary turnaround in accordance with the City Department of Transportation (City DOT), the North Carolina Department of Transportation (NCDOT), or other appropriate jurisdiction requirements;
    - (iv) If staff determines that a street closure petition is necessary, staff may require proper street closure documents be filed with the appropriate jurisdiction.
- (E) ~~Minor Subdivision Exception Requests~~  
~~An exception request to the minor subdivision regulations may be submitted to the Planning Board for approval. Application requirements shall be the same requirements specified in Section D.1(K). In addition to the application requirements specified in Section D.1(K), the owner or owner's agent shall state the hardship as it relates to the property for the exception request. Financial hardships will not be considered by the Planning Board. The scheduling of the exception request and the hearing procedures for the Planning Board meeting are the same requirements as specified in Section D.1(K). If the exception request is denied, the Planning Board shall state the reasons to the owner or owner's agent. If the exception request is approved, the Planning Board shall state the hardship under which the exception request is approved to the owner or owner's agent. In approving the exception request, the land involved in the exception request shall be recorded on a final plat in the office of the Register of Deeds with a statement limiting future subdivision of the property without Planning Board approval. The Planning Board may require other conditions of approval as deemed necessary.~~  
Reserved

**Section 3.** This ordinance shall become effective upon adoption.