

## STAFF REPORT

**TO:** Planning & Economic Development Committee      **DATE:** 8/16/16

**FROM:** Todd Okolichany, Planning & Urban Design Director

**PREPARED BY:** Shannon Tuch, Principal Planner

**SUBJECT:** UDO Amendments – Review Process for (non-CBD) Level II projects

### Summary

Development projects, based on size or number of units, are categorized as Level I, II or III projects. The detail of the review of each increases with each level allowing larger, more complex projects to receive a higher level of attention and input. Those review processes are as follows:

Level I <i>Over 500 s.f. or 3-19 units</i>	Level II <i>35-100K s.f. or 20-49 units</i>	Level III (Requires CUP) <i>&gt;100K s.f. or 50 units</i>
Pre-application (optional)	Pre-application (optional)	Pre-application required
Applicant submits directly to staff	Applicant submits to DSD for review by the Technical Review Committee (TRC)	Applicant submits to DSD for review by the Technical Review Committee (TRC)
Initial review is complete within 10 days	TRC performs a <b><i>ministerial</i></b> review and makes a recommendation to Planning & Zoning Commission	TRC performs a <b><i>ministerial</i></b> review and makes a recommendation to Planning & Zoning Commission
	Planning & Zoning Commission performs a final <b><i>ministerial</i></b> review	Planning & Zoning Commissions performs a <i>legislative</i> review & makes a recommendation to City Council
	Process follows prescribed notice and meeting schedule and can take 2-3 months	City Council performs a <b><i>quasi-judicial</i></b> review Process follows prescribed notice and meeting schedule and can take 3-4 months

### Background

Prior to June 2011, all Level II projects were reviewed and approved by the city’s TRC. The TRC is comprised of representatives from all city departments that have a role in the development review and approval process, along with a representative from the city’s Tree Commission and the Metropolitan Sewerage District (MSD). These individuals are experts in their respective fields and effectively and equitably apply city, state and federal development standards to projects meeting Level II and Level III thresholds. The TRC performs what is commonly called a ***ministerial*** review which describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented

but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.

Events prior to June 2011 caused city officials to question not whether the review should be ministerial in nature, but rather whether the body approving the project should be different in order to allow for a more public forum where citizens could attend and offer comment and input. As a result, a change to the review process was adopted that moved the final review of a Level II project from the TRC to the Planning & Zoning Commission. Under this process, the TRC still performs its technical review which is then, to some degree, duplicated by the Planning & Zoning Commission who is limited in their ability to review to the same ministerial standards that the staff is bound by. After five years, it is apparent that this change did not produce the desired results and a request to return the final review of Level II projects back to the TRC was made at the August 2014 meeting of the Planning and Economic Development Committee (PED). In this meeting, the PED moved to recommend that Council consider this change but to apply it only to those Level II projects proposed for areas outside of the downtown (non-CBD projects) and to identify strategies to maintain or improve public notice and opportunity for input.

The Planning & Zoning Commission, as part of their stated recommendations and priorities in 2015, also included the return of final review of Level II projects to the TRC citing concerns with: public frustration at the Commission's inability to consider non-technical matters; the Commission's unfamiliarity with technical industry standards and how they should be applied; undue pressure from the community to make a legislative decision that could later be challenged legally; and the disincentive that comes with an additional review (time delay) by an appointed body (fear of subjective decisions).

### **Review and Analysis**

NC cities are not required to provide public notification for a ministerial review and most NC cities do not provide any notification beyond a simple electronic agenda or email notice. City staff, however, are proposing that a similar level of notification and availability of information be provided that is currently afforded Level II projects going before the Planning & Zoning Commission and these measures, if adopted, greatly exceed what is required under state statutes. These recommendations are similar to those adopted for Major Subdivisions earlier this year, which place an emphasis on earlier public notification, and include the following:

- 1) Require a community meeting be held by the developer prior to application. All property owners within 200' of the subject property would be notified and invited to attend. Contact information for both the developer and the appropriate city staff will be provided for those with specific questions or for those who cannot or choose not to attend the meeting. The use of a meeting facilitator is recommended.
- 2) Require that a summary of that meeting be submitted with the application packet. All points raised in the meeting will be directly addressed in the Technical Review Committee staff report.
- 3) Once application is made, city staff would post a "Notice of Technical Review Meeting" sign all road frontages included in the subject property. This sign will also have a copy of the TRC agenda, city website, and the contact information where questions may be directed.
- 4) Development Services will upload all submitted documents to the development map (MapAsheville/TRC Projects) within one week of submittal.

- 5) A “Notice of Technical Decision” will be mailed via US mail to all property owners within 200’ of the subject property within 10 days of the TRC decision. This letter would provide official notice to anyone wishing to appeal.

**Recommendation**

Staff recommends that a wording amendment that moves the final review of (non-CBD) Level II projects from the Planning & Zoning Commission to the TRC be drafted, including requirements for public notice as described above.

**Financial Impact/Resources:**

No measurable change. Current process already requires notification and staff time.

**2036 Council Vision Considerations:**

This proposal aligns with the 2036 Council Vision in the following areas:

- Connected and Engaged Community – through promoting public engagement and encouraging input on development projects;
- Thriving Local Economy – by providing predictability and reduced time frames in the development review process; and,
- A Well-Planned and Livable Community – by encouraging compatibility of new development projects within the existing built environment through community input.