



The Hickory Regional Planning Commission will hold its regular meeting on **Wednesday, April 28, 2021 at 6:00 p.m. in the City Council Chambers of City Hall**. The following will be the agenda for the Regular Meeting:

### AGENDA

- Parliamentary Call to Order
- Welcome
- Roll Call
- Items of Correspondence
- City Council Action
- Approval and signing of minutes from the March 24, 2021 meeting.

### PRESENTATIONS AND PUBLIC HEARINGS

1. **Text Amendment 21-01.** Consideration of various amendments to the Hickory Land Development Code to align the document with recently enacted requirements of the State of North Carolina. Said amendments also include other technical modifications not directly related to the recently enacted state requirements.

### OTHER BUSINESS

1. None

The Hickory Regional Planning Commission does not discriminate on the basis of disability in the provision of its service as charged by the City Council of the City of Hickory. All meetings are held in accessible facilities. Any person with a disability needing special accommodations should contact the Planning Department at telephone number (828) 323-7422 at least 48 hours prior to the scheduled meeting.

**Hickory Regional Planning Commission**  
**Wednesday, March 24, 2021, 6:00 pm**

A regular meeting of the Hickory Regional Planning Commission (HRPC) was held on Wednesday, March 24, 2021, 6:00 pm, in Council Chambers of the Julian G. Whitener Municipal Bldg.

**Members Present:** Randall Mays, Bill McBrayer, David Deal, Robert Weaver, Wallace Johnson, Junior Hedrick, Dan Shabeldeen, Jeff Kerley, Bill Pekman, and Meg Locke

**Members Excused:** Sam Hunt

**Members Absent:** none

**Others Present:** Director of Planning Brian Frazier, Senior Planner Brian Burgess, Deputy City Attorney Arnita Dula, and Minutes Clerk Anne Starnes

**Parliamentary Call to Order & Welcome:** Randall Mays, Chairman, called the meeting to order at 6:00 pm and welcomed everyone.

**Roll Call:** Mr. Frazier said a quorum was present, and Mr. Hunt was excused. He noted there was a new sound system in Council Chambers, which should make it easier for the audience and recording clerks to all hear the members' questions and discussions. He said the new microphones at the members' seats can be moved closer or muted, if needed, and the staff now has a microphone to use at their staff table.

**Items of Correspondence:** None.

**City Council Action:** None.

Mr. Frazier noted that members had not recommended approval of Rezoning Petition 20-06 at the previous meeting. He has since spoken with applicant L.D. Austin a few times and said Mr. Austin had asked staff to hold the rezoning request for at least one City Council meeting while he considered a different business model that would not require a rezoning.

**Approval and Signing of Minutes from the February 15, 2021 Meeting:** Minutes from the previous meeting were distributed to members in advance. No additions, deletions or corrections to the minutes were stated. Bill Pekman moved, seconded by Meg Locke, to approve the February 15, 2021 minutes as presented. By a show of hands, the motion carried unanimously.

**PRESENTATIONS & PUBLIC HEARINGS**

Mr. Mays said there was one public hearing on the agenda, for Rezoning Petition 21-01. He read the "NC State Ethics Commission's Ethics Awareness & Conflict of Interest Reminder" aloud:

*In accordance with the State Government Ethics Act, it is the duty of every member of this committee to avoid both conflicts of interest and appearances of conflict. Does any member of the committee have any known conflict of interest, or appearance of conflict, with respect to any matters coming before us today? If so, please identify the conflict, or appearance of conflict, and refrain from any undue participation in the particular matter involved.*

Mr. Mays asked if any of the members had a known conflict, and none were stated.

**1. Rezoning Petition 21-01.** Request by Scott Riley for consideration of rezoning +/- 0.48 acres of a +/- 0.99-acre parcel of property, located at 2565 Section House Road NE, from Low Density Residential (R-1) to Neighborhood Commercial (NC). The subject property is shown as PIN 3723-07-68-7968 on the Catawba County Tax Map.

**Brian Burgess** presented the Staff Report and referred to PowerPoint slides. He reviewed slide #2 (Rezoning Petition 21-01):

- Property Owners: Scott Riley
- Applicant: Scott Riley
- Location: 2565 Section House Road
- Current Zoning: R-1 Residential
- Property Size: 0.99 acres, rezoning area is 0.48 acres
- Background: The subject property is currently zoned R-1. The requested action would rezone ~0.48 acres of the northern part of the property from R-1 to NC. Should this be successful, the residentially zoned (R-1) part of the property would decrease to ~0.51 acres.
- Request: The property owner has requested to rezone part of the property to extend the Neighborhood Commercial (NC) zoning to the east, which includes 0.48 acres of property.

Mr. Burgess reviewed slide #3 (Map 1. Future Land Use), saying the subject property was hashed in red. It is located on Section House Road and not far from Springs Road, which is Commercial Corridor. The immediate area around the property is classified as High Density Residential.

Mr. Burgess reviewed slide #4 (Map 2. Current Zoning), saying the subject property is zoned R-1 and is vacant. He noted the adjacent property to the west is zoned Neighborhood Commercial and would be discussed in detail later.

Mr. Burgess reviewed slide #5 (Map 3. Aerial Photo), saying the property to be rezoned is hashed in red, and located just east of the Springs Road Commercial Corridor area.

