



**Asheboro Planning Board
Asheboro City Hall (146 N. Church Street)
Monday, March 1, 2021
7:00 PM**

AGENDA

- I. Call to Order
- II. Approval of Minutes from February 1, 2021
- III. Review of Cases
- IV. RZ-21-02: Text amendments to the zoning ordinance for compliance with NC General Statutes 160D (Local Planning and Development Regulations)
- V. Items not on the agenda
- VI. Adjournment

MEETING OF THE ASHEBORO PLANNING BOARD
CITY COUNCIL CHAMBERS, 146 N. CHURCH ST.
MONDAY, FEBRUARY 1, 2021
7:00 p.m.

This being the time and place for the regular meeting of the Asheboro Planning Board, a meeting was held with the following officials and members present:

Van Rich) - Chair
Michael O'Kelley) – Vice Chair

Harold Anderson)
Ritchie Buffkin)
David Henderson) - Members Present
Thomas Rush)
Pamela Vuncannon)

Brad Morton, Planner/Deputy City Clerk
Trevor Nuttall, Community Development Division Director
Jeff Sugg, City Attorney

CALL TO ORDER

Mr. Rich called the Asheboro Planning Board to order.

APPROVAL OF MINUTES FROM JANUARY 4, 2021

Mr. Rich inquired if there were any corrections or additions to the minutes presented. Hearing no corrections or additions, the minutes were approved as presented.

REVIEW OF CASES FROM DECEMBER, 2020 AND JANUARY, 2021

Mr. Nuttall informed the board of the zoning related cases that were heard at the regular December, 2020 and January, 2021 City Council meetings.

ELECTION OF BOARD OFFICERS AND SECRETARY

Mr. Rich opened the floor for discussion on nominating the Planning Board Chair. Mr. Rush nominated Mr. Van Rich to serve as Board Chair. There were no other nominations, therefore Mr. Rich closed the discussion. Mr. Rush then moved that Mr. Rich be elected as Chair of the Planning Board. Mr. Anderson seconded the motion and the motion carried unanimously.

Mr. Rich then opened the floor for discussion on nominating the Planning Board Vice Chair. Mr. Anderson nominated Mr. Michael O'Kelley to serve as Board Vice Chair. There were no other nominations, therefore Mr. Rich closed the discussion. Mr. Anderson then moved that Mr. O'Kelley be elected as Vice Chair of the Planning Board. Mr. Rush seconded the motion and the motion carried unanimously.

Mr. Rich then stated that a Board Secretary will need to be appointed. Mr. Buffkin moved to appoint Mr. Brad Morton to serve as Board Secretary. Ms. Vuncannon seconded the motion and the motion carried unanimously.

Therefore, the following officers and secretary were elected and appointed:

Chair: Van Rich

Vice Chair: Michael O'Kelley

Secretary: Brad Morton

RZ-21-01: TEXT AMENDMENTS TO THE ZONING ORDINANCE CONCERNING ALLOWABLE ENCROACHMENTS INTO THE PUBLIC RIGHT-OF-WAY

Mr. Nuttall gave a visual presentation for case number RZ-21-01. He gave an overview of the case, stating that the applicant is the City of Asheboro. He stated the request is text amendments to the zoning ordinance concerning allowable encroachments into the public right-of-way. He stated the affected sections of the zoning ordinance would be to insert a new sub-section to Article 200A that would negate provisions of Section 304.4 and Section 505 within Tiers 1 and 2 of the Center City Planning Area. He then gave the analysis as follows:

1. The Asheboro Zoning Ordinance generally prohibits encroachments into public right-of-ways, which are outside of a public street that is maintained by either the City of Asheboro or North Carolina Department of Transportation. Such encroachments may include features such as canopies, awnings, signs, or improvements related to outdoor dining.
2. There has been an increase in the number of requests for encroachments described in (1) above, particularly in the central business district that makes up the historic core and coincides with part of the Center City Planning Area, where the setbacks of existing structures tend to be minimal, or in some cases are directly along the public right-of-way line. The proposed text amendments are focused on the Center City Planning Area.
3. The Asheboro City Code includes provisions that can allow encroachments into public right-of-ways with review to ensure such encroachments do not create safety problems or prevent free passage across them.
4. The City only has jurisdiction over city-maintained public right-of-ways. The North Carolina Department of Transportation reviews encroachment requests within public right-of-ways of state-maintained roads. State law, for example, allows encroachments into the public right-of-way in cases such as sidewalk dining (which may include structures regulated by the Zoning Ordinance). This is subject to an agreement between the local government and NCDOT (Session Law 2013-266).
5. The intent of the amendments is to ensure that the zoning ordinance isn't in conflict with the provisions of the city code, or allowances by state law. However, the other provisions related to design standards, provisions related to area, height, and placement, and other general requirements are not affected by this proposal.
6. Staff has researched standards for other jurisdictions and found that many closely align with requirements of the state building code;
 - Prohibition of objects or structures less than 7 feet in height above sidewalks
 - Supports for objects or structures shall be at least 2 feet from curb lines
 - Cap of canopy/awning encroachment at two-thirds the width of the sidewalk measured from the building

He then listed city code provisions:

§ 99.11 STRUCTURES OVER SIDEWALKS.

