



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



**Date:** June 15, 2015

**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, Independent Living Facility (TC1400005)

**Summary.** *Unified Development Ordinance* (UDO) text amendment TC1400005 is a privately-initiated application to develop standards for a type of residential use called an "independent living facility." The original application was a request to add a use called a "life care facility/retirement center," similar to the use within the repealed Durham Merged Zoning Ordinance (MZO). Upon further review of the various types of facilities and definitions for senior group living (congregate care, assisted living, retirement center, life care, elder housing, independent living), staff determined that the proposed term "independent living facility" and the associated definition discussed below best matched the intent of the applicant.

The draft text amendment ordinance provides the following for an "independent living facility":

1. Establishes the use within Article 5, Use Regulations;
2. Clarifies references to other similar uses within Article 5, Use Regulations;
3. Establishes parking requirements in Article 10, Parking and Loading; and
4. Provides a definition for the use in Article 16, Definitions.

**Recommendation.** Staff recommends approval of the attached Ordinance to amend Article 5, Use Regulations; Article 10, Parking and Loading; and Article 16, Definitions, of the *Unified Development Ordinance* (TC1400005); and recommends approval of a consistency statement declaring the request consistent with the Durham *Comprehensive Plan* and that the request is reasonable and in the public interest. Information supporting these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

The Planning Commission recommended approval, 11-0, of the text amendment on April 14, 2015. The Planning Commission determined that the Ordinance request is consistent with the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest based on comments received at the public hearing and the information in the staff report.

**Background.** The text amendment application is a privately-initiated amendment submitted by the Morningstar Law Group on behalf of Meridian 2012 LLC d.b.a. Bartlett Reserve. The application was first presented to the Joint City-County Planning Committee (JCCPC) as an informational item on November 4, 2014. At that time, the application indicated a request for a use called a "life care facility/retirement center" and cited the definition from the repealed MZO to possibly add to the UDO. A parking assessment was pending from the applicant that would suggest or justify a proposed parking rate for the use. An initial parking assessment was submitted to staff on December 11, 2014, and a revised version was submitted on December 29, 2014.

A draft amendment was reviewed by the JCCPC on February 4, 2015. The JCCPC acknowledged the need for more options for senior housing and that this amendment appeared to aid in remediating that need. No definitive parking requirement was provided at that time due to the need for additional comparison data from the applicant. Staff informed JCCPC that a parking rate in the range of 0.5-to-one space per unit was being considered, but the additional information from the applicant would be helpful to determine a more conclusive rate.

Subsequent to the JCCPC review, the applicant provided a revised parking assessment that includes additional comparable data for established facilities similar to the proposed use (Attachment B). That assessment has been reviewed by staff and aided the staff determination of an acceptable minimum parking rate for the proposed use.

The Planning Commission heard the request at its April 14, 2015, meeting and recommended approval with an 11-0 vote. The Durham Board of County Commissioners will consider this request at its June 8, 2015, meeting.

#### **Issues.**

**Use Category Classification:** The requested amendment would establish a type of residential use for senior populations that current uses within the UDO do not accommodate. The repealed MZO contained the following use, and forms the basis of the applicant's request:

*"Retirement Center, Life Care Facility, or Elderly Congregate Living Facility: A development for 6 or more persons. The facility provides housing and some degree of food service and may also provide individual assistance with some medical needs or housekeeping. The facility may also provide recreational facilities and some personal service shops such as a bank or barber shop."*

This use was not incorporated into the UDO when it became effective in 2006. Current residential uses within the UDO that cater to senior or special needs populations, and their corresponding UDO definitions, are as follows:

***Use category: Household Living***

*Congregate care facility with individual units that meet the definition of a dwelling unit, or retirement center apartment: Undefined.*

***Use category: Group Living***

*Congregate living facility: A residential use which undertakes, for a period exceeding 24 hours, care, housing, food service and one or more personal services for persons not related to the owner or administrator.*

*Hospice, nursing, or convalescent house: A facility that provides nursing services and custodial care on a 24 hour basis for three or more unrelated individuals who for reasons of illness, physical infirmity, or advanced age require such services.*