Mr. Burgess reviewed slides #6 & 7 (Rezoning Petition 21-01):

- The property is currently zoned Low Density Residential (R-1) and is vacant.
- The Hickory by Choice 2030 Comprehensive Plan indicates High Density Residential areas are to be located within or near mixed-use areas or higher intensity commercial districts. The subject property to be rezoned is located just east of the Springs Road commercial corridor area. The text of the comprehensive plan indicates that High Density Residential areas may also contain office areas along thoroughfares and commercial areas.
- Another section of the Hickory by Choice 2030 Comprehensive Plan discusses the Commercial Corridor land use classification. In summary, the plan indicates: 1) it is applicable to areas along Springs Road and NC 127; 2) these areas should be pedestrian focused; and, 3) the corridor should remain accommodating to vehicular traffic. The area in question to be rezoned is not shown on the Future Land Use Map as being Commercial Corridor, but the subject property is contiguous to such to the east.
- The Commercial Corridor area along Springs Road extends out 250-feet from either side of the right-of-way. The existing Commercial Corridor area of Springs Road is roughly 200-feet wider from east to west on the parcels north of Section House Road. Where the Neighborhood Commercial District extends out ~510-feet eastward from Springs Road north of Section House Road, the same zoning district only extends ~311-feet eastward on the southern Section House Road parcels. A successful

rezoning of this parcel would make the Neighborhood Commercial District more aligned with the northern contiguous parcels.

- The Neighborhood Commercial zoning district is not listed as the implementing zoning district for the High-Density Residential classification; however, the rezoning request is to extend an existing commercial district, further eastward into an existing high-density residential district. Given the existing zoning of the subject property and its proximity to a major thoroughfare (Springs Road), it would appear reasonable to expand the existing Neighborhood Commercial District in the manner requested.
- Given these factors, the rezoning of the property to Neighborhood Commercial (NC) should be considered consistent with the findings and recommendations of the Hickory by Choice 2030 Comprehensive Plan.

Mr. Burgess reviewed slide #8 (Examples of Future Permitted Uses).

- Examples of Neighborhood Commercial Permitted Uses:
  - Duplexes & Apartments
  - Bed and Breakfast
  - Office & Retail
  - Vehicle Repair
  - Medical Centers
  - Schools & Religious Institutions

Mr. Burgess reviewed slide #9 (Examples of Current Uses).

- Examples of R-1 Permitted Uses:
  - Duplexes
  - Single Family Homes
  - Mobile Homes
  - Mobile Home Parks
  - Family Care Homes

Mr. Burgess reviewed slide #10 (Findings & Recommendation).

- **Findings**
  - The Neighborhood Commercial zoning district is not listed as the implementing zoning district for the High-Density Residential classification; however, the subject rezoning request is to extend an existing commercial district, further eastward into an existing high-density residential district. Given the existing zoning of the subject property and its proximity to a major thoroughfare (Springs Road), it would appear reasonable to expand the existing NC district, in the manner requested.
  - Given these factors, the rezoning of the property to Neighborhood Commercial should be considered consistent with the findings and recommendations of the Hickory by Choice (2030) Comprehensive Plan.
- **Recommendation**
  - Staff has found Rezoning Petition 21-01 to be consistent with the Hickory by Choice 2030 Comprehensive Plan, and recommends the following:
    - The Planning Commission move to affirm the rezoning petition's consistency with the Hickory by Choice 2030 Comprehensive Plan and
    - Forward a recommendation of approval to Hickory City Council.

Mr. Burgess asked if there were any questions from members.

Mr. McBrayer noted staff had received two inquires on the rezoning and asked what their concerns were. Mr. Burgess consulted Mr. Frazier, who said they were general questions on the action being taken.

Mr. Mays noted the property was one parcel of land zoned to different classifications. Mr. Burgess said Hickory has many parcels that are already split-zoned. However, he and Mr. Frazier had a conversation about this and, in the future, if they were to see development on that back parcel, staff would recommend the property owner subdivide it, so the new property line would go along with the zoning. For example, if someone wanted to put a home on the back portion, staff would then suggest they get a surveyor and put a line across there, and you would have a new lot for the home. Mr. Mays said, what about access to a land-locked piece of property, as such. Mr. Burgess said part of the implementation of a subdivision is that you must make sure you have utilization (access) of that property.

Mr. Kerley asked if any buffering would be required, since it is next to residential. Mr. Burgess said, as it is now, yes. On the back end, if they were to have an unlike use, there would be a landscape buffer. Mr. Shabeldeen said that would also be on the sides, and Mr. Burgess said yes, on the eastern side, as well as on the southern side.

Mr. Shabeldeen said he had noticed they have started doing some grading there and asked if there was an idea yet of what would be going in there. Mr. Burgess said the applicant would discuss his plans with members.

There were no additional questions for staff.

The Staff Report was entered into the record as Exhibit A.

Mr. Mays said this would be a quasi-judicial hearing. The standard policy is for proponents to speak first and the opponents speaking second, followed by rebuttal time.

Mr. Mays opened the public hearing for Rezoning Petition 21-01.

## **PROPONENTS**

**Scott Riley**, 3714 21<sup>st</sup> Street NE, addressed members, saying he lives directly across from Clyde Campbell Elementary School in Hickory. He is originally from Caldwell County, but has lived in Catawba County for the past 15 years. He started a home window replacement company in 2002 and has operated it out of his home for all these years.