Plans for the construction or erection of a structure or fixture, exclusive of a drop awning, over any sidewalk area shall be submitted to the Building Inspector and his approval thereof obtained before the work of

construction or erection is begun. No such plan shall be approved unless the following minimum requirements are met:

(A) All projections on the street side of a structure shall be at least 18 inches from the traffic face of the curb.

(B) The minimum clearance from the finished grade of the sidewalk to any part of an overhead structure shall be ten feet, excluding any horizontal supports, which shall not be less than eight feet, six inches from the finished grade of the sidewalk.

(C) Signs placed under the deck of all structures shall have a minimum clearance of nine feet from the finished grade of the sidewalk.

(D) Column spacing shall vary from 18 feet to 25 feet to conform to spacing of parking spaces, water meters and fire hydrants.

(E) Roof drainage shall be provided with all downspouts emptying through the curb to existing gutters.

(F) The top of all foundations shall be at least six inches below the finished grade of the sidewalk.

(G) Repairs to sidewalk or necessary new sidewalk shall be constructed at cost to abutting property owners.

(H) Abutting property owners shall be responsible for the maintenance of the structure and keep the roof or deck clear from all rubbish and trash.

(I) All structure materials, including roof and deck, shall be noncombustible. A flat roof or deck shall be designed by a licensed architect or engineer to support a live load of at least 40 pounds per square foot.

('69 Code, § 19-17) (Ord. passed 7-8-65; Am. Ord., passed 3-4-66)

§ 99.12 AWNINGS.

All awnings suspended over any sidewalk or walkway shall be not less than seven feet in height from sidewalk or walkway at the lowest point.

He also listed the affected zoning ordinance provisions:

304.4 Projection of Canopies, Marquees & Awnings into Required Yards

Canopies, marquees and awnings may project not more than eight feet into a required yard provided that

(1) No part of a canopy (except awnings) or marquee shall be less than 10 feet above the sidewalk or other surface which it overhangs, except for necessary vertical supports which may be attached to the ground and except for necessary horizontal supports which shall not be less than eight feet six inches above the sidewalk.

(2) No part of any awning (canvas and similar metal type) shall be less than seven feet above the sidewalk or other surface which it overhangs.

(3) **No part of any canopy, marquee, or awning shall extend into any public right-of-way**, and no closer to the curb face than 18 inches measured in horizontal distance.

(4) No part of any canopy, marquee, or awning may project into any required buffer yard.

505 Prohibited Signs

1. Locations

(a) Except where specifically exempted or modified by this Ordinance, signs shall be located as follows:

i.) In all zoning districts, and subject to G.S. 136-32, **signs shall be located outside of the public rights-of-way.**

He then showed the Center City Planning Area map and stated that the request includes Tier 1 (Central Business Planning Area) and Tier 2 (Central Fringe Planning Area).

He listed the proposed text (in Tiers 1 and 2 of Center City Planning Area):

Notwithstanding Sections 304.4 and 505 of the Asheboro Zoning Ordinance, objects and structures over sidewalks otherwise permitted by Chapter 99 of the Code of Asheboro shall be allowed to encroach into city-maintained public right-of-ways and, with state approval, state-maintained public right-of-ways, provided:

- (aa) any sidewalk within the public right-of-way is not rendered non-compliant with Americans with Disabilities Act standards by such object or structure; and
- (bb) the object or structure does not prevent the city and any other entitled entity from maintaining public infrastructure within the public right-of-way; and
- (cc) the object or structure is in strict compliance with Chapter 99 of the Code of Asheboro and all other provisions of the city Zoning Ordinance.

He then gave Land Development Plan (LDP) Recommendations as follows:

Goals/Policies Supporting Request (3):

- 2.1.1 The Zoning Ordinance will periodically be reviewed to ensure that the specific regulations for each Zoning District are aligned with the desired character and focus of each district.
- 3.2.1 The City will amend Zoning requirements (i.e. setback regulations, permitted building materials, orientation of streetscapes, parking areas, pedestrian access, etc.) to ensure that new development is compatible with, and enhances, the architectural design of surrounding land uses.
- Checklist Item 10: Text amendment is consistent with Land Category Descriptions.

