



TO: Mayor Bill Bell and Durham City Council Members
Chairman Fred Foster, Jr and Durham Board of County Commissioners

FROM: Merry Rabb, Chair, Bicycle and Pedestrian Advisory Commission

RE: Changes to the Unified Development Ordinance (UDO) Regarding Discretionary Actions

DATE: February 19, 2013

As a follow up to our memo from January 19, 2013, the Bicycle and Pedestrian Advisory Commission (BPAC) respectfully asks City Council and Board of County Commissioners to review our concerns about proposed changes to construction of sidewalk, shared facilities, and UC items. We also request the Council and Board to consider our requests for improving the proposed UDO text. Our concerns and requested modifications are listed below. More specific text modification requests are attached.

Sidewalk Construction- 12.4.2

12.4.2.C.2

We have added the proviso that Payment-In-Lieu shall be calculated by using the entire required frontage footage. This is so that a developer cannot decide to build the inexpensive section of frontage sidewalk and leave the more expensive to the city.

12.4.2.C.3

The proposed formula for sidewalk construction is an all or nothing proposition—the developer either builds all of the frontage sidewalk or pays the City for the equivalent footage at a predetermined dollar per linear ft. rate (\$65). In order to induce the developer to do the sidewalk construction himself, the Payment-In-Lieu rate has to be high enough to make building the frontage sidewalk desirable. In the proposed text, there is no monetary threshold over which the sidewalk must cost before the developer can seek an alternative to building it. It is his decision to build or pay. This is an elegantly simple way to strip discretionary decision-making from the sidewalk ordinance. Unfortunately it has some consequences that don't help the builder, the City or the pedestrian.

Timeliness, Efficiency, and Hidden Cost to the City

In the past payment in lieu has gone into a fund where the money sat unspent for years thus creating a lag between construction of the development and construction of the sidewalk. We believe that it makes better sense for the developer to build sidewalk even if it is not on site than to have this lag. It is also more efficient for the developer to build it as part of a larger project because designers and construction crew will be available for both. A final concern is that the proposed \$65/linear ft. may not cover the cost of sidewalk design for the City, and that extra will have to be absorbed.

Building to Hazards

Furthermore, because of the \$65/ linear ft. payment-in-lieu rate, there is an incentive to build a cheaper frontage sidewalk even if it leads to a pedestrian hazard such as an unimproved culvert, steep embankment

or to a bridge or overpass with no sidewalk where people would walk in the lane of traffic. The Development Review Board did not permit this, but under the new law, the matter will be out of DRB's hands.

No Payment-In-Lieu Fund in the County

Finally, though construction of required sidewalk in the County is rare for now, if it does occur, under the newly formulated ordinance the developer has no option but to build since there is no fund to collect Payment-In-Lieu.

Conclusion

In order to remedy problems regarding timeliness, efficiency and the burden of design costs to the City and to remove the incentive to build sidewalk to hazards, we suggest that Sidewalk-In-Lieu (alternative sidewalk) be reinstated as a third option satisfying the sidewalk requirement. Allowing sidewalk-in-lieu satisfies the need for efficient timely sidewalk building, relieves the City of the burden of design, and gives developers in the City and County the ability to contribute sidewalk while not building to a hazard.

The proposed changes do not establish variations in standards that would require a quasi-judicial hearing as all discretion is still in the hands of the developer. The practical outcome of these changes is that the developer will be able to do one of three things: (1) build all required frontage, (2) pay for all required frontage, (3) build part or none of required frontage and build alternate sidewalk elsewhere.

12.4.2.D.3

A developer should still have a requirement to supply Payment-In-Lieu or Sidewalk-In-Lieu even though there will be road improvements to the frontage sometime in the future. Presently the new ordinance allows them to get out of the obligation entirely.

Removal of 12.4.4.C- Shared Facilities

This section provides the opportunity for an applicant to merge required facilities (i.e. sidewalk and bike lanes) within a ROW into a shared off-road facility with minimum 10 foot width. We believe this is contrary to the adopted Bicycle Transportation Plan, and that this section should be removed. There will be instances where a minimum 10' sidewalk is built within a ROW to serve as a connector for a trail in the adopted Trails plan, but if on-road bike facilities are required, the 10' wide sidewalk cannot relieve the applicant of the requirement to provide on-road facilities as well.