Mr. Riley said he has been searching for a building, or land that he could purchase and build an office on, for the last few years. He recently purchased this property on Section House Road where he can build a small office, enabling him to have clients come and meet with him, and view his window samples. This will be a more professional setting for him. For years, he has had to go out to people's homes, and he still does that, but people call him all the time and ask where his office is, saying they want to come by. He has not been able to invite them to an office. He has been in business as Riley's Replacement Windows for 19 years and has sold over 10,000 windows, with 4,000 of them sold in the past 6 or 7 years.

Mr. Riley said he had talked with the City's Planning Department staff regarding this specific piece of property numerous times and is in full compliance with whatever Commission members request of him. A customer called him today who was interested in coming by his office to see him, and they were lost. He has no office to go to, since he operates out of his home. Regarding Google reviews, he said you must list a business address, and if it is in your home, you have to list that address. This past Saturday, there was someone knocking on his front door at 8:00 in the morning. He did not know who they were, or why they were at his door, but they said Google had led them to his house.

Mr. Riley said the planning staff had basically laid out what he is trying to do here, and he plans to do everything they tell him needs to be done. He said the whole lot is .96-acres, and it would be better if they could do the whole thing, as commercial or whatever, but if they do not, and the members do not agree to it, that if he could only do the front half of it, then so be it, that is the way life goes. He said this is pretty much the way he sees it.

Mr. Riley asked if the members had any questions.

Mr. Kerley asked if there was currently sewer or septic on the property. Mr. Riley said it was perked, which was the first thing he had done, so with that done, he is ready to make a move.

Mr. Riley said someone had asked earlier what was going on the property. It is going to be a building, and he has all the specs for it.

Mr. Frazier said Mr. Kerley had asked a good question. There is currently water to the property, but sewer is quite a distance away. However, he and the late Kevin Greer, the City's previous Director of Public Services, came to an internal agreement about it, that an annexation would not be required for just the sewer. Mr. Frazier said the applicant has been advised to talk with Catawba County Environmental Health, and that he has already had everything taken care of and approved in advance.

There were no further questions for Mr. Riley, and no additional speakers in favor of the petition.

## **OPPONENTS**

None

Mr. Mays declared the Public Hearing was closed.

Mr. Mays asked for discussion on the request.

Mr. Kerley asked if the building would be a metal building, or a frame structure. Mr. Frazier said yes, the applicant will basically build a pre-manufactured metal building, which of course is not allowed in most sections of the city, unless the street side is either partially rock-faced, with the proper amount of fenestration, or brick-faced; or he could use textured panels, either straight out of the factory, manufactured that way, or as a third-party application, after the fact.

There was no further discussion, and Mr. Mays asked for a motion to either approve or deny the application.

Bill McBrayer moved, seconded by Meg Locke, that the Hickory Regional Planning Commission affirms Rezoning Petition 21-01 is consistent with the Hickory by Choice 2030 Comprehensive Plan. There was no discussion on the motion. By a show of hands, the motion carried unanimously.

Mr. Mays said a recommendation of approval for this rezoning petition would be forwarded to Hickory City Council.

Mr. Frazier advised Mr. Riley that City Council's public hearing on his rezoning request would be held at 7:00 pm on Tuesday, April 6th, here in Council Chambers.

**Other Business:** Mr. Mays said Mr. Frazier had a matter to discuss with members.

Mr. Frazier thanked members for speaking with him by phone over the past few days, as he had contacted each of them individually. He said they should each be receiving a letter, or a call, from the City Council member or governmental entity that appointed them to this body. He said the City is currently proceeding with a bill in the General Assembly in Raleigh to, basically, re-structure the Hickory Regional Planning Commission from how it has been structured, starting back in 1963, he believed. It was revised one time, when the Caldwell County representative was added to the Commission.

Mr. Frazier said the proposed legislation is expected to be approved. Basically, what the legislation will do is rescind the two previous bills, one from the early '60s and one from the '80s or early '90s that originally created the Commission, on a regional basis, noting he believes this Commission was the first regional one in the state of North Carolina. He said the legislation would rescind the two bills, and the City would then have to draft and have City Council approve a new ordinance law creating a new Planning Commission. He said they would also be required to prepare new by-laws, which could be done by both the Planning Commission and professional staff, but the ordinance would have to be drafted and approved by City Council. This will all happen down the road, and they expect it will take effect no later than July 1, 2021. He does not yet know the exact composition of the new commission, but he knows one of the goals is to have an odd number of members, instead of an even number, and they would have a more City-oriented focus. He is not sure how the ETJ would work, as there are certain state statutes that require an ETJ representation. He stated that our attorneys, and City Management staff are currently looking at exactly what that ETJ representation would look like pursuant to state statute.

Right now, Mr. Frazier said there is technically a 12-member Commission, but there had not been a Brookford representative for some time. He and Ms. Dula have consulted with the city manager's Office and they believe the Commission will go from having 12 members to nine, but exactly who that will be is not known at this time.

Ms. Locke asked what had prompted this change, and Mr. Frazier said there were several things. There has been discussion for years about changing the regional nature of the Commission. As an example, he asked why someone from Brookford would want to comment on a rezoning in northeast Hickory, that type of thing. He said that back in the '60s and '70s there was a major push in the realm of planning theory and education to make everything regional. Since then, there has been a bit of a backlash – the pendulum moves both ways in terms of making things more localized.

Regarding having a Caldwell County representative, Mr. Deal noted that a portion of Caldwell County has City of Hickory zoning. A question was posed as to how the City could continue collecting taxes from Caldwell County without providing them representation.

