

CBD

ORDINANCE NO. 3930

ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO REVISE THE DEVELOPMENT REVIEW PROCESSES FOR PROPERTIES IN THE CENTRAL BUSINESS/DOWNTOWN DESIGN REVIEW OVERLAY DISTRICT IN ACCORDANCE WITH RECOMMENDATIONS FROM THE DOWNTOWN MASTER PLAN

WHEREAS, the City of Asheville has the authority pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety, and welfare; and

WHEREAS, a comprehensive amendment to the City's zoning regulations was adopted on May 27, 1997, (Ordinance No. 2369) and is codified in Chapter 7 of the Asheville City Code (herein "Zoning Ordinance"), and maps dividing and classifying the property within the City's zoning jurisdiction were adopted on May 27, 1997 (Ordinance No. 2370) and are on file and maintained in the Offices of the Asheville City Planning and Development Department (herein "Official Zoning Map"); and

WHEREAS, the Asheville City Council approved the Downtown Master Plan in 2009 and directed staff to work with stakeholder groups to implement the plan; and

WHEREAS, the Downtown Master Plan proposed changes to the Unified Development Ordinance (UDO) of the City specifically concerning the development review process for properties zoned Central Business District and located within the boundaries of the Downtown Design Review Overlay District; and

WHEREAS, this proposed amendment is consistent with the City's 2025 Comprehensive Plan, Smart Growth policies, and other official plans of the City for the reasons set out in the Staff Report, which is hereby adopted and incorporated by reference; and

WHEREAS, this proposed ordinance is determined to be reasonable and in the public interest as follows:

- a. Implements a community developed master plan.
- b. Sets forth a process that provides greater certainty to developers on projects in the CBD/DDR.
- c. Provides for a more transparent review process for projects in the CBD/DDR.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Chapter 7 of the Asheville City Code be amended as follows:

- a. Section 7-5-9 is amended by deleting the title, "Site plan review." and replacing it with the following:

**"Site plan review for development projects except those on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR)."**

- b. Add a new Section 7-5-9.1 as follows:

**Sec. 7-5-9.1. Site plan review for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR)**

(a) *Level III site plan review process.*

- (1) *Purpose.* This Level III site plan review process is required for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR). This review process is required for projects, which, due to their size, could be expected to have significant impact upon public services and facilities. Proposed developments which fall into one or more of the following categories are subject to the Level III site plan review process:

- a. Any new construction and/or changes of use with buildings, structures, or developments having a gross floor area greater than 175,000 square feet.
- b. Any new construction and/or changes of use with buildings, structures, or developments that are above the Intermediate Height Zone.
- c. Additions with a gross floor area of 50 percent or more of the above threshold for new construction for that land use, or additions with a gross floor area of 25 percent of the above threshold for new construction if the resulting total gross floor area, when combined with the existing floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold.
- d. Properties located within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.

(2) *Pre-application procedure.*

- a. All applicants for Level III plan review in the Central Business District and Downtown Design Review Overlay District are required to schedule a predevelopment conference as provided in section 7-5-9(a)(3)a. of this chapter.
- b. It is required that the developer meet with representatives of the area in which the proposed project is located. This meeting shall be held prior to project submittal. The developer is responsible for providing notification to property owners in accordance with section 7-5-20(b)(2).

and (3) and must certify to the planning and development director that these notice requirements have been met.

(3) *Plan submittal.* Plan submittal for Level III plan review in the Central Business District and Downtown Design Review Overlay District shall be as set forth in section 7-5-9(a)(4)a.-d. Developments with phased components shall be required to also submit a phased master plan.

(4) *Staff review.*

a. *Planning and development staff review.* Plans for development requiring Level III site plan review in the CBD/DDR shall be reviewed by the planning and development director for compliance with the requirements of this chapter.

b. *Action by technical review committee.* Plans for developments requiring Level III site plan review in the CBD/DDR shall be submitted and reviewed by the members of technical review committee in accordance with section 7-5-9(a)(5) b. and c., except that following approval by the technical review committee the plans shall next be transmitted to the downtown commission for review and recommendation.

(5) *Action by the downtown commission.* Upon receipt of the conceptual site plan for the Level III site plan project in the CBD/DDR and the recommendation of the technical review committee, the Asheville Downtown Commission shall schedule a public hearing to receive comments regarding the proposed project. Review and action shall be taken in accordance with section 7-5-10(b)(1)-(4) and (6). The downtown commission shall act on the proposed development application within one hundred and twenty (120) days of receipt. Following approval by the downtown commission the plans shall be transmitted to the Asheville Planning And Zoning Commission for review and approval.

(6) *Action by the planning and zoning commission.* Upon receipt of the conceptual site plan for the Level III site plan project in the CBD/DDR and the recommendations from the technical review committee and the downtown commission, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the planning and zoning commission. Review and action shall be taken in accordance with section 7-5-9(a)(4)d.[e.] except that review by the Asheville City Council shall be in accordance with section 7-5-9.1(a)(7).

