

**AN ORDINANCE TO AMEND VARIOUS PROVISIONS  
OF THE UNIFIED DEVELOPMENT ORDINANCE DUE TO STATE LEGISLATION  
AND CASE LAW (TC1500007)**

**WHEREAS**, the Durham City Council wishes to amend certain provisions in the Unified Development Ordinance by making technical revisions to comply with recent state legislation and case law; and

**WHEREAS**, it is the objective of the Durham City Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

**NOW, THEREFORE**, be it ordained that Article 3, Applications and Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 12, Infrastructure and Public Improvements; and Article 16, Definitions, of the Unified Development Ordinance are amended to make the following changes set forth in the deletions (strikethroughs) and additions (underlining) below:

**PART 1**

[Update references to various State departments and divisions.]

**Sec. 3.8 Sedimentation and Erosion Control**

[Paragraphs not listed remain unchanged]

**3.8.9 Appeals**

**B.** In the event that an erosion control plan is disapproved pursuant to paragraph 3.8.7, Disapproval of Plan, the County Sedimentation and Erosion Control Office shall notify the Director of the Division of Energy, Mineral, and Land Resources (within the North Carolina Department of ~~Environment and Natural Resources~~Environmental Quality [DEQDENR]) of such disapproval within ten days. The Office shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Office's disapproval of the plan pursuant to paragraph 3.8.7, Disapproval of Plan, directly to the State Sedimentation Control Commission.

**Sec. 3.14 Variance**

[Paragraphs not listed remain unchanged]

**3.14.9 Watershed Protection**

**C.** The Planning Director, or designee, shall keep a record of variances to Sec. 8.7, Watershed Protection Overlay Standards. This record of variances, not including those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced in Sec. 8.7, shall be submitted to the Division of Water Resources, North Carolina Department of ~~Environment and Natural Resources~~Environmental Quality by January 1st of each year. The record shall provide a description of each project receiving a variance and the reasons for granting a variance. The record of variances from Sec. 8.5 shall be included in the annual report to the North

Carolina Division of Water Resources summarizing activities implementing the requirements of that section.

**Sec. 3.16 Historic District or Landmark Designation**

[Paragraphs not listed remain unchanged]

**3.16.3 Designation of an Historic District**

**C. Action by the NC Department of [Natural and Cultural Resources](#)**

In accordance with NCGS §160A-400.4(2), the NC Department of [Natural and Cultural Resources](#) shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of [Natural and Cultural Resources](#) to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

**3.16.4 Designation of an Historic Landmark**

**B. Action by the Historic Preservation Commission**

1. In accordance with NCGS §160A-400.6(2), the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the ~~Division Office~~ of Archives and History, North Carolina Department of [Natural and Cultural Resources](#).

**C. Action by the NC Department of [Natural and Cultural Resources](#)**

In accordance with NCGS §160A-400.6(3), the NC Department of [Natural and Cultural Resources](#) shall be given the opportunity to review and comment upon the substance and effect of the designation of any historic landmark. Any comments shall be provided in writing. If the NC Department of [Natural and Cultural Resources](#) does not submit its comments within 30 days following receipt by the Department of the investigation and report, the HPC and the governing body are relieved of any responsibility to consider such comments.

**Sec. 3.17 Certificate of Appropriateness**

[Paragraphs not listed remain unchanged]

**3.17.9 Action by the Historic Preservation Commission**

B. As part of its review procedure, the HPC may view the premises and seek the advice of the North Carolina Department of [Natural and Cultural Resources](#) or other expert advice as it may deem necessary under the circumstances.

**3.17.15 Local and State Coordination**

The HPC shall use all reasonable efforts to expedite any concurrent process with the North Carolina Department of [Natural and Cultural Resources](#) if such a process is desired by the applicant for the purpose of securing both a certificate of appropriateness and a Federal historic preservation tax credit.

**Sec. 5.3 Limited Use Standards**

[Paragraphs not listed remain unchanged]

**5.3.1 Agricultural Use Standards**

**B. Forestry (City Only)**

Forestry activities in the City shall be conducted in conformance with a Forest Management Plan which uses the current best management practices set out in "Forest Practice Guidelines Related to Water Quality," as adopted by the North Carolina Department of ~~Environment and Natural Resources~~Environmental Quality.

