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Date: December 8, 2011

To: Thomas J. Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager
Steven L. Medlin, AICP, City-County Planning Director
Keith Luck, AICP, Assistant Planning Director

From: Lisa Miller, Senior Planner
Sara Young, AICP, Planning Supervisor

Subject: Presentation on the Proposed Text Amendment to the Unified Development Ordinance (UDO) - Compact Design District (TC1000005)

Summary. The proposed text amendment would create requirements in the Unified Development Ordinance (UDO) for Design Districts within the Compact Neighborhood Tier. The primary intent is to implement policies established with the adoption of the Ninth Street Plan in November of 2008. The text amendment is proposed in conjunction with a zoning map change, which would create a new zoning district to which these requirements would be applied. The Planning staff will present this UDO text amendment, and the associated zoning map change, for Council consideration on January 17, 2012.

Recommendation. Planning staff recommends that the Council receive the presentation.

Background. After two years of development, the Ninth Street Plan (the Plan) was adopted by the Durham City Council on November 17, 2008. The Plan called for revisions to the Durham Comprehensive Plan, the Future Land Use Map, the Unified Development Ordinance, and policies impacting the area. Since the adoption of the Plan, Planning staff has been implementing many of those Comprehensive Plan amendments, UDO text changes, and policy directions.

One of the implementation strategies in the Plan is to create a hybrid form-based zoning district for the Ninth Street Compact Neighborhood. The associated form-based code would allow new development in the area to complement the existing development patterns, allow for the greater densities needed to support future transit, and respect the scale and character of the surrounding historic neighborhoods. Many details regarding the regulations to be included in this new zoning district were established in the Plan. However, many areas regulated by the Unified Development

Ordinance were not discussed in detail in the Plan and therefore, additional input from the community and development by staff were required.

Planning staff held a public workshop on April 29, 2010, where proposals for the Ninth Street area were presented to the community for dialogue and feedback. After the workshop, staff began drafting regulations for the proposed district. These regulations are based on the adopted Ninth Street Plan, the results of the public workshop, and the framework for design districts that was established by the adoption of the Downtown Design (DD) District in February of 2010.

Staff held another public meeting, on October 14, 2010, to receive public input on the drafted regulations for the proposed district. Staff worked to incorporate this additional community feedback into the text and then distributed the draft for review by City and County departments in November of 2010. Another public comment period and public meeting were held in December of 2010.

Staff continued to receive public comment into February of 2011 to allow the members of the community additional time to review the lengthy proposal. During March, April, and May of 2011 Planning staff worked with staff from other City departments to incorporate appropriate revisions to the draft to address the concerns and comments raised in the public input period. Staff held a final public meeting in June of 2011 to inform the community of changes that had been made to the draft and allow a final opportunity to provide feedback before beginning the public hearing and adoption process.

At the August 9, 2011 Planning Commission public hearing, issues were raised by several stakeholders. Planning staff was asked to work with the neighborhood stakeholders and property owners to resolve those issues raised in the public hearing for the proposed text amendment. At the October 11, 2011 Planning Commission public hearing staff proposed a series of recommendations to address as many of the concerns as possible. These recommendations are incorporated into the proposed text amendment attached and outlined below.

Proposal. The majority of the changes in the text amendment are modifications of the design district standards in Article 6, District Intensity Standards. The 2010 downtown zoning update created general standards for all design districts in paragraph 6.12.2 and specific standards for the Downtown Design (DD) District in paragraph 6.12.3. This proposal moves many provisions previously in the DD District section to the general design district section so that they become applicable to both the Downtown and Ninth Street areas. The relocated provisions include: Purpose, Applicability, Permitted Uses, Building and Frontage Types, Pedestrian Mall Standards, Parking and Services, Architectural Standards, Streetscape Standards, and Additional Requirements. This will

unify these standards throughout all design districts. The standards remaining in paragraph 6.12.3 for Downtown, and created in paragraph 6.12.4 for Compact Design (CD) Districts, include Site Design Standards for each design district and Additional Use Limitations for the CD Districts. Site Design Standards include provisions for building placement and building height and massing. Throughout the remainder of the UDO most of the DD District standards have been revised to apply to all design districts, including the CD District to reflect and create the design character envisioned for downtown and future transit areas.

Issues. The public meetings on the proposed regulations generated significant comment on both the content of the regulations and the proposed geographical boundaries. Both the regulations and the boundaries were revised significantly as a result. At the Planning Commission public hearings, two issues with the proposed text amendment were raised by stakeholders.

