



## ENVIRONMENTAL AFFAIRS BOARD

### MINUTES

**January 04, 2023**  
Virtual Meeting (Zoom)

#### **Voting Members:**

Juilee Malavade (chair), Wilson Salls (vice chair), Sherry Taylor (secretary), Katie Barnhill-Dilling (at large), Ethan Case, Wafa Khalil, Matt Kopac, Corie Hlavaty, Miran Bhima, Jennifer Carrigan, and Cooper Norris.

#### **Ex Officio Members/Staff:**

Paul Cameron (General Services), Tobin Freid (Durham County Sustainability Manager), Summer Alston, Laura Smith (City of Durham Public Works Department), Sydney Miller, Johnathan Baker (City of Durham Public Works Department), and City Council Member DeDreana Freeman.

Presenters: Aaron Luebeck & Dave Olverson

Attendees & Panelists Total: 23

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- I. Call to Order at 6:04 pm
  - II. Approval of December 07, 2022 Minutes
  - III. Announcements

- a) Next EAB meeting is scheduled for February 1, 2023, 6-8 pm.

#### **IV. New and Continuing Business**

##### **a) Simplifying Code for Affordable Development (SCAD) Amendments**

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*Presenter(s): Aaron Luebeck*

- SCAD is an acronym for Simplifying Code for Affordable Development. The origin for this amendment stems from Habitat for Humanity, knowledge of the zoning code, and their need for to provide affordable for sale housing. Lots are expensive or have many issues that have to be worked through with engineering, variances, or rezoning. We also talked with other development practitioners to see what was preventing them from building more affordably to draft the amendment.
- Two problems are related to environment stewardship in Durham. Off-street Parking requirements for commercial space is one of the issues. Requiring parking adds costs and can prevent small companies from building retail space. This part of the amendment removes the requirement (builders can still build off-street parking if they would like to). By code in Durham, you have to provide one parking space for 100 sq ft of restaurant. The requirement is harmful for adaptive reuse of properties for restaurant. The parking adds to impervious surface, run-off, and pollution. The portion of the amendment matches what Raleigh did six months ago, which is to stop parking mandates entirely.
- The Uniform Development Code (UDO) is littered with things that were well intended but produce undesirable results.
- Small lot homes are now capped at 25ft in height. Durham UDO currently calculates that from all four corners to the midpoint of the roof. It doesn't make sense and forces design decisions that are less desirable visually. Sometimes it forces unnecessary excavations to comply with height standards. The amendment clarifies how height is calculated to a more logical one corner to the ridge and square footage below grade will not count for height. Builders don't have the time or funding to ask for variance in every situation, so addressing these issues is useful.
- Affordable Path portion of the amendment addresses land use buffers. Planned Development residential units (PDRs) of more than 100 are required to reserve space for future commercial additions. SCAD also removes penalties for mixed-use development. It encourages use of using environmental alternatives when building residential on small lots. Builders have a menu of things to choose from, including certifications.

### **Comments:**

**Juilee Malavade:** Sherry had put a comment in the chat about small lot homes not being affordable to those under 80% Area Median Income. Do you have thoughts on that?

- *A. Luebeck:* The most affordable homes being built in Durham are small lot homes and built almost exclusively by local builders, but the definition of affordability is less workable. Interest rates have more than doubled.

**Juilee Malavade:** I have a comment specifically in the document that you sent on page 27 when you talk about the Affordable Path program. It seems like there's a lot of like modifications that are occurring, like to increase the density, to increase encroachments. Can you explain, the reasoning behind why you chose the numbers you chose and how that will affect these properties?

- *A. Luebeck:* The Affordable Path has two components. One is for rent and one is for sale. The dimensional bonuses are minor when you look at them. SCAD is really focused on much

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smaller projects. This is meant for the local practitioner to reenter the market for less expensive housing. I think it's a 20% bonus (might be 25% for the encroachment).

**Juilee Malavade:** I think the base density on that can be increased. I'm not sure if there's a max?

- *A. Luebeck:* On the dimensional bonuses, if they're 20 or 25%, that means a five foot setback reduces the four. On the front or the back, it would be more consequential, but still pretty minor. The density standards in most of these situations, because these are small projects, (three to ten homes) are not going to be regulated by density standards. What you're looking Juilee is for the for-rent product. Their will probably be less interest in bonuses on the for-rent product.

**Matt Kopac:** Can you set the context of the process that this amendment goes through (just a couple of words for that)? What should the next steps be within that? I'm curious to know, just because I haven't been able to read the notes, what feedback you got from the planning commission with the vote that they took?

