

ATTACHMENT 2



CITY OF DURHAM | DURHAM COUNTY
City-County Planning Department
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www.durhamnc.gov



January 3, 2013

Dolly B. Fehrenbacher, President
Good Neighbors of 751
4 Oakwind Court
Durham, NC 27713

Dear Ms. Fehrenbacher:

I am in receipt of your recent letter (see attached) regarding your concerns regarding proposed changes to the Durham Unified Development Ordinance (UDO) related to "Discretionary Regulations" (TC1100007). Thank you for your letter and for taking the time to meet with me yesterday to discuss your concerns and the text amendment process.

As we have discussed and as a summary of our conversation, the review and approval of free-standing, concealed wireless communications facilities (WCFs) in Durham is an *administrative* process.

In this context, *administrative* means that if specified, technical standards are met, approval of a proposed development must (by law) be granted, regardless of public concerns about issues not addressed by the aforementioned technical standards.

As has been previously noted, the decision to review and approve WCFs as an administrative approval was endorsed by City Council and the Board of County Commissioners in 2004 and is now required by law.

The Planning Department, as we represented to City Council at their November 8, 2012 Work Session meeting, will be initiating a discussion with the Joint City-County Planning Committee (JCCPC) about possible revisions to the WCF review and approval standards and process, as you have requested.

The JCCPC meeting is scheduled to be held at March 6, 2013, at 9:30 AM in the City Council Committee Room on the 2nd Floor of City Hall. The Planning Department will review all options available to the City (and County) regarding possible modifications to the WCF review and approval process at this meeting, and receive policy direction from the JCCPC members, including, but not limited to the following:

- 1) Whether to allow WCFs to be approved administratively or through a quasi-judicial process (i.e.: a process that involves public notice and a review by a fact-finding body about the allowability of a specified use against specific performance standards);
- 2) Whether or not to consider adding additional or revised performance standards to the WCF review and approval process regarding safety, WCF location, aesthetics and related issues, as allowed by Federal and State law; and
- 3) Whether or not to require public notification in addition to any required legal notice that may be required of proposed WCFs.

The Planning Department will share with you any material prepared for and provided to the JCCPC in advance of this meeting.

Future actions regarding changes to the UDO as they pertain to WCFs are subject to final review and approval by the City Council and the Board of County Commissioners.

The "Discretionary Regulations" text amendment (TC1100007) you referred to in your attached letter has been developed as a response to a 2009 State law (NCGS 160A-393) that disallows discretionary actions in the review and approval of site plans.

The proposed text amendment is therefore required by State law and was initiated well in advance of your concerns regarding WCFs. The practical impact of the above-referenced law is that site plans must be approved *administratively* or *quasi-judicially* (as defined earlier in this letter).

Currently, our UDO allows for many discretionary provisions that are intended to provide flexibility in response to unique site conditions and development circumstances. The above referenced State law prohibited use of these discretionary provisions.

Please note, however, that the current UDO does not currently have any discretionary provisions in regards to WCFs.

Whereas, the primary role of the Development Review Board (DRB) is to make discretionary decisions in regards to site plan review and approval, we are recommending that they (the DRB) be eliminated, as they may no longer make discretionary decisions in regards to site plan review and approval.

Ms. Dolly B. Fehrenbacher
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The proposed text amendment is proposing no changes whatsoever in the current technical standards for review and approval of WCFs. As such, administrative review and approval of WCFs will continue exactly as they are today, except that final approval will be granted by the Planning Director rather than the DRB.

Please also note that a final decision on a site plan (approval or denial) can still be appealed to the Board of Adjustment if there are concerns that the plan was wrongfully denied because the applicant believes the plan met all technical criteria, or wrongfully approved because there is a concern by a project opponent that it did not meet all technical criteria. Again, this is identical to the current process in the current UDO.

As noted above, we (the Planning Department) will be bringing the JCCPC a range of options regarding substantive changes to the review and approval process for WCFs for their consideration in March, and you are encouraged to provide us any input, questions, comments or concerns you have regarding this matter.

Thank you and please contact Patrick Young, Assistant Director for Development, with any questions or concerns regarding this matter. Mr. Young can be reached at 919.560.4137 x28273 or Patrick.young@durhamnc.gov.

Sincerely,



Steven L. Medlin, AICP
Planning Director

SLM/poy

cc: William V. Bell, Mayor
Cora Cole-McFadden, Mayor Pro Tempore
Eugene Brown, City Council
Diane Catotti, City Council
Howard Clement, III, City Council
Steve Schewel, City Council
Thomas J. Bonfield, City Manager
Keith Chadwell, Deputy City Manager
Patrick O. Young, AICP, Assistant Planning Director

GOOD NEIGHBORS

751

December 21, 2012

Mr. Steve Medlin, Durham Planning Director
101 City Hall Plaza
Durham, NC 27701

Dear Steve Medlin:

This letter is to inform you that the GoodNeighbors of 751 received a copy of An Ordinance to Amend the Unified Development Ordinance Regarding Discretionary Regulations (TC1100007) and are formally writing you about our objections to the changes in (Section N) on pages 35-36 about Wireless Communication Facilities (WCF's). The changes made within this section are not in keeping with changes that were discussed in the City Council's meeting of Nov.8, 2012. As concerned citizens about this topic, we were not invited to view, contribute, and or review any changes in the WCF's ordinances as discussed in the City Council's meeting. We see no provision for neighborhoods to be notified about a proposed tower coming to their community. The ordinance for a freestanding concealed tower now states that the Planning Director shall have the responsibility for the approval. This change totally eliminates the citizen from having a say in the process.

In the City Council's meeting, we were asking for more safety measures to be placed in this specific ordinance that would offer more protection to Durham neighborhoods and residents when dealing with cell phone towers near homes and near underground natural gas lines. This clearly did not happen. In fact, the current ordinance has virtually no provisions for public safety. Our concerns and problems with the WCF's Ordinance were definitely ignored. For a government entity to so blatantly disregard citizens' concerns is totally against North Carolina State laws and the foundation of the United States Federal government. The revised TC1100007 has placed complete control of concealed freestanding cell phone towers into the hand of a few administrative workers. These same administrative workers were in control when we first questioned the judgment of placing the specific WCF SouthPoint Sprint Cell Phone Tower in the southwest community of Durham, NC. This specific application was so filled with inaccurate information that we paid thousands of dollars to go before the Board of Adjustment to stop the tower and their ruling was to have the application process started again. Now we are at this point.

We again state that the GoodNeighbors of 751 strongly object to this ordinance change and are seeking action from the Durham City/County Government to correct this unabashed disregard to taxpayers' request.



Dolly B. Fehrenbacher, President
GoodNeighbors of 751
(919) 237-3248

TIME: 2:46 AM/PM
RECEIVED

DEC 21 2012

Cc: Durham Mayor, Bill Bell
City Councilman, Steve Schewel

DURHAM CITY/COUNTY
PLANNING DEPARTMENT