Ms. Locke suggested the entire Commission needs the strong leadership currently being provided by the Chair, as well as his institutional knowledge. She has appreciated his leadership during her tenure and believes all of the members do. She is confused about why the stated changes are necessary, and wishes she understood the reasoning better. If it was an attendance matter or something else, then the members could step up, but the reasons would need to be shared with them. In the future, she expects the City wards will each be represented, meaning other dedicated members from outside Hickory would no longer be serving. Mr. Frazier said the law allows certain actions within the ETJ, and the pending legislation, does allow for at-large members.

Mr. Mays thanked Mr. Frazier for informing members on the pending situation.

**Next Meeting:** Mr. Frazier said the Planning Commission would hold their monthly meeting in April, which would include a public hearing to review the proposed revisions to the existing Land Development Code.

The next meeting will be on Wednesday, April 28, 6:00 pm, in Council Chambers.

**Adjourn:** Bill McBrayer moved, seconded by Jeff Kerley to adjourn. There being no further business, the meeting adjourned at 6:30 pm.

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Randall Mays, Chairman  
Hickory Regional Planning Commission

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Anne Starnes, Minutes Clerk  
City of Hickory



To: Hickory Regional Planning Commission

From: Office of Business Development, Planning and Development Division

Re: 2021 Land Development Code Update - Text Amendments (TA) 21-01

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Annually Planning and Development staff conducts a review of the City's Land Development Code to identify modifications needed or required to maintain the document's effectiveness. During 2020 staff has identified several items that need to be addressed to maintain this document. Most importantly were changes at the state level to the laws governing planning and development.

Upon the Governor's signature, Session Law 2019-11 was ratified with an effective date of January 1, 2021. While the effective date of the legislation remains unchanged, local governments were given until August 1, 2021 to amend their ordinances. The intent of this session law was to modernize, consolidate, reorganize, and clarify statutes related to planning and development regulations. To achieve these goals, the General Assembly solicited the assistance of the NC Bar Association, the NC Chapter of the American Planning Association, the NC Home Builders Association, and various other real estate and development professionals. What culminated from this process was NCGS Chapter §160D. This new chapter consolidated portions of chapters §160A (cities), Chapter §153A (counties), and several parts of other session laws and chapters of the North Carolina General Statutes.

The intended purposes of Chapter §160D were effectively met, and now must be codified into all locally adopted development ordinances across the state. The most notable thing about §160D is its emphasis on the processes related to development approvals. The approval processes are outlined with specificity, and mimic court procedures in many instances. For instance, quasi-judicial hearings are now setup as evidentiary hearings, where only qualified testimony can be considered in decision making processes. This similar distinction is made for legislative hearings, such as zoning map amendments.

Planning and Development staff worked alongside a contractual land use attorney, and the City's Legal Department in preparing the changes necessary to bring the Hickory Land Development Code into compliance with NCGS §160D. The remainder of this report will outline the specific changes to the Hickory Land Development Code, and also provide a brief explanation for the changes. Most of the recommended changes were brought about because of NCGS §160D, but some others proposed by staff. The amendments also include formatting changes, and changes to references that have no legal weight.

## **Article 1 – Introductory Provisions**

Section 1.7.1 – This section was amended to indicate plans, other than the Hickory by Choice 2030 Plan, should be implemented through the application of the Hickory Land Development Code. This amendment is staff recommended and intended to recognize other duly adopted plans.

Section 1.8.3 – NCGS §160D – 501(c) requires plans be adopted (comprehensive, neighborhood, area, etc.) in accordance with the procedures required for zoning text amendments. This means the Planning Commission must review proposed plan(s) and make its recommendation to City Council. City Council is then required to hold an advertised public hearing to consider the plan. After the public hearing City Council would then need to vote formally to adopt, or reject, the plan.

Section 1.9.1 – NCGS §160D – 105 allows the use of paper or digital zoning maps, and also requires past versions of zoning maps be retained.

Sections 1.9.3 – NCGS §160D -105 allows for regulatory maps to be adopted by reference. Examples include flood rate insurance rate maps, watershed maps, or other maps promulgated by State and Federal agencies. This prevents the need for local re-adoption of maps if they are amended by State or Federal agencies.

Section 1.10 – The method in which performance guarantees are referenced was changed in a prior session of the General Assembly by S.L. 2019-79. This law better defines performance guarantees, which are commonly referred to as bonds, and stipulates what types of instruments can be used.

## **Article 2 – Development Review Procedures**

Section 2.1 – NCGS §160D – 403(a) expands the list of individuals who may submit applications for the various types of development approvals outlined within the Hickory Land Development Code. It is now permissible for lessees, persons holding an option to purchase, and an authorized agent to submit applications. NCGS §160D – 1402 (c) also clearly specifies who has standing in the case of appeals to decisions authorized by the Hickory Land Development Code.

Section 2.1.7(b)(2) – NCGS §160D – 602(c) specifies required posted notices be done within the same time period as specified for required mail notices. This has been the City’s practice for some time, but the language is now formally codified into law.

Section 2.1.7(b)(3)(a) – Language regarding certification of notices was updated to remain consistent throughout the ordinance.

Section 2.1.7(b)(3)(c) – Section was deleted as only the City, the property owner or their agent can initiate a rezoning.

Section 2.1.7(b)(3)(d) – Section was modified to clearly indicate notice is required.

Section 2.1.7(b)(3)(e) – Section was added to clearly indicate who are to receive notice for hearings pertaining to Major Certificates of Appropriateness.