**Sec. 6.2 Residential Rural (RR) Development Intensity**

[Paragraphs not listed remain unchanged]

**6.2.4 Conservation Subdivision**

**H. Primary and Secondary Conservation Areas and Other Open Space**

**1. Primary Conservation Areas**

- c. Wetlands protected by the Army Corps of Engineers or the North Carolina Department of Environmental Quality ~~Environment and Natural Resources~~ and any provided or required buffers;

**Sec. 8.5 Riparian Buffer Protection Standards**

[Paragraphs not listed remain unchanged]

**8.5.7 Existing Use Exemption**

**C. Outside the Neuse River Basin**

- 3. The project is reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or its immediate successor and reached agreement with the NC Department of ~~Environment and Natural Resources~~Environmental Quality on avoidance and minimization prior to the effective date of this section; or

**8.5.12 Mitigation**

**A. Mitigation Options**

- 1. Participation in a private compensatory mitigation bank in the same hydrologic area, as defined in NCGS 143.214(11), as the proposed impact that is approved by the NC Department of Environmental Quality~~Environment and Natural Resources~~;
- 2. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 contingent upon acceptance of payments by the Division of Mitigation Services~~North Carolina Ecosystem Enhancement Program~~. This option is available to a nongovernment applicant only if option 1 is not available;

**Sec. 8.9 Wetlands Protection Standards**

[Paragraphs not listed remain unchanged]

**8.9.2 Application of Wetlands Protection**

The City and County acknowledge the pre-eminence of the Federal and State governments with regard to the identification and regulation of wetlands. Accordingly, the standards contained within this section shall not duplicate the requirements of the US Army Corps of Engineers (the Corps) or the North Carolina Department of Environmental Quality~~Environment and Natural Resources~~.

[Resources \(DENR/DEQ\)](#), Division of Water Resources (Division), but shall require the buffering of wetland areas, identified by these agencies, on development plans, site plans, preliminary plats, final plats, and as otherwise required under Sec. 8.5, Riparian Buffer Protection Standards.

## **Sec. 9.5 Mass Grading Buffers and Revegetation**

[Paragraphs not listed remain unchanged]

### **9.5.2 Exemption**

Forestry activities conducted in conformance with a Forest Management Plan that uses the current best management practices set out in “North Carolina Forestry Best Management Practices Manual To Protect Water Quality,” as amended, as adopted by the North Carolina Department of [Agriculture and Consumer Services](#)~~Environment and Natural Resources~~, shall not require a mass grading buffer; however, if required buffers are not provided consistent with the requirements of paragraph 8.3.4, Clear Cutting, development of the site shall be prohibited for a period of three or five years (in the City) or three years (in the County) from the date of forestry activities.

## **Sec. 12.10 Sedimentation and Erosion Control**

[Paragraphs not listed remain unchanged]

### **12.10.2 Applicability**

**A. Exemptions.** The following activities do not require a permit under this section:

5. Land-disturbing activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of [Agriculture and Consumer Services](#)~~Environment and Natural Resources (DENR.)~~. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Article shall apply to such activity and any related land-disturbing activity;

## **Sec. 16.2 Abbreviations**

~~DENR: North Carolina Department of Environment and Natural Resources~~[DEQ: North Carolina Department of Environmental Quality](#)

## **Sec. 16.3 Defined Terms**

**Historic Structure:** Any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG)

Program.” Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of [Natural and Cultural Resources](#) through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

## PART 2

[Revise sections of the UDO to remove design or aesthetic regulations for single-family or two-family residences per SL2015-86]

### Sec. 4.6 Neighborhood Protection Overlay (-P)

[Paragraphs not listed remain unchanged]

#### 4.6.3 Modification of Standards

B. A Neighborhood Protection Overlay may allow for restrictions on building design or placement details, including scale, mass, materials, and architectural style.

[Commentary: North Carolina Session Law SL2015-86 limits the ability to place design or aesthetic regulations upon single-family and two-family residential structures.](#)

#### 4.6.4 Design Guidelines

Where appropriate [and allowed by State statute](#), a Neighborhood Protection Overlay may require the application of specific design guidelines in the review of development. Such guidelines shall be established as part of the overlay district at the time of adoption, and implemented through review and approval of site plans pursuant to Sec. 3.7, Site Plan Review, or architectural review pursuant to Sec. 3.23, Architectural Review.

