CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA

ZONING MAP CHANGE REPORT

Meeting Date: March 17, 2014

Table A. Summary			
Application Summary			
Case Number	Z1300030	**Jurisdiction**	City
Applicant	The John R. McAdams Company, Inc.	**Submittal Date**	October 28, 2013
Reference Name	Bethpage Village Revisions	**Site Acreage**	407.27
Location	Northwest quadrant of the intersection of Page Road and Chin Page Road.		
PIN(s)	0748-03-94-7127, 0758-03-12-7976, -01-20-0345, -03-11-2112		
Request			
Proposed Zoning	Planned Development Residential – 4.733 (PDR 4.733), Industrial Light with a development plan (IL(D)), Commercial General with a development plan (CG(D))	**Proposal**	Change in commitments from existing plan – Section B below and Attachment 5, Summary of Changes
Site Characteristics			
Development Tier	Suburban		
Land Use Designation	Low-Medium Density Residential (4-8 DU/Ac.), Industrial, Commercial, Recreation and Open Space		
Existing Zoning	Planned Development Residential – 4.733 (PDR 4.733), Industrial Light with a development plan (IL(D)), Commercial General with a development plan (CG(D))		
Existing Use	Vacant		
Overlay	None	**Drainage Basin**	Lower Neuse
River Basin	Neuse	**Stream Basin**	Stirrup Creek

Determination/Recommendation/Comments	
Staff	Staff determines that this request is consistent with the *Comprehensive Plan* and applicable policies and ordinances.
Planning Commission	Approval 11 – 0 on January 14, 2014. The Planning Commission finds that the ordinance request is consistent with the adopted *Comprehensive Plan.* The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.
DOST	No comments
BPAC	No comments

A. Summary

This is a request to modify the commitments associated with the existing development plan for Bethpage Village, zoning districts: Planned Development Residential 4.733 (PDR 4.733), Industrial Light with a development plan (IL(D)), and Commercial General with a development plan (CG(D)).

The Planning Director has determined that modification of text commitments only requires a change to that portion of the application to be subject to the zoning map change process (ref. UDO Secs. 3.5.12.A and 3.5.12.B). As such, only the modification of the commitments from the development plan was reviewed. All other portions of the original application that are not expressly modified remain unchanged.

Removal of the commitment, a proffered level of development greater than ordinance requirements, does not change the sufficiency of the previously approved development plan nor its consistency with the future land use designation of the *Comprehensive Plan*.

B. Site History

The site's existing zoning designation of PDR 4.733, IL(D), and CG(D) and associated development plan (case Z06-47) was approved by the Board of County Commissioners on December 10, 2007 with City Council approving the initial zoning on October 19, 2009 (Case Z0900002A).

On April 2, 2012 City Council approved case Z1100032 which amended the commitments of Z06-47 by removing a commitment that required that single-family lots be a minimum of 6,500 square feet and removing sheet DV-3, Illustrative Master Plan.

Proposed changes under consideration with this case, Z1300030, are shown as deletions ~~stricken~~ and additions <u>underlined</u>.

Table B: Development Plan Text Commitments
1. Maximum number of units within the PDR 4.733 district: 1,300.
2. This project will provide a minimum of 90.0 acres of open space. This acreage is a combination of 24 acres of active and 66 acres of passive open space.
3. At the time of the building permit, the applicant shall pay a voluntary school

impact fee of $1,000 per single-family lot and $300 per townhouse or multi-family unit. Housing units governed by the Housing for Older Persons Act of 1995 (HOPA) shall be exempt from school impact fee payments.