Section 2.1.7(c) and 2.1.7(d) – NCGS §160D – 403(a) requires written notice of development approvals or denials be sent to applicant(s) and/or property owner(s).

Section 2.1.7(d)(2) – NCGS §160D – 403(b) gives property owners the ability to provide constructive notice to all persons who may have standing to appeal administrative development approvals. This

gives property owners the ability to place a sign(s) on the property to provide notice the administrative determination has been given.

Section 2.1.11 – Section was modified to outline all types of development approvals in which conditions may be placed and reference the types of conditions that may be imposed.

Section 2.1.14 – NCGS §160D – 108(b) If development rules a changed between the time applications are submitted and a decision is made, the applicant can choose which rules will apply to the application.

Section 2.1.15 – NCGS §160D – 108 clarifies and modifies the rules pertaining to the process for establishment of, and duration of vested rights (The verbiage is verbatim from the General Statutes.) The items which constitute an instrument that can establish a vested right are clearly outlined, as well as the duration of time such rights are vested.

- Building Permits – Expire after six (6) months, unless work authorized under the permit has begun. Expiration shall also occur if work has ceased for a period of twelve (12) months after it commenced.
- Other Development Approvals – Other types of approvals authorized by the Land Development Code expire after one (1) year unless work has been substantially commenced. Examples of these types of approvals include zoning compliance permits, certificates of appropriateness, and Special Use Permits.
- Site-Specific Vesting Plans – These types of approvals are valid for a period of two (2) years, with the option to be expanded to five (5) years by the City. Examples of these types of approvals include subdivisions and planned developments.
- Multi-Phased Developments – These types of approvals are valid for a period of seven (7) years from the time of approval for the initial phase of the development. These types of developments must consist of projects containing twenty-five (25) acres or more.
- Development Agreements – Approvals of this type do not have an expiration date, unless such a date is specified in the agreement.

A property where a vested right has been duly established will not be subject to changes in zoning that would alter, or otherwise impair the development approval, unless with written consent of the landowner, or upon findings after an evidentiary hearing current conditions, if not corrected, would pose a serious threat to the public's health, safety, and welfare.

Section 2.1.16 – NCGS §160D – 406 modifies the pervious requirements, and procedures for quasi-judicial hearings (the verbiage inserted is verbatim from the General Statutes.) The modifications transform such hearings into much more of an actual court proceeding. A few highlights of the changes include:

- Outlines who may participate in the hearing (applicant, city, and others with standing to appeal);
- Other witnesses may present competent, material, and substantial evidence.
- What evidence can be presented and utilized in the decision-making process.
- How administrative materials are provided to the board considering an item.
- Clarifies the board chair has the responsibility to rule on objections.
- Clarifies the board chair has the power to subpoena witnesses and compel the production of evidence; and
- Clarifies the board's decision must be based upon competent, material, and substantial evidence. The decision must also indicate determinations on contested facts. The decision shall be in written format that includes a finding of fact, and conclusions of law.

Section 2.1.17 – NCGS §160D – 403(c) establishes a sunset provision for development approvals permitted by the Land Development Code. This is similar to those of established vested rights but are expanded to include more than only building permits. This section establishes a sunset provision on all types of development approvals, including quasi-judicial approvals, but excluding legislative approvals such as rezoning or conditional zonings. This section has no impact on established vested rights.

Section 2.2.1(c) – This section was deleted as the section pertaining to vested rights and permit choice already address these situations.

Section 2.2.2(a) – Modification explicitly indicates only the property owner, or their agent may petition for rezoning.

Section 2.2.5 – This section outlines the Planning Commission’s responsibility to provide its recommendations to City Council, and outlines City Council is not bound by any recommendation given.

Section 2.2.6 – NCGS §160D – 605 requires City Council adopt a consistency statement regarding plan consistency and reasonableness before approving or denying any zoning text of maps amendments. The consistency statement may be brief. Also, the consistency statement may also be met by a clear indication in the meeting minutes City Council was aware of and considered the Planning Commission’s recommendations, and relevant adopted comprehensive plans.

The statement of reasonableness must also be provided when approving or denying a zoning map amendment (rezoning). There are specific factors outlined within the referenced section that may be considered.

NC GS §160D – 60(c) allows statements for both plan consistency and reasonableness to be approved as a single statement.

Section 2.2.8(c)(6) – This section was modified to define minor and major modifications within the Land Development Code’s glossary rather than repeat throughout the ordinance.

Section 2.2.8(d) – Modifications were made to correct a scrivener's error discussing special use permits in a section devoted to conditional zoning.

Section 2.2.8(d)(1) - NCGS §160D – 702(a) specifically states conditions may not be imposed without the applicant’s consent. Legal counsel recommended inserting a requirement to obtain such consent in writing to avoid future issues.

Section 2.2.11 – This section was modified to clearly outline the method to withdraw any application.

Section 2.3.2(a)(3) – The text was modified to indicate the purchase of property for public transportation corridors is exempt from subdivision standards.

Section 2.3.4(c)(8) – NCGS §160D – 803(b) requires either a public utility or County health Director opportunity to comment on subdivision plats.

Section 2.3.4(c)(7) – NCGS §160D – 403(b) outlines who receives notice of the decision, as well as the type and method of delivery. (minor subdivisions)

Section 2.3.5(b)(4) – NCGS §160D – 803(b) obligates the Planning Director to consult the NCDOT and County Health Departments regarding major subdivision plats.