### 4.6.5 Tuscaloosa-Lakewood Neighborhood Protection Overlay

#### D. Single-Family Residential Structures and Duplexes

##### ~~2. Building Design~~

~~a. Garages or carports facing the street shall be limited to a single bay unless located to the rear of the residential structure, in which case two bays may be permitted. In no case shall a garage or carport extend in front of the front building line of the residential portion of the structure.~~

~~b. New primary structures shall not have the same elevation with the same architectural features as existing primary structures, or those in process of being built, on the same block face. Review and approval of elevations through architectural review pursuant to Sec. 3.23, Architectural Review, shall be required prior to issuance of a building permit. The following shall be demonstrated:~~

~~(1) The architectural design of the proposed structure creates a unique elevation compared to other structures on the same block face, through the modulation of some or all of the following architectural features:~~

- ~~(a) Length, width and massing of the structure;~~
- ~~(b) Number of stories;~~
- ~~(c) Façade materials;~~
- ~~(d) Porches and other similar articulation of the front façade;~~
- ~~(e) Number and location of doors and windows; and~~
- ~~(f) Roof style and pitch.~~

~~(2) The design of structures of the same architectural style as other structures on the same block face is varied enough from other similar structures to ensure architectural variety through the modulation of the features listed above.~~

~~(3) If no more than two primary structures exist on a block face, then the context area for determining the above criteria shall be extended to include the nearest block faces within the neighborhood protection overlay, in all directions, with more than two structures.~~

### **32. Housing Types** [text remains unchanged]

## **Sec. 6.8 Infill Development in Residential Districts**

[Paragraphs not listed remain unchanged]

### **6.8.4 Buildings**

#### **D. Main Entrance**

Except for single-family and two-family residential structures, Every every principal structure shall have a main entrance on a street other than an alley. On corner lots, the main entrance can face either street or can be oriented toward the corner. For buildings that have more than one main entrance ~~(e.g., a duplex)~~, only one main entrance shall be required to face a street.

#### **E. Garages, Access, and Parking**

1. Where an alley access is provided and developed, all vehicular access shall be taken from the alley.
2. When a garage entrance faces a street other than an alley, a single garage entrance shall be no more than 22 feet in width ~~and such entrance shall be set back a minimum of 20 feet from the right-of-way or the average setback of the developed residential lots within the context area, whichever is greater.~~
3. The construction material of the garage shall match that of the primary structure. This shall not apply if the primary structure is a single-family or two-family structure.

## **Sec. 16.3, Defined Terms**

**Yard, Rear:** That portion of a yard between the required rear setback and the rear property line extending the full width of the lot between side lot lines. The rear yard width is measured perpendicular to the rear lot line. The rear yard shall be the yard on the opposing side of ~~the primary structure from the main or primary entrance to the primary structure~~ a street yard. No rear yard shall apply for triangular or pie-shaped lots where there is no rear property line.

## **PART 3**

[Modify the definition of “impervious surface” to reference “built-upon area” as defined for stormwater purposes per SL2015-149]

## **Sec. 16.3, Defined Terms**

**Impervious Surfaces:** A surface composed of any material that impedes or prevents natural infiltration of water into the soil and qualifies as “built-upon area” as defined by NCGS 143-214.7, as amended. ~~Impervious surfaces shall include but are not limited to roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel surfaces. Wooden slatted decks and the water area of swimming pools shall~~

~~be considered to be pervious. Calculation of impervious surfaces for streets shall include the area compacted for pavement or gravel base.~~

**PART 4**

[Add text indicating what zoning map change applications could qualify for a protest petition submittal per SL2015-160]

**Sec. 3.5 Zoning Map Change**

[Paragraphs not listed remain unchanged]

**3.5.13 Protest Petition Sufficiency and Procedures**

**A. Protest Petition Defined**

A petition in opposition to a zoning map change shall be considered a "valid protest petition" if the petition meets the requirements of applicable state ~~or local~~ law.

[Commentary: Session Law SL2015-160 repealed the protest petition process for municipalities, effective upon zoning map change applications submitted after August 1, 2015. This law did not repeal Session Law SL2010-80, which allows protest petitions for zoning map change applications within Durham County's jurisdiction.](#)

**PART 5**

[Remove density credit limitation for right-of-way dedication, modify text to accommodate allowances for land encumbered by riparian buffers, and revise the definition of "dwelling unit" per SL2015-246.]

**Sec. 6.13 Measurement and Computation**

[Paragraphs not listed remain unchanged]

**6.13.4 Density**

Other than calculating the density bonus area pursuant to paragraph 6.4.3A, Major Roadway Density Bonus Area, all existing right-of-way ~~and dedications to expand existing right-of-way~~ shall be excluded from the calculation of the area of a project for density purposes. Right-of-way shall mean the ultimate right-of-way of a roadway as established by NCDOT or the City of Durham, as appropriate.

