

## Attachment A

### AN ORDINANCE TO AMEND PROVISIONS OF THE UNIFIED DEVELOPMENT ORDINANCE REGULATING SPECIAL USE PERMITS AND COMMERCIAL NEIGHBORHOOD DISTRICT

**WHEREAS**, the Durham City Council wishes to amend certain provisions regarding special use permits and the Commercial Neighborhood District in the Unified Development Ordinance to better promote the community's health, safety, and welfare;

**NOW, THEREFORE**, be it ordained that Article 3, Applications and Permits, and Article 6, District Intensity Standards, of the Unified Development Ordinance are amended to make the following changes:

#### **SECTION 1**

Modify Section 3.9, Special Use Permit, paragraph 3.9.1, Applicability, paragraphs B and C; and paragraph 3.9.8, Criteria for Approval of Major and Minor Special Use Permits, paragraph B, Review Factors, paragraph 10, Effect on Adjacent Property, paragraph 11, Compatibility, and paragraph 12, Other Factors, by renumbering as paragraph 13, and add new paragraph 12, as set forth in the strike-outs and underlining below.

### **Sec. 3.9 Special Use Permit**

#### **3.9.1 Applicability**

- A.** Special uses within the zoning districts are considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses may require individual review.
- B.** A minor special use permit shall be required for all minor special uses as set forth in the use table in Sec. 5.1, Use Table, and as may be specified elsewhere in this Ordinance. Minor special use permits require approval by the Board of Adjustment.
- C.** A major special use permit shall be required for all major special uses as set forth in the use table in Sec. 5.1, Use Table, and for fill or development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas pursuant to Sec. 8.4.4D, Development Requiring Governing Body Approval, and as may be specified elsewhere in this Ordinance. Major special use permits require approval by the appropriate governing body.
- D.** Projects within the Downtown Tier that require both minor and major special use permits may have the use permits consolidated into a single hearing for a major special use permit before the appropriate governing body so long as all required findings for both the minor and major special use permits are made.

### **3.9.8 Criteria for Approval of Major and Minor Special Use Permits**

#### **A. General Findings**

Applications for major or minor special use permits shall be approved only if the approving authority finds that the use as proposed, or the use as proposed with conditions, is:

- 1.** In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
- 2.** In conformance with all special requirements applicable to the use;
- 3.** Will not adversely affect the health or safety of the public; and
- 4.** Will adequately address the review factors identified below.

#### **B. Review Factors**

The applicant shall demonstrate that the review factors listed below have been adequately addressed. If an application is denied, the approving authority shall specify which of these review factors, if any, were not adequately addressed.

##### **1. Circulation**

Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

##### **2. Parking and Loading**

Location of off-street parking and loading areas.

##### **3. Service Entrances and Areas**

Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

##### **4. Lighting**

Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

##### **5. Signs**

Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area.

##### **6. Utilities**

Location and availability of utilities.

##### **7. Open Spaces**

Location of required yards and other open spaces and preservation of existing trees and other natural features.

##### **8. Environmental Protection**

Preservation of tree cover, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space and other natural features, and protection of water quality.

**9. Screening, Buffering and Landscaping**

Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.

**10. Effects on ~~Adjacent~~ Nearby Propertyies**

Effects of the proposed use on nearby propertyies, including, but not limited to, the effects of noise, ~~and~~ odor, lighting, and traffic.

**11. Compatibility**

The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to ~~and~~ the appropriateness of the scale, design, and use in relationship to other properties.

**12. Consistency with Policy**

Consistency with the Comprehensive Plan and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts.

**123. Other Factors**

Any other review factors which the approving authority considers to be appropriate to the property in question.

**SECTION 2**

Modify Section 6.10, Nonresidential District Development Intensity, paragraph 6.10.1, Nonresidential Development Standards, A, Rural Tier, B, Suburban Tier, C, Urban Tier, and D, Compact Tier, Downtown Tier, and CBD District, paragraph 1, Compact Tier and Downtown Tier, as set forth in the strike-outs and underlining below.

**Sec. 6.10 Nonresidential District Development Intensity**

**6.10.1 Nonresidential Development Standards**

**A. Rural Tier**

All nonresidential development in the Rural Tier as designated in the Comprehensive Plan shall comply with the standards in the table below:

Dimensional Standard	CN		CG		I	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (acres)	2	---	3	---	10	---
Project Floor Area (square feet)	---	20,000 <sup>1</sup>	---	50,000	---	---
Lot Width (feet)	100	---	150	---	250	---
Street Yard (feet)	25	---	25	---	40	---
Side Yard (feet)	25 <sup>1</sup>	---	25 <sup>12</sup>	---	50	---
Rear Yard (feet)	25	---	25	---	50	---
Building Coverage (%)	---	23 <sup>23</sup>	---	35 <sup>23</sup>	---	30 <sup>23</sup>
Height (feet)	---	25	---	25	---	50 <sup>34</sup>

<sup>1</sup> A development with new project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to Sec. 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

<sup>12</sup> Side yard may be reduced to a minimum of 15 feet if adjacent to a nonresidential district or use.