Staff Note: Actual checklist item refers to rezoning request consistency with Land Category Descriptions, but as articulated in final analysis on p. 3, the text amendment also complies with this item.

He also stated that there were no Goals/Policies that were negative to the request.

He then gave the consistency with adopted plans, reasonableness and public interest statement:

- Ensures other requirements related to appearance, safety, and public accessibility are met.
- Defers, in part, to City Code Provisions regarding objects or structures over sidewalks
- Recognition that buildings in Center City were developed with limited separation from street.
- Recognition of encouraging features to meet LDPs vision for the area as "Unique and vibrant atmosphere setting the City Center apart from other districts."
- Recommending continuance to give public and Planning Board time to review.

He then stated that staff's recommendation was to continue the request. He stated that if continued, the case will be on the March 4, 2021 Planning Board agenda. It will remain scheduled for the March 7, 2021 City Council agenda. He then asked the board if there were any questions at this time. There were no questions for Mr. Nuttall at this time. Mr. Rich then asked if there was anyone who was in favor of the request.

At this time, Mr. Mark Trollinger, Trollinger Construction, spoke in favor of the request. He stated that he is partnering with Dan and Janet Mackie, restaurant owners in Asheboro, and mentioned that they are attempting to create a wonderful space for citizens and travelers, similar to the outdoor dining experience of a European bistro. He stated that the project would provide protection from the elements while still adding outdoor tables for dining and also will be able to accommodate ADA compliance. He then stated that aesthetic regulations would still be in compliance with the city's zoning ordinance. He then asked if there were any questions. Mr. Henderson inquired if all infrastructure has been located or if there is knowledge of what utilities or infrastructure are underneath the proposed project. Mr. Trollinger stated that city water will be replaced and relocated. He stated that city sewer is located to the back of the building. He stated that gas is located to the back of the building as well as electrical utilities. He stated that he wasn't aware of anything else that was underground. Mr. Henderson also inquired about drainage and if it is collected or if it simply falls on the sidewalk and runs into the gutter, to which Mr. Nuttall referenced letter

E of the particular city code provisions pertaining to roof drainage. Mr. Henderson asked if this roof drainage includes canopies, to which Mr. Nuttall stated that this would be assessed as a part of the review process. Mr. Henderson also asked if the 5 foot sidewalk width is considered a safe travel width, to which Mr. Nuttall stated that ADA compliance is met at 5 feet with no obstructions. There were no other questions at this time for Mr. Trollinger or Mr. Nuttall.

Mr. Nuttall stated that a continuance tonight would not change City Council's schedule for hearing this case. Mr. O'Kelley asked if the text amendments are approved, there will still be permitting processes in place, to which Mr. Nuttall stated that there is a permit process after text amendments are decided upon. Mr. O'Kelley asked if they saw any issues with the proposed text amendments and asked if the reasoning for a continuance was to make sure this was a consistent amendment for the city of Asheboro as a whole, to which Mr. Nuttall stated that this is correct. Mr. O'Kelley stated that if the Planning Board recommends approval then would it be correct that only the City Council will hear this case in March, to which Mr. Nuttall stated that this is correct unless there are significant changes to the amendments that would require a new hearing of the case by the Planning Board.

Mr. Buffkin stated that the text amendments look satisfactory and moved that the Planning Board recommend approval of the proposed amendments. Ms. Vuncannon seconded the motion and the motion carried unanimously.

ITEMS NOT ON THE AGENDA

There were no items at this time.

ADJOURNMENT

With no further business to come before the board, Mr. Rich adjourned the meeting.

Bradley Morton, Planning Board Secretary

Van Rich, Planning Board Chair



RZ-CUP-21-02: Text Amendments to the zoning ordinance to be consistent with North Carolina General Statutes 160D (Local Government Planning and Development Regulation)

Staff Report

Rezoning Staff Report

RZ Case # RZ-21-02

Date 3/1/2021 PB

General Information

Applicant City of Asheboro

Address 146 North Church Street

City Asheboro NC 27203

Phone 336-626-1201

Location N/A

Requested Action Text amendments to the zoning ordinance to be consistent with North Carolina General Statutes 160D (Local Planning and Development Regulation)

Existing Zone N/A

Existing Land Use N/A

Size N/A

Pin # N/A

Applicant's Reasons as stated on application

See attached statement.

