

**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**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-234  
SEPTEMBER 13, 2012**

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.

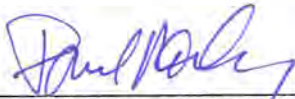
SECOND: Wesley Curtis

VOTE:

FOR: Wesley Curtis, Arnold King, Clarence Lambe, Darryl Little, Barry Lyons, Lynne Mitchell, Brenda Smith, Allan Younger

AGAINST: None

EXCUSED: None



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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.