<sup>23</sup> Building coverage may be further restricted by the impervious surface requirements of Sec. 8.7.2B, Impervious Surface Limits.

<sup>34</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

**B. Suburban Tier**

All nonresidential development in the Suburban Tier as designated in the Comprehensive Plan shall comply with the standards in the tables below:

Dimensional Standard	CN		OI		CG	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000	---	20,000	---	20,000	---
Project Floor Area (square feet)	---	20,000 <sup>1</sup>	---	---	---	---
Lot Width (feet)	50	---	60	---	100	---
Street Yard (feet)	25	---	25	---	25	---
Side Yard (feet)	15	---	20 <sup>12</sup>	---	25 <sup>12</sup>	---
Rear Yard (feet)	25 <sup>12</sup>	---	25 <sup>12</sup>	---	25 <sup>12</sup>	---
Building Coverage (%)	---	60 <sup>23</sup>	---	60 <sup>23</sup>	---	60 <sup>23</sup>
Height (feet)	---	35	---	50 <sup>34</sup>	---	50

<sup>1</sup> A development with new project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to Sec. 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

<sup>12</sup> Side and rear yard may be reduced by up to 50% if adjacent to a nonresidential district or use or a railroad right-of-way.

<sup>23</sup> Building coverage may be further restricted by the impervious surface requirements of Sec. 8.7.2B, Impervious Surface Limits.

<sup>34</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

Dimensional Standard	SRP		IL		I	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	---	---	25,000	---	30,000	---
Lot Width (feet)	400	---	100	---	150	---
Street Yard (feet)	150 <sup>6,7</sup>	---	40	---	40	---
Side Yard (feet)	150 <sup>1,7</sup>	---	30 <sup>2</sup>	---	50 <sup>2</sup>	---
Rear Yard (feet)	150 <sup>1,7</sup>	---	25 <sup>3</sup>	---	40 <sup>3</sup>	---
Building Coverage (%)	---	15	---	60 <sup>4</sup>	---	65 <sup>4</sup>
Height (feet)	---	120 <sup>5</sup>	---	50 <sup>5</sup>	---	90 <sup>5</sup>

<sup>1</sup> Side and rear yard may be reduced to a minimum of 30 feet if adjacent to permanently protected open space that results in a building separation of at least 150 feet or eliminated if adjoining a railroad right-of-way.

<sup>2</sup> Side yard may be reduced by 10 feet if adjacent to a nonresidential district or use.

<sup>3</sup> Rear yard may be reduced by up to 50% if adjacent to a railroad right-of-way.

<sup>4</sup> Building coverage may be further restricted by the impervious surface requirements of Sec. 8.7.2B, Impervious Surface Limits.

<sup>5</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

<sup>6</sup> The street yard in the SRP shall be increased by one foot for each acre of land in the site, up to a maximum of 250 feet,

<sup>7</sup> No parking, loading, or storage shall be permitted within the required yard areas.

### C. Urban Tier

All nonresidential development in the Urban Tier as designated in the Comprehensive Plan shall comply with the standards in the tables below:

Dimensional Standard	CN		OI		CG	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000	---	20,000	---	20,000	---
Project Floor Area (square feet)	---	20,000 <sup>2</sup>	---	---	---	---
Lot Width (feet)	50	---	50	---	100	---
Build-To Line						
From ROW (feet)	---	15 <sup>1</sup>	---	15 <sup>1</sup>	---	15 <sup>1</sup>
% of Frontage	60 <sup>1</sup>	---	60 <sup>1</sup>	---	60 <sup>1</sup>	---
Side Yard (feet)	10	---	10	---	15	---
Rear Yard (feet)	25 <sup>2</sup>	---	25 <sup>2</sup>	---	25 <sup>2</sup>	---
Building Coverage (%)	---	60 <sup>3</sup>	---	60 <sup>3</sup>	---	60 <sup>3</sup>
Height (feet)	---	35	---	90 <sup>4</sup>	---	50 <sup>4</sup>

<sup>1</sup> Build-to line may be modified using the provisions of Sec. 6.10.1E, Street Yard Variations.

<sup>2</sup> Rear yard may be reduced by up to 50% if adjacent to a railroad right-of-way.

<sup>3</sup> Building coverage may be further restricted by the impervious surface requirements of Sec. 8.7.2B, Impervious Surface Limits.