Surrounding Land Use

North N/A

East N/A

South N/A

West N/A

Zoning History See analysis for historic background.

Legal Description

Text amendments to the zoning ordinance to incorporate Chapter 160D of the NC General Statutes (Local Planning and Development Regulation) into the Asheboro Zoning Ordinance. Note: A final legal description will be provided prior to advertisement.

Analysis

1. Changes to state law concerning land use were adopted in 2019 (Senate Bill 355, NCGS 160D) . The provisions consolidated provisions for city and county land use regulations into one chapter. Many of the provisions were focused on reorganizing existing law, and making primarily technical changes rather than sweeping policy changes. However, some provisions have a greater impact on how land use decisions are made.
2. One of the most significant mandated changes is replacement of combined legislative rezoning and quasi-judicial Conditional Use Permit applications with legislative Conditional Zoning, which places conditions on a property as part of a rezoning process. Quasi-judicial proceedings for Special Use Permits would continue to exist for sensitive land uses that already require a Special Use Permit.
3. Other changes include requiring an applicant/landowner's written consent to enforce conditional zoning district or special use permit, prohibition of non-governmental third party "downzonings" (from commercial to residential for example).
4. The law now also requires an adopted land use plan that is reasonably maintained. Also, a Land Use Plan's Future Land Use Map must be updated each time a rezoning this is not consistent with the map is approved.
5. NCGS 160D requires that amendments be made by July 1, 2021 for local zoning provisions to remain valid.
6. As noted in (1) above, a key goal of NCGS 160D was to consolidate and reorganize existing state law into a more coherent fashion. Similar reorganization of the zoning ordinance's format is proposed.

Rezoning Staff Report

RZ Case # RZ-21-02

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Consistency with the 2020 LDP Growth Strategy designations

In reviewing this request, careful consideration is given to each Goal and Policy as outlined in the Land Development Plan. Some Goals and Policies will either support or will not support the request, while others will be neutral or will not apply. Only those Goals and Policies that support or do not support the request will be shown.

Proposed Land Use Map Designation Not applicable
Small Area Plan Not applicable
Growth Strategy Map Designation Not applicable

LDP Goals/Policies Which Support Request

1.2.4 The City will promote its expedited permitting process and continue to make the land development process user-friendly for citizens and organizations.

2.1.1 The Zoning Ordinance will periodically be reviewed to ensure that the specific regulations for each Zoning District are aligned with the desired character and focus of each district.

2.2.3 The City will periodically update maps in the Land Development Plan to ensure they accurately represent current conditions in our city and are consistent with the goals and policies.

Rezoning Staff Report

RZ Case # RZ-21-02

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LDP Goals/Policies Which Do Not Support Request

Staff's Final Analysis Concerning Consistency with Adopted Comprehensive Plans, Reasonableness and Public Interest

These amendments are proposed primarily to comply with recent changes in state law. In addition, the proposed changes formalize many of staff's existing practices (ensuring that the Land Development Plan is regularly updated, ensuring consistency of zoning designation with the Land Development plan or offering a rationale for why a decision was made that was contrary to the plan). Current practice offers citizens various procedural options to change a land use designation of their property, and legislative conditional zoning will provide a new option, replacing conditional use district permits. As noted above, staff is also proposing some organizational changes to the zoning ordinance that offer improvements in how it is formatted and useable for applicants and staff.

Considering these factors and state law requiring these changes, staff believes that the proposed text amendment is overall consist with the Land Development Plan and is therefore reasonable and in the public interest.

Recommendation

During the March Planning Board meeting, staff will be giving the Planning Board a general overview of the proposed text amendments and will provide additional information. Staff recommends **continuing** the request.



Application for Zoning Ordinance/Map Amendment

APPLICATION FEE

A \$200 filing fee is required for any amendment.

APPLICATION INSTRUCTIONS

The rezoning process can be complex. It is highly recommended that the applicant speak with Planning and Zoning Department staff prior to submitting the application and paying the filing fee. Contact staff at (336) 626-1201 ext. 225 to ensure application requirements are satisfied.

REQUIRED APPLICATION CONTENTS

- 1) A dimensional map, at a scale of not more than 200 feet to the inch, showing the land that would be covered by the proposed amendment, if the amendment would require a change in the zoning atlas.
- 2) A legal description/deed reference of such land.

It is recommended that the applicant mail letters to the adjoining property owners a minimum of 10 days prior to the scheduled Planning Board meeting. A template showing the required information contained in the letters is on Page 4 of this application. Please verify location and meeting times with staff prior to mailing.

