



CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA



Date: March 18, 2013

To: Thomas J. Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager

From: Steven L. Medlin, AICP, Planning Director 

Subject: Unified Development Ordinance Text Amendment, Removal of Discretionary Regulations (TC1100007)

Summary. State legislation went into effect at the beginning of 2010 that explicitly defined quasi-judicial decisions to specifically include discretionary decisions authorized by local development ordinances for the purpose of site plan approval. Durham's Unified Development Ordinance (UDO) contains provisions intended to provide flexibility in response to unique site conditions and development circumstances. Some of these provisions require the exercise of discretion without employing quasi-judicial decision-making procedures, and thus are not compliant with the state statute. The purpose of this text amendment is to bring the UDO into compliance by revising discretionary provisions, while continuing to provide flexibility in the UDO, either through performance standards, quasi-judicial approval, or both.

Recommendation. Staff recommends approval. The Planning Commission recommended approval, 13-0, of the text amendment on December 11, 2012.

Background. In late 2009 the General Assembly adopted S.L. 2009-421 to create N.C.G.S. §160A-393 and §153A-349. Effective January 1, 2010, those sections, among other things, define a quasi-judicial land use decision as:

A decision involving the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. *Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary*

decision on the findings of fact to be made by the decision-making board (emphasis added).

In the spring of 2011, during a public review of the proposed Compact Design District text amendment (TC100005) a stakeholder raised a question about the legality of a mechanism for variations from ordinance standards. Upon further review, and after legal consultation, the Planning Department determined it advisable to revise provisions of the ordinance and draft alternative methods that would still provide flexibility for certain standards.

A Planning staff team began reviewing the entire UDO in July, 2011, to identify all discretionary provisions. The draft revisions were issued for public review in early July, 2012. The Joint City-County Planning Committee (JCCPC) reviewed the draft revisions on August 1, 2012, received comments from the public, and suggested minor revisions to the draft. The comments received primarily consisted of sections of the UDO regulating parking, floodplain development, sidewalks, and vehicular access, in addition to minor technical or typographical errors. Subsequently, staff reviewed the comments and held discussions with representatives of the development community to determine what additional revisions were necessary.

At the November 13, 2012, Planning Commission meeting, staff provided the draft text amendment in order for the Planning Commission to have an adequate amount of time to review the document prior to the public hearing. The Planning Commission held the public hearing on December 11, 2012, and recommended approval with a vote of 13-0. The Durham Board of County Commissioners will consider this text amendment at its April 8, 2013, meeting.

Issues. The proposed text amendment modifies the discretionary provisions of the UDO to allow flexibility through either: 1) specific supplementary, or performance, standards; 2) approval through an existing quasi-judicial mechanism; or 3) in some cases, both methods. Additional changes deemed necessary to come into conformance with other regulations were also made. Although almost all of the UDO will require some level of amendment, some of the more significant changes are as follows:

1. Article 2, Review Authority: Dissolve the Development Review Board (DRB) and the Design District Review Team (DDRT).
2. Article 3, Applications and Permits: Revisions to site plan categories and the removal of Section 3.14, Administrative Adjustment.
3. Article 4, Zoning Districts: Revisions to the Tuscaloosa-Lakewood Neighborhood Protection Overlay (TLNPO), and revisions to the Major Transportation Corridor (MTC) Overlay.
4. Article 5, Use Regulations: Revisions to limited use standards and custodial care.

5. Article 6, District Intensity Standards: Revised parking and sidewalk requirements for the University-College Districts (UC and UC-2).
6. Article 7, Design Standards: Revisions to utility and trash handling.
7. Article 8, Environmental Protection: Revisions to approval authority for development in special flood hazard areas.
8. Article 9, Landscaping and Buffering: Revisions to landscaping and screening standards, and revisions to the Landscape Guidelines.
9. Article 10, Off-Street Parking and Loading: Revisions to methods for parking reductions and alternative forms of compliance.
10. Article 12, Infrastructure and Public Improvements: Revisions to vehicular access and sidewalk requirements.
11. Article 14, Nonconformities: Revisions to Section 14.4, Nonconforming Improvements and Structures, reducing the instances that would require a minor special use permit.

Additional changes to the draft presented to the Planning Commission, dated November 13, 2012, and discussed at the hearing, or made subsequent to the hearing, are reflected in the draft attached and presented to the Durham City Council and Durham Board of County Commissioners.

Changes reviewed by the Planning Commission and received a recommendation of approval consisted of:

1. Additional text to Section 9.9, Fences and Walls, to allow fence posts, wall columns, and other similar supports to be excluded from height restrictions as long as the additional height is not used to support material spanning from one support to another. This is to allow common fence and wall accents and ornamentation typically found on top of posts or columns.
2. Revision to existing text in Section 10.3, Required Parking, to clarify the circumstances in which a maximum amount of bicycle parking could apply. Current text did not include Compact Neighborhood Tiers to be excluded from this provision. The revised text corrects this omission.
3. Revision to proposed text for Alternative Pedestrian plans in Section 12.4, Pedestrian and Bicycle Mobility, to remove a sunset date for valid pedestrian plans other than those associated with the UC District. The Research Triangle Foundation pointed out that RTP had a unique way of funding sidewalk and other infrastructure due to the special assessment district status, and that removal of the current pedestrian plan would be uniquely problematic. Since only RTP and Treyburn had existing, valid alternative pedestrian plans, it was decided to maintain the validity of those plans.

Changes made subsequent to the Planning Commission hearing consisted of:

1. Grammatical and word choice corrections that made no substantial change to the intent of the standards; these changes only clarified or provided further correction to the text of the standard.
2. A proposed change from “major” to “minor” special use permit for certain development within the floodplain indicated in paragraph 8.4.4C, Development Requiring a Minor Special Use Permit. The proposed change would make the Board of Adjustment the approval authority instead of the governing bodies. Approvals will still require a quasi-judicial hearing, the overall process would remain the same, and no changes in the findings are made.
3. Adjustments to changes within paragraph 5.3.3N, Wireless Communication Facilities for Transmitting and Receiving Electronic Signals (WCFs). Staff has reviewed comments received from citizens and agreed that:
 - a. Proposed changes to “third-party review” standards should be removed and considered in a future text amendment specific to wireless communication facilities; and
 - b. A revision should be made to paragraph 5.3.3N.13.4, Aesthetics, to remove the phrase “to the extent feasible.” Staff agrees that this is a discretionary standard.

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Attachment:

Attachment A: An Ordinance to Amend the Unified Development Ordinance Regarding Discretionary Regulations (TC1100007)

Attachment B: Planning Commission Comments

Attachment C: BPAC Memorandum, January 19, 2013

Attachment D: BPAC Memorandum Follow-Up, February 19, 2013