<sup>4</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

<sup>5</sup> A development with project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to Sec. 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

Dimensional Standard	IL		I	
	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000	---	25,000	---
Lot Width (feet)	50	---	100	---
Setback (feet)	---	---	40	---
Build-To Line				
From ROW (feet)	---	20 <sup>1</sup>	---	---
% of Frontage	60 <sup>1</sup>	---	---	---
Side Yard (feet)	15	---	40	---
Rear Yard (feet)	25 <sup>2</sup>	---	40 <sup>2</sup>	---
Building Coverage (%)	---	60	---	65 <sup>3</sup>
Height (feet)	---	50 <sup>4</sup>	---	90 <sup>4</sup>

<sup>1</sup> Build-to line may be modified using the provisions of Sec. 6.10.1E, Street Yard Variations.

<sup>2</sup> Rear yards may be reduced by up to 50% if adjoining railroad rights of way.

<sup>3</sup> Building coverage may be further restricted by the impervious surface requirements of Sec. 8.7.2B, Impervious Surface Limits.

<sup>4</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

## D. Compact Tier, Downtown Tier, and CBD District

### 1. Compact Tier and Downtown Tier

- a. All nonresidential development in the Compact and Downtown Tiers as designated in the Comprehensive Plan other than development on property designated CBD shall comply with the standards in the tables below:

Dimensional Standard	CN		OI	
	Min.	Max.	Min.	Max.
Project Floor Area (square feet)	---	20,000 <sup>1</sup>	---	---
Lot Width (feet)	50	---	50	---
Build-To Line <sup>42</sup>				
From ROW (feet)	---	15	---	15
% of Frontage	60	---	60	---
Side Yard (feet)	10	---	10	---
Rear Yard (feet)	15	---	15	---
Height (feet)	---	35	---	120 <sup>43</sup> <sub>34</sub>

<sup>1</sup> A development with project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to Sec. 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

<sup>42</sup> Build-to line may be modified using the provisions of Sec. 6.10.1E, Street Yard Variations.

<sup>23</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

<sup>34</sup> Height shall be capped at 45 feet for any structures located within 150 feet of the perimeter of the Compact Neighborhood Tier where the Tier adjoins residentially used and designated property.

Dimensional Standard	CG		IL	
	Min.	Max.	Min.	Max.
Lot Width (feet)	50	---	50	
Build-To Line <sup>1</sup>				
From ROW (feet)	---	15	---	15
% of Frontage	60	---	60	
Side Yard (feet)	10	---	15	---
Rear Yard (feet)	15	---	15	---
Height (feet)	---	90 <sup>2,3</sup>	---	50 <sup>3</sup>

<sup>1</sup> Build-to line may be modified using the provisions of Sec. 6.10.1E, Street Yard Variations.

<sup>2</sup> Additional height, up to 145 feet, may be approved through the issuance of a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit.

<sup>3</sup> Height shall be capped at 45 feet for any structures located within 150 feet of the perimeter of the Compact Neighborhood Tier where the Tier adjoins residentially used and designated property.

- b.** Areas designated CBD shall utilize the standards established in Sec. 4.8, Downtown Design Overlay, or the requirements of the Downtown Historic District, as appropriate.

**2. CBD District**

Nonresidential development in the CBD District in the Downtown Tier shall comply with the standards established in Sec. 4.8, Downtown Design Overlay, as modified by the requirements of the Downtown Historic District, where applicable.

**E. Street Yard Variations**

A new structure or modifications to an existing structure shall not be required to conform to the minimum street yard requirements of the district in the following circumstances:

- 1.** Where 50% or more of the lots on the same linear block as the lot in question are developed with less than the required street yard, the average setback of the buildings on the developed lots on the block with less than the required street yard shall be observed as the minimum setback for a new structure;
- 2.** Where the lot on which the new structure is proposed is between two adjacent existing developed lots with less than the required street yard, the average setback of the buildings of both adjacent lots shall be observed as the minimum street yard;
- 3.** Where a linear block of less than 500 feet is split into more than one zoning district, the zoning district with the most frontage shall determine the minimum street yard setback. However, this provision shall not apply if the street right-of-way is less than 50 feet wide and property on the opposite side of the street is residentially used or zoned,

in which case the provisions of Sec. 6.8.3A, Street Yards, shall be applied;

4. In the Urban, Compact Neighborhood, and Downtown Tiers, where a lot has multiple frontages, the Planning Director, or designee, shall determine the most significant street frontage and apply the required build-to lines to that frontage, permitting greater setbacks on other frontages; or
5. In the Urban, Compact Neighborhood, and Downtown Tiers, to accommodate the location of those limited vehicular-dependent uses (such as, but not limited to, convenience stores with gas sales, automobile sales, and service) that are allowed in these tiers, or if the design requirements of Sec. 10.4.1A, Location of Parking, are satisfied.

### **SECTION 3**

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

### **SECTION 4**

That this amendment of the Unified Development Ordinance shall become effective upon adoption.