UC Sidewalks- 6.11.4.L.2

We also request a modification to the proposed text for this section, as detailed in the attachment. This change is suggested to ensure that the universities have the maximum amount of flexibility for providing sidewalk within the entire area zoned UC.

cc: Tom Bonfield, City Manager
Mike Ruffin, County Manager
Steve Medlin, City-County Planning Director
Mark Ahrendsen, Director, Transportation Department

Suggested Text- 12.4.2 & 12.4.4.C

Recommended additions to proposed text in underline

Recommended deletions to proposed text in strikethrough

12.4.2

A. A public sidewalk shall be provided along the frontage of a development site as required in the table below

B. Preliminary plats, and developments required to improve existing right-of-way to City or NCDOT standards, as applicable, shall provide public sidewalk within right-of-way pursuant to paragraph 12.4.2, Sidewalk Requirement.

C. For all other development except as exempted pursuant to paragraph 12.4.2D, Exemptions, required sidewalk can be provided through one of the following methods:

1. Sidewalk located within the right-of-way or on-site.

a. Sidewalk located in right-of-way or on-site shall connect to external sidewalks that extend to the property of the subject development, including connectivity to crosswalks and end of pavement to all adjacent intersections.

b. If on-site sidewalks are provided, the sidewalk shall meet the following criteria:

- (1) The sidewalks shall be located within a public access easement;
- (2) The maximum distance from the right-of-way, measured to the closest edge of the sidewalk to the right-of-way, shall be 20 feet; and
- (3) Lighting per Sec. 7.4, Outdoor Lighting, shall be provided either by proposed lighting, or existing on-site lighting or street lights within the right-of-way.

2. Payment-in lieu (City only)

~~(1)~~ a. Payment-in-lieu of constructing required sidewalk shall be made at the rate set by the City Council and shall be for the entire length of the required sidewalk not a part of it.

~~(2)~~ b. In order to accommodate future sidewalk, a recorded public access easement shall be provided along frontage of the subject property where no sidewalk is proposed if there is insufficient right-of-way to accommodate a sidewalk.

~~(3)~~ c. Payment-in-lieu shall not remove the requirement of sidewalk per paragraph 12.4.2A for future development projects, unless exempt per paragraph 12.4.2D, Exemptions.

3. Sidewalk-in-lieu

a. Alternative sidewalk shall be equal to the amount of the required frontage sidewalk that is not being built and developer must have in hand all necessary permissions for use of private property.

b. Alternative sidewalk shall be located either:

a. within the immediate vicinity of the development (distance set by City Council) and satisfying standards of connectivity to the development (set by planning;) or

b. a priority sidewalk corridor as specified within Durham Walks! Plan or subsequently adopted pedestrian plans.

c. In order to accommodate future sidewalk, a recorded public access easement shall be provided along frontage of the subject property where no sidewalk is proposed if there is insufficient right-of-way to accommodate a sidewalk.

d. Sidewalk-in-lieu shall not remove the requirement of sidewalk per paragraph 12.4.2A for future development projects, unless exempt per paragraph 12.4.2D, Exemptions

D. Exemptions

1. Level 1 site plans shall be exempt from sidewalk requirements.
2. Level 2 site plans shall be exempt from sidewalk requirements under the following circumstances:
 - a. Improvements consist only of unmanned facilities of less than 1,000 square feet, such as storage rooms, mechanical equipment, coolers, or stand-alone ice kiosks;
 - b. Improvements consist only of less than four additional motor vehicle parking spaces;
 - c. Improvements consist only of less than 1,000 square feet of building area; or
 - d. Improvements are documented to solely bring existing facilities up to current health, safety, or building code requirements.
3. Sidewalk shall not be required to be constructed on-site when documentation is provided that sidewalk will be provided, through a scheduled and funded City or State roadway project, along the location where sidewalk would otherwise be required. Instead Payment -In-Lieu or Sidewalk-In-Lieu will be required

Removal of 12.4.4.C- Shared Facilities (formerly 12.4.5.C)

~~C. Shared Facilities~~

~~Rather than utilize separate pedestrian and bicycle facilities, shared facilities with a 10-foot minimum width are allowed in any area where both sidewalks and bicycle facilities are required, unless separate facilities have been previously developed or approved in the area. Shared facilities of that same width shall be required, however, following the initial installation of shared facilities in the area.~~

Remove section because it conflicts with the adopted Bike Plan

UC Sidewalks- 6.11.4.L.2

b. Sidewalk can be placed as permitted in paragraph 12.4.2C.1; however, locations shall be prioritized as follows:

(1) Locations within the ~~campus~~ UC district specified within the *Durham Walks!Plan* or subsequently adopted pedestrian plan(s);

(2) Along public right-of-way internal to the UC district ~~campus~~ pursuant to paragraph 12.4.2B(1)

(3) Within the TUA located within one mile of the project site.