*Retirement center or life care community without individual dwelling units: Undefined.*

The UDO definition of a “congregate living facility” includes “care” as one of the services provided; and although it incorporates many of the elements that are requested with the proposed use, it also allows for more of a continuum of care pursuant to the limited use standards in paragraph 5.3.2B, Congregate Living Facility. Thus, this has been determined to be different than the proposed use. The proposed use is primarily a facility that allows for independent living targeted to a senior population, including individual dwelling units (with cooking facilities) along with personal-service-oriented amenities (e.g., hair salon/barber, banking, etc.) and common dining areas. Medical care is not offered, although the facility may aid a resident in obtaining it when necessary.

Staff researched various types of senior living facilities, and associated definitions of those types of facilities. It was concluded that:

1. The proposed term “life care facility/retirement center” was consistently defined as a facility that provided a continuum of senior care, from independent living, to assisted living, to skilled nursing care. This allowed residents to age in place while their needs change over time. This is somewhat different than the above-referenced MZO definition and more similar to the existing “congregate living facility” use already established in the UDO. Thus, staff concluded the proposed term was not appropriate based on the intent of the application.
2. The term “independent living facility” consistently referenced a type of facility that most closely matched the intent of the use proposed by the applicant. Therefore, after consultation with the applicant, the following definition is proposed:

**Independent Living Facility:** A facility consisting of a single building or group of buildings with one ownership and management in which the residents are persons at least 55 years of age, their spouses, and/or their surviving spouses, and with or without an on-site resident manager. Residents live in their own dwelling units. The facility maintains a common dining room and typically provides personal services such as transportation, banking, and/or a barber shop/hair salon; recreational activities and amenities; concierge services; and housekeeping for residents and their guests. Health maintenance services and/or treatment are not provided.

The proposed use is residential in nature, similar to an apartment complex, but provides more services and assistance to a targeted population. Staff thus determined that this use is appropriate for both residential and nonresidential zoning districts; but it warrants additional review through a minor special use permit process for locations in residential districts to ensure compatibility within residential areas. This is also consistent with the zoning districts that allow a congregate living facility with or without a minor special use permit.

**Parking:** The proposed motor vehicle parking rate is 0.6 spaces per dwelling unit. The basis for this proposed rate rests upon the review of information provided by the applicant, data from the *Parking Generation Manual, 4<sup>th</sup> Edition*, of the Institute of Transportation Engineers (ITE), and review of similar uses in other ordinances.

*Applicant's information:* The applicant submitted a revised parking assessment dated February 9, 2015. The assessment used data from other ordinances, the ITE, and comparable existing facilities. The most compelling data from the assessment involves the comparable data from existing facilities. This data indicates established motor vehicle parking ratios of 0.6 and 0.7 parking spaces per unit. The data reported from the ITE "Assisted Living"<sup>1</sup> use category (land use code 254) and review of other ordinances was not as compelling since it referred to uses more consistent with nursing facilities or the congregate living facility use already established in the UDO.

*ITE data:* Staff performed an independent review of the ITE parking generation manual and determined that the use listed as "Congregate Care Facility"<sup>2</sup> (land use code 253) most closely reflected the use proposed by the applicant. The ITE case studies indicated that 0.5 spaces per dwelling unit were supplied, with peak hour demand ranging from 0.41 to 0.48 spaces per dwelling unit.

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<sup>1</sup> ITE describes "Assisted Living" complexes as "...residential settings that provide either routine general protective oversight or assistance with activities necessary for independent living to mentally or physically limited persons... Assisted care commonly bridges the gap between independent living and nursing homes."

<sup>2</sup> ITE describes "Congregate Care Facilities" as "...independent living developments that provide centralized amenities such as dining, housekeeping, transportation, and organized social/recreational activities. Limited medical services (such as nursing or dental) may or may not be provided."

*Review of ordinances:* Review of other ordinances resulted in a range of minimum parking rates. If an ordinance did not have an identical use listed, staff compared parking rates of uses similar to the proposed use. Those were typically indicated as “multifamily elderly,” “senior housing,” or “elderly housing.” Municipalities listed below are those that have parking rates for these comparable uses.