One copy is to be filed with the city manager and one copy filed with the Zoning Administrator by 5:00 pm on the day which is at least 55 days prior to the City Council meeting at which the request will be considered. At no time shall the city council hear more than five (5) cases per month. If five applications have been received prior to the cut-off date, the request will be heard the following month.

MEETING INFORMATION* Dates are subject to final Planning Board/Council approval in December, 2019.

<i>Application Deadline</i>	<i>Planning Board Meeting</i>	<i>City Council Meeting</i>
December 11, 2020	Monday, January 4, 2021	Thursday, February 4, 2021
January 8, 2021	Monday, February 1, 2021	Thursday, March 4, 2021
February 12, 2021	Monday, March 1, 2021	Thursday, April 8, 2021
March 12, 2021	Monday, April 5, 2021	Thursday, May 6, 2021
April 16, 2021	Monday, May 3, 2021	Thursday, June 10, 2021
May 21, 2021	Monday, June 7, 2021	Thursday, July 15, 2021
June 11, 2021	Monday, July 12, 2021	Thursday, August 5, 2021
July 23, 2021	Monday, August 2, 2021	Thursday, September 16, 2021
August 13, 2021	Monday, September 13, 2021	Thursday, October 7, 2021
September 10, 2021	Monday, October 4, 2021	Thursday, November 4, 2021
October 15, 2021	Monday, November 1, 2021	Thursday, December 9, 2021
*Confirm application deadline with staff	Monday, December 6, 2021	*January, 2022: Confirm meeting date with staff

***January, 2022 Council meeting dates are not set by Council until December, 2021.**

Application for Zoning Ordinance/Map Amendment

APPLICANT INFORMATION

Applicant: City of Asheboro

Applicant's Phone #: 336-626-1201

Applicant's Address: 146 N. Church Street

Applicant Email Address: jevans@ci.asheboro.nc.us

PROPERTY INFORMATION FOR MAP AMENDMENTS Not applicable as this is a text amendment.

Property Owner's Name _____

Location of Property _____

Property Size (ac. or s.f.) _____

Randolph County Property Identification Number (PIN#) _____

Current Zoning District _____

Requested Zoning District _____

Date Property Title Acquired _____

Deed Book _____ Page _____

Subdivision _____ Section _____ Lot # _____

Plat Book _____ Page _____

ORDINANCE AMENDMENT INFORMATION

Section 1011.2 of the Asheboro Zoning Ordinance requires the applicant to answer the following questions. The application may not be accepted unless all questions are completed.

1. Are there alleged errors in this Ordinance that would be corrected by the proposed amendment? If so, give a detailed explanation of such error and detailed reasons how the proposed amendment will correct the errors.

There are no specific errors but there is a mandate by North Carolina General Statutes for municipalities who want to apply zoning to codify the newly organized Chapter 160D, which pertains to land use law, into local zoning ordinance.

2. What are the changed or changing conditions, if any, in the jurisdiction of the City of Asheboro generally, which would make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare?

It is important that the Asheboro Zoning Ordinance reflect changes to state law.

3. In what manner will the proposed amendment carry out the intent of the Land Development Plan?

Goal 2.1.1 of the Land Development Plan states “The Zoning Ordinance will periodically be reviewed to ensure that the specific regulations for each Zoning District are aligned with the desired character and focus of each district.” This has been interpreted broadly to include updates to the zoning ordinance which make sure that it is responsive to changes in local, state, and federal laws, regulations, and mandates. It applies to this case.

4. Are there any other circumstances, factors, or reasons that the applicant offers in support of the proposed amendment?

NCGS 160D mandates that local governments enact legislation in a timely manner, no later than July 1, 2021. This makes filing this amendment in a timely manner essential to give adequate time for public review and comment. Additional supportive information will be presented in future staff analyses.

APPLICATION SIGNATURES

It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with the applicant. The applicant for rezoning to any district other than a conditional use district shall be prohibited from offering any testimony or evidence concerning the specific manner in which he or she intends to use or develop the property.

Applicant Signature

John L. Evans 2-12-2021

Owner Signature (if different than Applicant) _____

*Printed Name of Authorized Signatory (if
different from Applicant) - Same - JLE*

John L. Evans, Assistant Community
Development Director, City of Asheboro

Owner Address

146 N. Church Street

*Position/Relationship of Authorized
Signatory to Applicant*

Telephone Number

336-626-1201 Ext. 225

*Printed Name of Authorized Signatory (if
different from Owner)*

*Position/Relationship of Authorized
Signatory to Owner*

STAFF USE

Received by: Filed by JLE Date: 2-12-2021 Case Number: RZ-21-02 (tentative case #)