4. Construction of 3 miles of six-foot wide soft surface & asphalt walking trails ~~as shown on DV-1~~. Trails shall be field located to avoid specimen tree locations. Walking trails shall be completed prior to the last certificate of occupancy in the adjacent development pod.
5. A 100-foot greenway dedication along unnamed tributary of Stirrup Iron Creek prior to approval of final plat as shown on DV-1.
6. 25 feet of additional right-of-way to be dedicated along frontage of Page Road.
7. 10 feet of additional right-of-way to be dedicated along frontage of Chin Page Road.
8. 120-foot right-of-way dedication will be provided on the north side of the property for the proposed Wake-Durham collector as shown on DV-1.
9. A minimum of four feet of additional asphalt (in addition to the proposed widening required by the TIA) will be provided for the full frontage of the site along the north side of Chin Page Road and the west side of Page Road. The additional asphalt widening will be provided to allow for a future bicycle lane.
10. Developer agrees to provide one (1) bus shelter either along Page Road, Chin Page Road, or within the non-residential section of this development at a mutually-agreed upon location, if such a request for a shelter is made by TTA or DATA anytime in the life of the project.
11. No lots will be platted within steep slopes as defined by the UDO.
12. Applicant will make the historic structure and barn available for salvage to Preservation Durham upon request.
13. Applicant will provide a minimum of four usable open space areas. The main active recreation ~~usable open space~~ area shall contain a Clubhouse and swimming ~~a junior Olympic~~ pool. In addition, ~~one (1) tot lot shall be provided in one of the remaining usable open space areas.~~ the project will provide a minimum of two of the following items located either at the main active recreation area or in one of the remaining usable open space areas:
    - Tot lot
    - Gazebo or covered cabana
    - Fitness room
    - Social room
    - Bocci court
    - Tennis court
14. The active recreation area will contain at least one of the following ~~multi-purpose field improved to a level sufficient to provide a place for organized community activities such as soccer or football. This field will be installed~~ prior to the 500th Certificate of Occupancy:
    - Multi-purpose field improved to a level sufficient to provide a place for organized community activities such as soccer or football
    - Two tennis courts
    - Two bocci courts

15. ~~Protect the cemetery and provide open space around the cemetery.~~
16. Portions of this community may consist of "age restricted" units in accordance with the Federal Housing for Older Persons Act of 1995 and the exemptions Housing for Older Persons contained in the North Carolina Fair Housing Act.

    In accordance with the provisions of the Housing for Older persons Act, the following requirements shall be satisfied:

    1. That at least 80% of the occupied dwelling units in the community must be occupied by at least one occupant who is 55 years of age or older;
    2. Permanent residents under the age of nineteen will not be permitted;
    3. That the housing community publish policies and procedures that demonstrate its intent to comply with the Housing for Older Persons Act;
    4. That the community comply with the rules issued by the Department of Housing and Urban Development *HUD) for verification of occupancy requirements.

    The declaration of covenants, conditions, and restrictions for the community shall require that the HOA comply with the requirements of the Federal Housing for Older Persons Act of 1995. The declaration shall:

    1. Specify that at least 80% of the dwelling units in the community must be occupied by at least one occupant who is 55 years of age or older;
    2. Specify that a permanent resident under the age of nineteen will not be permitted subject to the requirements of the Federal Housing for Older Persons Act;
    3. Require the HOA to document and verify the ages of the dwelling unit occupants in accordance with the Housing for Older Persons Act;
    4. Require the HOA to provide evidence of compliance with the Housing for Older Persons Act to the Zoning Enforcement officials upon request.

    All housing within the "age restricted" portions of the community shall be subject to the Housing for Older Persons Act and the declaration of covenants, conditions, and restrictions. The declaration of covenants, conditions, and restrictions shall be subject to review by the City Attorney and Durham Planning Director, to verify continued compliance with this zoning condition. The HOA documents must be reviewed and approved by the Planning Department and City Attorney's Office prior to recordation. Recordation must occur prior to issuance of any Certificate of Occupancy.