Section 2.3.5(b)(7) and 2.3.5(c)(9) – NCGS §160D – 403(b) outlines who receives notice of the decision, as well as the type and method of delivery. (major subdivisions)

Section 2.3.5(b)(10) and 2.3.5(c)(8) – NCGS §160D – 1403 modifies the subdivision appeal process. Appeals are now referred directly to Superior Court, rather than the Board of Adjustment.

Section 2.3.5(c)(10) – Modified to state the applicant is responsible for plat recordation.

Section 2.4.5 – Modified upon the advice of legal counsel to strengthen the verbiage, and state approval cannot be granted unless certain criteria have been met.

Section 2.4.6(f) – NCGS §160D – 705(c) does not permit local governments to require improvements, dedications, etc. for which legislative authority does not exist.

Section 2.4.8(a) – Modified to indicate findings be delivered as the ordinance requires their delivery in a prior section. This reduces redundancy.

Section 2.4.8(b) – Added to require applicant to consent in writing to conditions placed upon a special use permit. Reasonable conditions may be applied to such permits without the applicant’s consent. This reflects current case law regarding this topic.

Section 2.4.9 – NCGS §160D – 406(j) outlines when decisions must be delivered, how decisions are to be delivered to, and method for the delivery.

Section 2.4.12 – NCGS §160D – 1402 and 1405(d) contains specific requirements for appeals. Referencing these sections avoided adding several pages of text to the Land Development Code.

Section 2.4.14 – NCGS §160D 705(c) specifically outlines what elements of special use permits can and cannot be administratively approved.

Section 2.5 – This section has been modified throughout to replace “guidelines” with “standards”, as NCGS §160D – 947(c) now uses this term.

Section 2.5.2(b) – NCGS §160D – 947(a) requires this verbiage be added to the standards for certificates of appropriateness granted within historic districts, and for historic properties. It is not clear what the legal effect of this is, but the change puts the Ordinance in line with the general statute.

Section 2.5.3 – Modified to specify the emergency repair of utilities does not require approval of the Historic Preservation Commission.

Section 2.5.6 – Modified to reference required methods of notice rather than spell them out. Eliminated redundancy.

Section 2.5.7(b) – Modified to reference how meetings of the Historic Preservation Commission are to be conducted. Provides clarity.

Section 2.5.7(c) and (d) – Modified to reference how decisions are written for quasi-judicial hearings. Subsection (d) was deleted as it is outlined under the processes for quasi-judicial proceedings.

Section 2.5.13 – NCGS §160D – 406(h) and 1402(j) address appeals of major certificates of appropriateness, and what is considered when appealed.

Section 2.6.6 – This section was shortened to reference a prior section that addressed approval sunsets.

Section 2.8 – This section was modified to reference prior procedural sections, as well as the General Statutes. Some verbiage in the section was also modified upon advice from legal counsel, which were not substantial.

Section 2.9 – This section was modified to reference a prior procedural section.

Section 2.10.2 – NCGS §160D – 403(b) outlines only those with standing may appeal an administrative decision.

Section 2.10.3 – NCGS §1402 addresses stay of action regarding notices of violation where an appeal of the violation has been filed by the appellant.

Sections 2.10.4 & 2.10.6(a) – These sections were modified to clarify existing language, and section references.

Section 2.10.6(d) – This section was deleted upon advice of legal counsel, as there is no statute that authorizes this step. This language was carried over from numerous prior versions of the Land Development Code but was never exercised.

Section 2.10.7 – This section was deleted, as the powers and duties of the Board of Adjustment are outlined in Section 2.11.

Section 2.10.7 – Modified to include reference.

Section 2.10.8 – Updated verbiage regarding appeals of decisions of the Board of Adjustment.

Section 2.11.1(b) – Modification further outlines conflicts of interest.

Section 2.11.2(a)(2) – Modified to clearly state quasi-judicial procedures will be followed when acting on Special Use Permits.

Section 2.11.2(b) – This section was modified to reference the section of the Land Development Code that outlines procedures for the appealing quasi-judicial decisions.

Section 2.11.2(c) – Modified to reference rules regarding conflict of interest and quasi-judicial decisions.

Section 2.11.3(b)(1) – Added reference to powers and duties of the Board of Adjustment.

Sections 2.11.3(c) through (g) – These sections were deleted, as they are previously outlined.

Sections 2.11.3(f) & 2.11.4(b) – Amended to reference the previously outlined conflict of interest rules.

Section 2.11.5 – NCGS §109(c) Modified to clarify and add additional language regarding conflicts of interest standards for administrative staff.

### **Article – 3 Base Zoning Districts**

Sections 3.1(f), 3.4.11, 3.3.15, 4.2.8, 4.3.8, & 4.5.4 - NCGS §160D – 702(b) – These sections were modified or added, as the General Assembly had previously eliminated local governments' ability to

regulate design elements of one and two-family dwellings. There are some exceptions, including historic and manufactured homes.

Section 3.1 – Amended to specify appearance standards for container homes and other non-traditional homes, tiny homes, meet the same appearance and set-up standards as those for manufactured homes, as well as being constructed to residential building code.

#### **Article 4 – Overlay Zoning Districts**

Section 4.5 – Modified to come into compliance with new environmental rules promulgated from the NC Environmental Management Commission. These changes further explain grandfathered impervious coverages, and requirements for cluster development within Water-Supply-Watersheds.

Section 4.5.4 – The definition of “Existing Development” was modified to reference another section of the Land Development Code, rather than the General Statutes.

Section 4.5.11(k) – Modified to use “guarantee” rather than “bond”, as the General Statutes now refer to the terms in this manner.