(7) *Action by the Asheville City Council.* Upon receipt of the conceptual site plan for the Level III site plan project in the CBD/DDR and the recommendations of the technical review committee, downtown commission, and the Asheville Planning and Zoning Commission, the Asheville City Council shall schedule a public hearing to receive comments regarding the proposed project. There are two different review processes before the Council as set forth below.

a. *Process for Level III site plan projects in the traditional downtown core.*

Level III site plan projects in the CBD/DDR and also in the traditional downtown core shall be reviewed and may only be approved by the Asheville City Council through a conditional zoning process. In reviewing these projects, the Council shall follow the procedures set forth in section 7-7-8 of this Chapter.

- b. *Process for Level III site plan review projects outside the traditional downtown core.* Level III site plan projects in the CBD/DDR but outside the traditional downtown core shall be reviewed by the Asheville City Council. The Council will be reviewing the projects only for compliance with applicable standards and regulations.
- (8) *Final review by the technical review committee.* Following approval of the application and conceptual site plan by the Asheville City Council, a detailed site plan shall be submitted to the technical review committee for review and approval prior to permit issuance.
- (9) *Public notification.* Notice for all public hearings and meetings required under this section for Level III site plan review in the CBD/DDR (excluding the required developer/neighborhood meeting) shall be provided in accordance with the provisions of section 7-5-20 of this chapter. Notice shall provide a detail listing of any projects to be reviewed at the meeting. Notice for the developer/neighborhood meetings shall be provided in accordance with section 7-5-9.1(a)(2)b. above.
- (10) *Records.* Detailed records shall be kept of all meetings where projects are reviewed. Records shall include staff recommendations and any findings of the reviewing body.
- (11) *Variances.* Council may modify requirements as part of a conditional zoning approval. Additionally, staff of the planning and development department may provide for deviations of up to 10 percent on standards concerning openings and expanses of walls. Any other variances shall be considered by the planning and zoning commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of section 7-6-1. The downtown commission shall provide a recommendation on all variance requests.
- (12) *Appeals.* An appeal from the decision of the Asheville City Council regarding a development application and site plan may be made by an aggrieved party and shall be made to the Superior Court of Buncombe County in manner provided by law.
- (13) *Permit validity.* Permits shall be valid according to the provisions of section 7-7-8 of this chapter for those receiving conditional zoning approval. For other approvals, such approvals shall be valid for twenty-four (24) months from the date of approval. Failure to obtain a zoning permit or otherwise begin the permitted use within this time shall render the site plan approval void. The planning and development director shall grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances of this chapter.

(14) *Violations.* Violations of the conditional use permit or any of the conditions attached to the approval for a Level III site plan approval in the CBD/DDR shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.

(b) *Level II site plan review process.*

(1) *Purpose.* This Level II site plan review process is required for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overlay District (CBD/DDR). This review process is required for the following categories of proposed developments:

- a. Any new construction and/or changes of use in which buildings have a gross floor area of 20,000 to 175,000 square feet and which are under the Intermediate Height Zone.
- b. Additions with a gross floor area of 25 percent or more of the above threshold for new construction for that land use if the resulting total gross area, when combined with the existing gross floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold.
- c. Properties located within 500 feet of each other, under the same ownership and /or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.

(2) *Pre-application procedure.*

- a. All applicants for Level II plan review in the CBD/DDR are required to schedule a predevelopment conference as provided in section 7-5-9(b)(2)a. of this chapter.
- b. It is required that the developer meet with representatives of the area in which the proposed project is located. This meeting shall be held prior to project submittal. The developer is responsible for providing notification to property owners in accordance with section 7-5-20(b)(2) and (3) and must certify to the planning and development director that these notice requirements have been met.

(3) *Plan submittal.* Plan submittal for Level II plan review in the CBD/DDR shall be as set forth in section 7-5-9(b)(3) of this chapter. Developments with phased components shall be required to also submit a phased master plan.

(4) *Staff review.*

- a. *Planning and development staff review.* Plans for development requiring Level II site plan review in the CBD/DDR shall be reviewed by the

planning and development director for compliance with the requirements of this chapter.