    As a condition of the zoning, the HOA shall continuously enforce these requirements and the covenants, conditions, and restrictions. The HOA documents will require that, in the event that the community becomes non-compliant with these requirements, and/or is notified by the City of a potential violation, the HOA shall take actions necessary to remedy the violation and bring the community back into compliance within the prescribed timeframe as defined by the Durham City-County Planning Department or will be responsible for any notices of violation of civil penalties that may be assessed for non-compliance.

    The HOA and/or the developer of the "age restricted" portions of the community

(up to the time of total build out)shall conduct a survey every year to verify the ages of the swelling unit occupants, all in accordance with the Housing for Older Persons Act, and shall provide a summary of the findings and a certification from the HOA President/Manager to the Planning Director by January 15th of each year. Failure to do so will result in a zoning violation subject to appropriate Zoning Enforcement action including the issuance of a $500.00 per day civil citation (fine) for the maximum fine allowable.

C. Staff Analysis

The initial development plan governing this site (Case Z06-47) proposed 1,300 residential units, 500,000 square feet of office, and 150,000 square feet of commercial. The office and commercial spaces are not maximum commitments; however, the intensity of the site is limited by the assumptions of the Traffic Impact Analysis (TIA). The modifications approved by Z1100032 eliminated the requirement of a single-family lot size. The modifications proposed with this case (Z1300030) adds language associated with age-restricted housing and the proffered amenities associated with such housing as well as removing a proffer to protect an existing cemetery.

Determination. The modification to proffered text commitments associated with Z06-47, and amended by Z1100032, is not contrary to any current Ordinance requirements or policies. As such, staff determines that this request is consistent with the Comprehensive Plan and other adopted policies and ordinance.

If approved, development plan Z06-47 with modifications of Z1100032 and this case (Z1300030), establishes the level of development of the site.

D. Notification

Staff certifies that newspaper advertisements, letters to property owners within 600 feet of the site and the posting of a zoning sign on the property has been carried out in accordance with Section 3.2.5 of the UDO. In addition, the following neighborhood organizations were mailed notices:

- Inter-Neighborhood Council
- Fayetteville Street Planning Group
- Friends of Durham
- Unity in the Community for Progress
- RDU HZO Permit Area
- Center of the Region Enterprise (CORE) – City of Raleigh
- Center of the Region Enterprise (CORE) – Wake County
- Center of the Region Enterprise (CORE) – Town of Morrisville
- Center of the Region Enterprise (CORE) – Town of Cary

E. Summary of Planning Commission Meeting January 14, 2014 (Case Z1100032)

Zoning Map Change Request: Request CN to CG(D). Mainly changing language.

Staff Report: Ms. Wolff presented the staff report.

Public Hearing: Chair Jones opened the public hearing. One person signed up to speak, one person spoke in favor and no one spoke in opposition. Chair Jones closed the public hearing.

Commission Discussion: Question was asked for the cost per unit, but that information was unknown at this time. Much conversation was centered on the moving of the cemetery and how it might affect family members who had loved ones in the cemetery. It was not clear if the cemetery would actually be moved. Discussion was also centered around donations to the public schools.

Motion: Approval of the Zoning Case Z1300021. (Mr. Whitley, Chair Harris 2nd).
Action: Motion carried, 11-0.

Findings: The Planning Commission finds that the ordinance request is consistent with the adopted *Comprehensive Plan.* The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

E. Staff Recommendation

Staff recommends approval based on consistency with the Comprehensive Plan, and considering the information provided in this report.

F. Contacts

Table I. Contacts		
Staff Contact		
Amy Wolff, Senior Planner	Ph: 919-560-4137, ext. 28235	Amy.Wolff@DurhamNC.gov
Applicant Contact		
Agent: Bob Zumwalt, The John R. McAdams Company, Inc.	Ph: 919-361-5000	zumwalt@mcadamsco.com

G. Attachments

1. Context Map
2. Future Land Use Map
3. Aerial Photography
4. Development Plan Reduction
5. Summary of Changes
6. Submittal History
7. Planning Commissioner's Written Comments
8. Ordinance Form