**Sec. 6.2 Residential Rural (RR) Development Intensity**

[Paragraphs not listed remain unchanged]

**6.2.4 Conservation Subdivision**

**F. Open Space Requirements**

[4. Notwithstanding the above requirements, area within required riparian buffers can be used to satisfy any open space requirement.](#)

**Sec. 7.2 Open Space**

[Paragraphs not listed remain unchanged]

**7.2.3 Use of Required Open Space**

C. Notwithstanding the above requirements, area within required riparian buffers can be used to satisfy any open space requirement.

**Sec. 8.5 Riparian Buffer Protection Standards**

[Paragraphs not listed remain unchanged]

~~**8.5.9 Lots and Density Credits**~~

~~Land within the stream buffer shall not serve to meet minimum lot size requirements, except in the Rural Tier and on property zoned RR or RS-20, in the Suburban Tier, where at least 50% of the required lot area is outside the stream buffer. No credit shall be allowed for land within stream buffers, except in the RR District, where density credits may be given for stream buffers in conservation subdivisions pursuant to paragraph 6.2.4, Conservation Subdivision.~~

~~**8.5.10-9 Uses**~~ [Text remains unchanged]

~~**8.5.11-10 No Practical Alternatives/Authorization Certificate**~~ [Text remains unchanged]

~~**8.5.12-11 Mitigation**~~ [Text remains unchanged]

~~**8.5.13-12 Variances**~~ [Text remains unchanged]

**Sec. 16.3 Defined Terms**

~~**Dwelling Unit:** A room or group of rooms in a structure that serves as an independent, self-contained housekeeping establishment containing independent cooking, sleeping, and toilet facilities, physically separated from any other such units located within the same structure. Excluded from this definition are boarding houses, hotels, and dormitories. As defined by the most current edition of the *North Carolina State Building Code: Residential Code*.~~

**PART 6**

[Revise process for uses not listed within the ordinance pursuant to the *Byrd v Franklin County* North Carolina Supreme Court decision]

**Sec. 5.2 Use Categories**

[Paragraphs not listed remain unchanged]

**5.2.1 In General**

**A. Approach to Categorizing Uses**

**2. Use Determination**

a. Any if a use is not specifically set forth in the use category in this section, is expressly prohibited, unless the Planning Director, or designee, shall determine that if the use is similar to a permitted-specific use in accordance with this section. Where such similar permitted-specific use is subject to limited use standards or special exception use permit approval, the proposed use shall also be subject to such standards or approval.

b. If the Planning Director, or designee, cannot determine a similar specific use, then the Planning Director shall determine the most appropriate use group of the six use groups identified in this section and paragraph 5.1.2, Use Table, (agricultural,

residential, public and civic, commercial, office, or industrial) to apply the unspecified use.

(1) The same criteria in paragraph 5.2.1C, Use Not Specifically Listed, shall be used except for criteria #14.

(2) The unspecified use is allowed with approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit, in any zoning district where a specific use within that use group is permitted with a "P".

**C. ~~Principal~~ Uses Not Specifically Listed**

Determination of the appropriate use group category for a proposed principal and similar specific use shall be made by the Planning Director, or designee, in accordance with the criteria below. The following use information may be supplemented using NAICS codes as promulgated from time-to-time by the U.S. Census Bureau. The criteria below shall be used to determine both the appropriate group and category for a use not specifically listed in the use table or the examples in the use category descriptions, and whether a use is considered principal or accessory.

1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;
2. The relative amount of site area or floor space and equipment devoted to the activity;
3. Relative amounts of sales from each activity;
4. The customer type for each activity;
5. The relative number of employees in each activity;
6. Hours of operation;
7. Building and site arrangement;
8. Types of vehicles used and their parking requirements;
9. The relative number of vehicle trips generated;
10. Signs;
11. How the use is advertised;
12. The anticipated impact on surrounding properties;
13. Whether the activity is likely to be found independent of the other activities on the site; and
14. When considering appropriate districts for a use not listed in the use table, the district intent statements in Article 4, Zoning Districts, shall be taken into consideration.

**PART 7**

That the Unified Development Ordinance shall be renumbered as necessary to accommodate these changes and clarifications.

**PART 8**

That this amendment of the Unified Development Ordinance shall become effective on July 1, 2016.