- *A. Luebeck:* The process has been very long and laborious. Most of these changes were actually part of what staff agreed were good almost two years ago. And we thought we're going to be part of an omnibus bill in 2021 or early 2022. When those bills didn't get completed and held for the UDO rewrite, we decided that this was less laborious than submitting individual variances indefinitely. Instead SCAD was filed and started public processes in April 2022. It has gone through two JCCPC meetings and approximately 50-65 meetings. It's gone through two Planning Commission meetings and very detailed engagement with sub-committees. There were a lot of incremental additions and we are appreciative of both the staff and Planning Commissioners suggestions. Items were added that staff want to take care of as well. The next steps are City Council and County Commissioners.

**Sherry Taylor:** Will the for-sale homes have restrictions on affordability upon re-sale of the home?

- *A. Luebeck:* It was very clear for the applicant, which is Habitat for Humanity, that the homes will not have a restrictions upon resale. They will have an affordability threshold the initial time the home is sold and the buyer will be income qualified. The homes would not have a long term commitment. On the for-rent product, it's clear that a long-term commitment is needed or the numbers do not work. As written, their is a five year commitment to affordability on the for-rent product.

**Sherry Taylor:** For rental, five years is certainly not long enough. It goes by very quickly and that's even shorter than some of our friends out West, where they're having a very severe housing crisis. Some of our housing affordable housing providers have committed to, 15 years, 20 years, and 30 years.

- *A. Luebeck:* The building community (which builds a majority of housing) has built zero units of housing at 30 years of commitment. That's our reality. So what that number is, I'm not sure. It's going to be set by council ultimately. As that number increases, the amount of people who are

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willing to do it goes down and at a certain point it drops off.

**Ethan Case:** Are there any safeguards in the draft amendment that are both for affordable housing but addresses the type of capital that gets invested? How do we ensure that it's more competitive locally?

- *A. Luebeck:* There is no simple solution to what you're saying. Most of the small practitioners, (particularly the smallest of practitioners) are saying that pretty much anything that requires a variance or zoning change will not work. What remains is what can be done by right. What can be done by right (with small exceptions) is more expensive and for large lots.

**Ethan Case:** I do think these are probably steps in the right direction, but it does seem like maybe there's a lot more to do in addition.

- *A. Luebeck:* Zoning codes are complex and flawed. The UDO is from 2006, basically when downtown was dead. Some of the feedback loop is not quick enough and that's a huge problem.

**DeDreana Freeman:** I have concerns. The downtown core is very different from the suburban outer core or newly annexed communities. I have concerns based on what I'm seeing in East Durham with small lot homes and the type of building that is happening (it's unacceptable). This has to be a more nuanced conversation about what is affordable and who this market is geared for. I would like to speak with smaller developers about what the affordability looks like in the downtown core with teardown where multiple lots are replacing the single home. How has planning staff been receiving these proposed changes? Lots of updates have already been completed in the UDO.

- *A. Luebeck:* Staff has been supportive. They've understood the frustrations and are very aware of most of the problems that we brought to them. Staff was very productive in adding suggestions to the amendment.

**Sherry Taylor:** Scott Whiteman from the Planning Department gave us an update on the UDO revision process that's going to start next year. And so he gave us a very comprehensive presentation on that and how the community and EAB can be involved. Does this amendment get ahead of that fully engaged UDO rewrite process?

- *A. Luebeck:* Yes, schedule wise it will be ahead of the rewrite. This is very minor compared to a rewrite, really only technical revisions. The EAB should be involved and amplify its voice during the UDO rewrite process.

**Juilee Malavade:** Regarding community engagement involvement, what kind of community engagement has been done?

- *A. Luebeck:* At lot of civic groups, planning commission (several meetings and committees), and other leaders.

- *D. Olverson:* We have met with the Joint City County Planning Committee twice. We had our own initiated open-call meeting in August. It was a part of the Planning Commission (the first time) in September and then went back in December. In between those two meetings, we had another open-call meeting. We've also engaged with the neighborhoods by meeting with the Inter-neighborhood Council and three of the five PACs ( Partners Against Crime groups). We've also had meetings with civic groups and community leaders directly, folks like El Centro

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Hispano, the Triangle Community Coalition, and the Committee on the Affairs of Black People. We've also had conversations with Durham Tech and Southern High School, the UNC Department of City and Regional Planning, and faith based organizations.

**Juilee Malavade:** We are running out of time for this topic, however the EAB can put together a working group and reach out if additional questions, comments, and feedback come up. We can also add this topic as continuing business (for updates) at a future meeting.