- b. *Action by the technical review committee.* Plans for development requiring Level II site plan review in the CBD/DDR shall be submitted and reviewed by the members of the technical review committee in accordance with section 7-5-9(b)(4)b. and c., except that this is not the final approving body. The site plans are forwarded from the technical review committee to the Asheville Downtown Commission.
- (5) *Action by the downtown commission.* Upon receipt of the conceptual site plan for a Level II site plan project in the CBD/DDR, and the recommendation of the technical review committee, the Asheville Downtown Commission shall schedule a public hearing to receive comments regarding the proposed project. Review and action shall be taken in accordance with section 7-5.10(b)(1-4) and (6). The downtown commission shall act on the proposed development application within one hundred and twenty (120) days of receipt. Following approval by the downtown commission, the plans shall be transmitted to the Asheville Planning and Zoning Commission for review and approval.
- (6) *Action by the planning and zoning commission.* Upon receipt of the conceptual site plan for the Level II site plan project in the CBD/DDR and the recommendation from the technical review committee and the Asheville Downtown Commission, the Asheville Planning and Zoning Commission shall schedule a public hearing to receive comments regarding the proposed project. The public hearing shall be scheduled for the next available meeting of the Asheville Planning and Zoning Commission. The planning and zoning commission shall review the conceptual site plan for compliance with applicable standards and regulations.
- (7) *Final review by the technical review committee.* Following review and approval of the application and conceptual site plan by the Asheville Planning and Zoning Commission, a detailed site plan shall be submitted to the technical review committee for review and approval prior to permit issuance.
- (8) *Public notification.* Notice for all public hearings and meetings required under this section for Level II site plan review in the CBD/DDR (excluding the required developer/neighborhood meeting) shall be provided in accordance with the provisions of section 7-5-20 of this chapter. Notice shall provide a detail listing of any projects to be reviewed at the meeting. Notice for the developer/neighborhood meetings shall be provided in accordance with section 7-5-9.1(a)(2)b. above.
- (9) *Records.* Detailed records shall be kept of all meetings where projects are reviewed. Records shall include staff recommendations and any findings of the reviewing body.
- (10) *Variances.* Staff of the planning and development department may provide for deviations of up to ten (10) percent on standards concerning openings and expanses of walls. Any other variances shall be considered by the planning and zoning commission, serving as the board of adjustment in these

matters and acting in accordance with the provisions of section 7-6-1. The downtown commission shall provide a recommendation on all variance requests.

(11) *Appeals.* Appeals of decisions of the Asheville Planning and Zoning Commission regarding developments requiring Level II site plan approval in the CBD/DDR, shall be heard by the Asheville City Council. Further appeals shall be made to Buncombe County Superior Court in accordance with section 7-5-9.1(a)(12).

(12) *Permit validity.* Permits shall be valid for twenty-four (24) months from the date of approval. Failure to obtain a zoning permit or otherwise begin the permitted use within this time shall render the site plan approval void. The planning and development director shall grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension. Nothing herein shall be construed to extend any time limitations prescribed by statute or by other ordinances of this chapter.

(13) *Violations.* Violations of the approved site plan shall be considered a violation of this chapter and be subject to the enforcement and penalty provisions of Article XVIII of this chapter.

(c) *Level I site plan review process.*

(1) *Purpose.* This Level I site plan review process is required for development projects on parcels zoned Central Business District and located in the Downtown Design Review Overly District (CBD/DDR). This review process is required for the following categories of proposed developments:

- a. All new developments, changes of use or additions not meeting the threshold for Level II site plan review.
- b. Changes that modify the exterior walls and/or roof of an existing building.
- c. Renovations with a total cost exceeding 75 percent of the appraised value of the building, as determined by the Buncombe County Tax Assessor or by an MAI-certified real estate appraiser.
- d. Properties located within 500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.
- e. Development projects that require site and/or landscape compliance as referenced in Article XI: Development and Design Standards: section 7-11-1 – General; section 7-11-3 – Landscape and buffering standards; section 7-11-3(f) – Compliance and maintenance; and section 7-11-10 – Outdoor lighting standards.

(2) *Pre-application procedure.*

- a. A predevelopment conference with the planning and development director prior to the preparation of development plans is recommended.

- b. It is highly recommended that the developer meet with representatives of the area in which the proposed project is located. This meeting should be held prior to project submittal. The developer is responsible for providing notification to property owners of such a meeting. It is recommended that this notification be done in accordance with section 7-5-20(b)(2) of this chapter.
- (3) *Plan submittal.* Plan submittal for Level I plan review in the CBD/DDR shall be as set forth in section 7-5-9(c)(3).
- (4) *Staff review.* Plans for development requiring Level I site plan review in the CBD/DDR shall be reviewed in accordance with section 7-5-9(c)(4) of this chapter except that prior to obtaining any permits, the plans must be reviewed by staff of the planning and development department for compliance with downtown design standards.
- (5) *Public notification.* Public notice shall not be required for Level I site plan review in the CBD/DDR.
- (6) *Formal review.* Applications for Level I site plan review are not subject to formal review.
- (7) *Variances.* Staff of the planning and development department may provide for deviations of up to 10 percent on standards concerning openings and expanses of wall. Any other variances shall be considered by the planning and zoning commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of section 7-6-1 of this chapter. The downtown commission shall provide a recommendation on all variance requests.
- (8) *Appeals.* Appeals of decisions of the planning and development director regarding the Level I site plan review shall be heard by the Asheville Planning and Zoning Commission, serving as the board of adjustment in these matters and acting in accordance with the provisions of section 7-6-2 of this chapter.
- (9) *Permit validity.* Permits validity for Level I site plan review in the CBD/DDR is as set forth in section 7-5-9(c)(9) of this chapter.
- (10) *Violations.* Violations of the approved site plan for developments requiring Level I site plan review in the CBD/DDR shall be considered a violation of this chapter and subject to the enforcement and penalty provisions of article XVIII of this chapter.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved, and adopted this 23<sup>rd</sup> day of November, 2010.

Magdalen Bursleson  
City Clerk

Jerome Bellamy  
Mayor

Approved as to form:

Mark J. ...  
City Attorney