**North Carolina:**

<i>Asheville:</i> 2 spaces/unit	<i>Raleigh:</i> 1 space/unit
<i>Charlotte:</i> 0.25 spaces/unit	<i>Wilmington:</i> 0.5 spaces/unit
<i>Greensboro:</i> 0.5 spaces/unit	<i>Winston-Salem:</i> 0.75 spaces/unit

**Regional Peer Cities:**

*Richmond, VA.:* 0.5 spaces/unit  
*Little Rock, AR:* 0.5 spaces/unit

Based upon the above information, staff determined that the 0.6-spaces-per-dwelling-unit, minimum motor vehicle parking rate proposed by the applicant is reasonable, consistent with data reviewed, and consistent with the range indicated to JCCPC.

The UDO sets minimum and maximum motor vehicle parking rates based upon the Development Tier. As an example of the minimum and maximum amount of parking the proposed rate would generate, a 100-unit facility would allow for the following:

	Minimum <sup>3</sup> Parking	Maximum <sup>4</sup> Parking
Suburban and Rural Tiers	60 spaces	105 spaces
Urban Tier	54 spaces	105 spaces
Compact Neighborhood Tier	48 spaces	60 spaces
Downtown Tier	No minimum	60 spaces

The UDO currently permits flexibility in the parking rate through certain by-right parking reductions and reductions through a minor special use permit. Developments can also exceed maximum parking requirements through a parking analysis, or the provision of pervious paving or structured parking.

*Bicycle parking:* There is less comparable data for bicycle parking and the applicant has not proposed a standard. There is no comparable UDO standard for group living of this nature. The other group living parking categories include congregate care

<sup>3</sup>For the Suburban and Rural tiers, the minimums are 100% of the parking rate; for the Urban Tier the minimum is 90% of the parking rate; and for the Compact Neighborhood Tier, the minimum is 80% of the parking rate.

<sup>4</sup>The maximum for the Rural, Suburban, and Urban tiers is 175% of the parking rate; and for the Compact Neighborhood and Downtown tiers, the maximum is 100% of the parking rate.

facilities, which require “1 space per 20 employees, minimum 2 spaces.” Staff generally prefers not to regulate by the number of employees, since the number of employees for a facility can fluctuate, and thus is not a reliable indicator of parking demand. Also, the nature of the facility is independent living so regulating by the number of units is more appropriate. For similar uses in Cary, the requirement is “1 rack per building,” or “1 rack per building, or 1 per 50 units.” Raleigh requires “1 space per 20 units, minimum 4 spaces.” Charlotte does not require any bicycle parking.

Staff recommends using the Raleigh standard. Although it is more likely that residents will use their own cars or transportation services provided by the facility, the facility is intended to cater to *independent* senior adults. Therefore it is reasonable that some residents, along with employees of the facility, may use bicycles. A standard bicycle rack provides two spaces; and the number of racks required would be minimal, even for larger facilities. The UDO also provides flexibility for placement of racks; they can be placed outdoors, indoors, or both.

**Consistency with the *Comprehensive Plan*; Reasonable and in the Public Interest.** After review of the request and consideration of current UDO regulations, staff has determined that this request is reasonable. The proposed use would add a type of housing currently lacking as an option within the UDO, and is a significant housing option which will be in demand due to the growing senior population. The *Comprehensive Plan* does not specifically address senior housing or aging in place within Chapter 3, Housing Element; but the request appears to bolster the tenants of the Housing Element such as accommodating special needs populations, affordability (with the availability of new and additional housing options), and developing sustainable and proactive communities.

**Contact.** Michael Stock, AICP, Senior Planner, 919-560-4137 ext. 28227; [Michael.Stock@DurhamNC.gov](mailto:Michael.Stock@DurhamNC.gov).

**Attachments:**

**Attachment A:** Application by Morningstar Law Group

**Attachment B:** Parking Assessment (February 9, 2015) submitted by Morningstar Law Group

**Attachment C:** An Ordinance to Amend the *Unified Development Ordinance* Regarding Independent Living Facilities (TC1400005)

**Attachment D:** Statement of Consistency Pursuant to NCGS § 160A-383

**Attachment E:** Planning Commission Comments