## **b) Durham County SolSmart Certification**

*Presenter(s): Tobin Freid, County Sustainability Manager*

- SolSmart is a nationally recognized program for communities that foster solar development, specifically through codes, ordinances, inspection practices and public education and making information available to people. We are in the process of completing the application for this.
- It looks at breaking down the barriers to installing solar and what we already have in the UDO (unified development ordinance). The city achieved gold status in 2020, which is great. The program has since evolved and become more complex. Since we have a joint city county code and inspections department, the County can get many of the same points as the City.
- Additional recommendations that are not code related will be presented in a future meeting.
- Key findings: Durham's code is solar friendly. We're really good in a lot of ways. We are expecting to get gold certification.
- There is a lack of specificity in the language related to solar that isn't necessarily causing problems now, but SolSmart recommends (as best practice) to be as specific as possible. A lot of the recommendations are to just tighten up some of that specificity.
- Potential Improvement: More specificity between ground mounted and roof mounted systems, state explicitly that roof mounted solar is an allowed accessory use, explicitly mentioning roof mounted solar in relation to height restrictions, ability to install solar by right in all zoning districts, and ground mounted stations not counting as part of impervious surface limits.
- Next Steps: going over recommendations with Planning Department staff and the Planning Commission (if necessary).

### **Comments:**

**Jennifer Carrigan:** Thanks for the presentation. We can never rely on the State to keep something the way it is. If we can put specifics and definition in now at the City level, I recommend doing that. If there are any others where we rely on the State definition to cover us, now seems like a good time to also add them. Lets to be as explicit as we can at the city level and county level, in case the state changes things later. It seems like a lot of the recommendations are code related. Does SolSmart recommend any incentives (UDO or otherwise)?

- *T. Freid:* There were not any incentives regarding codes. We are creating a landing page where people could go to one place and just get plain language information on solar.

## **a) Continuing Topic: Update on Algal Floway Project**

*Presenter(s): Jonathan Baker, City Public Works, Stormwater Division*

- In February 2022, I came to EAB to present on the Algal Floway Project. Public Works has been

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focused on the project for a long time. The Flowway will help the city comply with the Falls Lake Rules. The Falls Lake Rules says that we have to reduce a lot of nitrogen and phosphorus going into the lake. It's going to cost the city a lot of money to do that through many different types of interventions.

- Flowways use algae to remove nutrients like nitrogen and phosphorus from surface water, like a lake or a river. It pumps the water across this big flow way that's on the ground, algae grows, takes up the nutrients, and then clean water is returned back downstream to that lake or river.
- We conducted extensive search in Durham for a suitable site. It was not successful. Next, we looked on the east side of Falls Lake in Granville County. We were able to find a site, but that plan did not work out because Granville County residents had concerns.
- Now our plan is to hire a consultant to re-evaluate sites and possibly find one in the county. It has to be within the Falls Lake watershed, which is basically, north of NC 147. We wouldn't be looking at any property in the Cape Fear River Basin watershed.
- Originally, we were hoping to build a cargo floodway that was about four acres, which could clean up to 10 million gallons per day of water. But we may need to build something smaller. It is scalable, so we might be able to build something that cleans 3 to 5 million gallons per day, which just means that there's less route nutrient removal. And we'll have to rely on building other types of stormwater control measures and other measures to help the City comply with the Falls Lake Rules.

#### **Comments:**

**Juilee Malavade:** Can you explain the reasoning behind Granville County residents being in opposition?

- *J. Baker:* We actually found this out in the process. State law that says you have to go before County Commissioners if one municipality or county is going to try buy land in another county. We had to go before the Granville County Commissioners to get approval. At that meeting, there was several residents and neighbors of the property that did not want the project built there. They didn't want Durham coming over into Granville County to build the project, even though it could benefit several municipalities.

**Wilson Sails:** Is there a possibility to split into multiple sites, even if you can get only one or two acres at a time? Would you be able to add it up to achieve the goals of one large site?

- *J. Baker:* It's something we're exploring. I think it's definitely a possibility. It just means managing more than one property with this type of technology. We will look to identify multiple sites and see if we can build. There's a lot of factors. It depends on the water quality itself, where you're pulling the water from, how much, and how dirty is the water to begin with. If it's dirtier, then you actually can pull out more nitrogen and phosphorus. If there's lower concentrations of nitrogen and phosphorus, it just becomes harder to get those pounds removed. We were looking originally at 10 million gallons per day. It could be 2,000 of nitrogen up to 3,000 pounds. It also depends on how much rain you get in the year. You know, how much flow you're getting. So there's several factors that make it more cost effective or less cost effective.

**Wilson Sails:** Are their efforts upstream to mitigate like sources in the first place? Is that something that's still ongoing?

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- *J. Baker:* We are always trying to do that through our IDDE program, our Illicit Discharge Detection and Elimination program. If there's a sewer overflow or spill, we have a really good working relationship with water management. That's a big part of finding those immediate sources, however the non-point sources are much trickier to find.

**Adjourn at 7:45 PM**

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