The first issue was the neighborhood stakeholder concerns regarding the loss of the development plan for the Ninth Street North development. Many of the Ninth Street neighborhood residents have raised concerns regarding the loss of current development plans when the Ninth Street area is rezoned to the proposed CD District. The neighborhood stakeholders have been actively involved in the crafting of committed elements on several large development plan rezonings in this district, and do not wish to see those commitments go away. Planning staff has worked with the City Attorney's office on this issue, and has determined that since a new zoning district is being created and applied in this area, there is no ability to "retain" these development plans as was done with the translation of zones with the establishment of the Unified Development Ordinance. Since retaining the development plans is not an option, staff has been working with neighborhood stakeholders to determine what modifications to the current proposal could assuage their concerns. In addition, the requirements of the proposed district will regulate building massing, architectural and streetscape standards, and many other concerns that resulted in commitments by developers on previously rezoned properties in the area. However, the Planning staff believes that the proposed zoning district, even at the expense of losing previous development plan commitments, will result in new development that meets the goals and objectives of the Ninth Street Plan.

Between Planning Commission meetings, Planning staff held a series of four meetings (August 25, August 31, September 9, and September 21) with the identified stakeholders to determine the scope of the concerns raised, determine possible solutions, and attempt to find areas of compromise between the parties. The options discussed to address neighborhood stakeholder concerns regarding the loss of the Ninth Street North development plan included the creation of a special sub-district, modification of proposed sub-district standards, repositioning of the proposed sub-

district division line, and removal of the property from the proposed new Compact Design District. The series of meetings concluded when it was determined that a compromise between the stakeholders could not be reached.

Planning staff made the following revisions to the draft text amendment that was presented to Planning Commission, based on the concerns identified by each party, in order to address some of each party's concerns:

1. Revise the use table and limited use standards to prohibit payday lenders, gasoline or other fuel sales, veterinary hospitals, clinic or animal boarding, and self storage in the Support 1 sub-district of the CD District. This is consistent with one of the committed elements on the Ninth Street North development plan.
2. Remove the parking structure frontage type from the allowable building and frontage types in the Support 1 sub-district. This would ensure that exposed parking structures could not be built on the Ninth Street North Phase 1A site in accordance with the commitment in the development plan.
3. Require that all projects of 200,000 square feet or greater in the Support 2 sub-district of the CD District provide the minimum residential density found in the table in paragraph 6.12.4A.3.a. This would ensure some residential density in the area surrounding the transit station, and aid in the transition from more intense development to the surrounding neighborhoods. This would likely result in some amount of residential use on the Ninth Street North Phase 1A site, even if not the 89% required by the current development plan.

At the October 11, 2011 public hearing, Planning Commission members recommended approval of the text amendment incorporating only items two and three above.

The second issue raised was the concern regarding the feasibility of developing a big-box grocery store within the District. After discussing potential options, Planning staff has determined that this building form is not in keeping with the Ninth Street Plan nor the proposed Compact Design District and does not recommend allowing this type of development. Planning staff notes that a site plan is being prepared for a large grocery store in the District, which could be approved before the CD District zoning map change is approved. In recognition of this, the following change is proposed:

1. Revise the text amendment ordinance to allow any site plan submitted prior to the adoption date of the ordinance to be approved under the present zoning regulations rather than the new regulations. This would allow the developer of

the site to submit a site plan up until the adoption of the new CD District and develop a big-box grocery store under the present development rules.

The Planning Commission did not discuss nor address this issue in making their recommendation at the October 11, 2011 meeting.

While these staff recommendations do not fully address the concerns raised by either party, they represent a professional recommendation that respects the intent of the Compact Design District and relates to the approved Ninth Street North development plan.

Finally, in the development of the Compact Design District regulations, concerns were raised regarding the proposed mechanism for variations from standards. After working with the City Attorney's office, Planning staff revised this mechanism (now called Alternative Forms of Compliance) to require a minor special use permit through the Board of Adjustment (BOA). In the time since the initial Planning Commission consideration of this proposed text amendment staff has determined that more streamlined and straight forward special use permit parameters would be beneficial for this mechanism. The content of this mechanism has not been altered significantly since the Planning Commission public hearing, but this mechanism is now proposed as a Design Special Use Permit (DSUP) and focuses the findings of the BOA on just those areas relevant to the types of alternatives that may be sought. The intention is to make this process more predictable, especially since the BOA does not generally deal specifically with design issues.

Alternatives. The City Council may approve or deny all or part of the revised amendment, or adopt modifications or alternate proposals.

Staff Contact: Lisa Miller, Senior Planner, 919-560-4137 ext. 28270, lisa.miller@durhamnc.gov

Attachments

Attachment A, Mark-up Copy of Proposed Ordinance

Attachment B, Clean Copy of Proposed Ordinance

Attachment C, Planning Commission comments