Section 4.5.13 & 4.5.14 –NCGS §160D – 804(g) outlines what can be offered as a performance guarantee, and the obligations of the local government holding such guarantee.

Section 4.7.9 – NCGS §160D – 702(b) – This section was added, as the General Assembly had previously eliminated local governments’ ability to regulate design elements of one and two-family dwellings. There are some exceptions, including historic and manufactured homes.

#### **Article 5 – Planned Developments**

Sections 5.1.8(a) and (b) – Modified by the recommendation of staff to increase the permissible floor area ration (FAR), which defines development intensities, for Planned Development Districts. Modifications also added language indicating City Council has the responsibility of approving the dimensional standards for lots within Planned Developments.

Section 5.1.8(m) – Modified to conform to Session Law 2020-25 which dictates when new overhead lines are required to be underground, which is how the verbiage of Section 9.16 (Underground Utilities) is written.

#### **Article 6 – Use Regulations**

Section 6.1 – Modified by the recommendation of staff to amend use table listing for single-family residences. The modification creates two listings for single family residences, attached and detached. Both of which are proposed to be permitted by-right in R-1, R-2, R-3, R-4, OI, NC, and C-1; and by Special Use in CC-1 and CC-2 districts. Please note, R-2 will remain solely single family detached. The distinction between these was better defined in the code’s glossary and came from the NC Building Code. This section was also modified to permit duplexes and single-family attached with C-2 districts.

Prior to 2011 both single-family attached and detached were allowed in the all the sane districts, and single-family attached were referred to as “townhomes”. By making the change in 2011 many single-family attached units were made non-conforming. Additionally, some developments where single-family attached units were constructed, the remainder of the lots or parcels were then not allowed to continue the prior development pattern. Covenants and deed restrictions placed upon developments

by the owners prohibit single-family attached units, which is a preferable method to dictate single-family building types.

This section was also amended to reference standards for agricultural operations found in Section 6.2.28.

Section 6.2.13(a) – NCGS §160D – 909(c) prohibits local governments from excluding manufactured homes base upon their age. Standards regarding the appearance and set-up standards for manufactured homes may still be regulated.

Section 6.2.13(b) – Recommended by staff to strengthen the appearance standards for manufactured home. This includes a clearer description of roofing and siding materials.

Section 6.2.16(b) –NCGS §160D – 804(g) changed the terminology for performance guarantees.

Sections 6.2.25, 6.2.26 and 6.2.27 – These sections were amended to increase the separation between day centers, food pantries, and shelter facilities from 1,500 feet to 2,500 feet.

Section 6.2.28 – NCGS §160D – 903(a) prohibits municipalities from applying zoning regulations on bona fide farms operations within extraterritorial jurisdictional areas (ETJs).

## **Article 7 – Intensity, Dimensional and Design Standards**

Section 7.1 – Staff recommends several modifications to the intensity and dimensional for residential districts. The recommended modifications are as follows:

- Insert minimum lot sizes of single-family attached in R-1 district.
- Modify minimum lot sizes for R-3 and R-4 districts. Current minimum lot size does not match the densities recommended by the Hickory by Choice 2030 Comprehensive Plan. The modifications align densities with lots sizes.
- Modify the maximum intensity in R-3 districts to six single-family units per acre, which mathematically works with the current required minimum lot size. This furthers the use of a graduate scale of intensity between residential districts.
- adjusted minimum lot sizes for duplexes and single-family attached, a multi-family structures in districts where permitted. Modifications represent a scaled increase in minimum lots sizes, which increase proportionally upwards from single-family detached.
- Modify the maximum intensity in R-3 districts to ten multi-family units per acre. This ramps up intensity to half on what is permissible in R-4 districts. This makes sense in increasing intensity by district. This intensity is more in line with the Hickory by Choice 2030 Comprehensive Plan.
- Increase the minimum lot width for R-4 districts to 60 feet. This would improve service abilities, such as sanitation.
- Increase the maximum building height in R-3 districts to forty (40) feet. This would create a more conducive environment for the construction of three-story buildings.
- Delete footnotes two and three, as they do not appear to have any positive effects on site design. Attached housing would likely not be able to fit on 2,500 square foot lots, or lots with forty-foot widths.

Section 7.2 – Staff recommends removing the current requirement limiting the location of off-street parking areas constructed for apartment complexes.

Section 7.3 – Staff recommends several modifications to the intensity and dimensional for non-residential districts. The recommended modifications are as follows:

- The minimum required lot size for C-3 districts is being reduced to 15,000. This aligns C-3 districts with C-2 districts, which possess similar characteristics.
- The minimum required lot width for C-1 districts, which is the downtown area, is being reduced to 25 feet. This width reflects the historical development pattern of the area.
- The floor area ration, which is the permissible density, is being increased in all commercial and office districts. While permissible density in these areas has never been as issue, the provision of greater density may lead to additional development and redevelopment of under-utilized areas, as well as expansions of areas that have viable or successful operations. The already established provision for increase setbacks for multi-story buildings adjacent to residential districts will work to offset negative impacts.
- The maximum height of non-residential development within 150 feet some residential districts is limited to 35 feet. This height has been modestly increased for all non-residential districts in this instance. The recommended increase is from 30ft to 35ft there is an existing standard that requires this additional setback for other non-residential districts.
- The maximum building height for OI district is recommended to be increased to 55 feet. This will allow for greater use of smaller properties, as well as accommodate larger development projects.
- Eliminate the size and height restriction of accessory structures for industrial uses within IND districts.
- Allows increases of Floor Area Ration for colleges, universities, and medical centers located within OI districts.

Section 7.4 – Recommended revision to where a front setback is measured in the event property lines extend to a roadway. The accompanying definition to setback in the glossary was also amended to reflect the type of measurement.

## **Article 8 - Subdivisions**

Section 8.1.2 – Amended to reflect current exemption of lot creations and property line manipulations which do not constitute a subdivision.

Section 8.8 – Modified to increase the minimum area for conservations from 2 acres to 10 acres. The provision was added to require all lot created as part of a conservation subdivision be accessed only by new internal streets. The standard for conservation area was reworded to require these areas to be contiguous to the maximum extent practical, and not be part of any privately owned lot. These modifications will help to alleviate service provision to these types of developments where all lots were narrow and accessed off existing roadways. This pattern caused issues with sanitation pick-up, traffic, and on-street parking.

Section 8.12.3 – Was amended to conform to NCGA Session Law 2020-25. This session law prohibits local governments from requiring the burial of overhead power lines that existed prior to development, as well a power lines outside the boundaries of the parcel of land being developed.

Section 8.15.4 – NCGS 160D – §804(g) has revised much of the terminology regarding performance guarantees. The new language defines what must be accepted as a performance guarantee, as well as the terms, maximum amount and responsibilities of all parties.

Section 8.15.9 – Was amended to conform to NGGA Session Law 2019-79. This session law stipulates local governments provide written acknowledgement of the release of performance guarantees.

Section 8.16.2 – This section was amended under the direction of legal counsel. This section codifies the City’s general requirements when accepting guarantees for infrastructure constructed as part of a development project.

**Article 9 – Standards of General Applicability**

Section 9.2.2(a) – This section was amended to reduce the required parking for senior housing from 0.66 spaces per unit, to 0.3 spaces per unit.

Section 9.2.2(a) – This section was amended to include fast food restaurants under the heading for retail for the purposes of calculating required parking.

Section 9.4 – This section was modified to reference the Engineering Manual of Practice regarding intersection sight visibility.

Section 9.7 – Staff recommends modifying the section to set intensity limits for tube lighting. Issues with the use of tube lighting recently arose. In a number of instances, the lighting was intrusive to adjacent properties, and distractive to motorists.

Section 9.13.11 (b) and (c) – NCGS 160D – §804(g) made it necessary to change the language regarding performance guarantees.

**Article 10 - Signs**

Section 10.1.5 (l) NCGS §160D – 908 exempts perimeter fence wraps, which display signage, at construction sites during construction.

Section 10.5.2 – This section was amended to delete provision for signs on properties without buildings. This was effectively off premise advertising, which is already prohibited.

**Article 13 – Violations, Penalties and Enforcement**

Section 13.5.3 – NCGS §160D – 403(f) amends the process for the revocation of development approvals. Unlike previous iterations, development approvals must be revoked in the same manner for which they were approved, including required notice or hearing.

Section 13.5.4(a), (b), (c), & (d) – NCGS §160D – 404(b) amends the requirements for providing notice of stop work orders. Subsection (b) was deleted, as this is outlined in length in Article 2 of the Land Development Code. Subsection (c) was amended to clearly indicate notice requirements apply to appeals to stop work order, except for expedited cases.

Section 13.3.6 – Deleted, as the section is redundant.

Section 13.5.8 – Amended to match the 30-day Board of Adjustment appeal period.

Section 13.5.9 – NCGS §160D – 404(e) reworks administrative staff’s ability to inspect work being conducted as part of a development approval. Consent must be given, and if not, an administrative warrant must be obtained.

Section 13.9.1 – Modified to clarify the methods for which notices of violation for non-emergency matters may be provided. Also includes the terminology for whom the notice is provided.

Section 13.9.3 – Modified to reference appeals to the Board of Adjustment, rather than reiterating previous language. Eliminates redundancy.

Section 13.9.4(a) – NCGS §1-51 has long contained this language regarding land-use statute of limitations. Legal counsel advised including it within the ordinance to make this clear.

Section 13.9.4(b) – NCGS §1-49 has long contained this language regarding land-use statute of limitations. Legal counsel advised including it within the ordinance to make this clear.

Section 13.9.4(c) – NCGS §160D-1405(c)(1) carries over an existing statute of limitation found in NCGS §1-56. Legal counsel advised including it within the ordinance to make this clear.

## **Article 14 - Definitions**

Section 14.1 – Definitions were modified or added to reflect new terms defined in NCGS §160D.

## **Findings and Recommendation**

### • **Findings**

- The NC General Assembly has passed legislation intended to modernize statutes outlining local government’s authority to implement land use regulations. While the legislation was made effective on January 1, 2021, local governments were given until August 1, 2021 to update their ordinances.
- In addition to the statutorily required amendments, staff conducted its annual review of the Land Development Code, and provided amendments deemed necessary to continue the document’s purpose as an implementation tool for the City’s comprehensive Plan.

### • **Recommendation**

- Staff has found Text Amendments 21-01 necessary to comply with the NC General Statutes, and other amendments to be consistent with the Hickory by Choice 2030 Comprehensive Plan, and recommends the following:
  - The Planning Commission move to affirm the text amendment’s consistency with the North Carolina General Statutes, and the Hickory by Choice 2030 Comprehensive Plan; and
  - Forward a recommendation of approval to Hickory City Council.