

DURHAM PLANNING COMMISSION'S

EHC COMMITTEE

Combined comments on TC1800007 Expanding Housing Choices

Background:

Upon direction from the Durham City Council, the Durham Planning Department proposed the Expanding Housing Choices initiative or the "EHC." As the EHC is a text amendment to the Unified Development Ordinance, it must first be reviewed by the Durham City/County Planning Commission (the "Planning Commission") before it continues to the City Council and Board of County Commissioners for further review and consideration. We have completed our review.

The Planning Commission initially reviewed the EHC at its March 12, 2019 meeting, during which extensive public input during the public hearing was provided, both for and against the proposal. After significant deliberation, the Planning Commission voted to continue EHC for two cycles, until the May 14, 2019 meeting, to allow for additional public outreach and input. At the May 2019 meeting, there was continued public input, including new and evolving questions and suggestions, which led the Planning Commission to vote to continue EHC for one additional cycle, until June 11, 2019, and to establish an EHC committee comprising five (5) members of the Planning Commission. The EHC committee drafted the following statement for the Durham Planning Commission to consider submitting as a collective response to EHC at the June 2019 meeting.

A variety of process concerns have been raised about the EHC, both by citizens and Planning Commissioners. Below we list the main concerns in the hopes that this input be considered before adopting EHC and incorporated into the upcoming process to revise the Comprehensive Plan.

Process Concerns and Recommendations

- 1) Uneven Stakeholder Treatment – At the March 2019 Planning Commission meeting, many Durham residents and community and neighborhood groups expressed concern about being excluded from the formative portion of the EHC creative process. We believe it was an error to involve only a "Practitioner's Panel" of representatives of development and housing interests at the early stage. Urban tier neighborhood groups are clearly stakeholders, but their representatives were not invited to work with the planning staff or the development stakeholders when the initial regulatory framework of the EHC was put together. Only after the November 2018 concept posters were published were these stakeholder groups invited to comment. By that time, the essential framework of the EHC had been developed without them. The nature of public engagement changed at that time from one of creation to presentation. This uneven handling of competing stakeholder interests has created distrust and undermined public faith in the EHC program among some stakeholders. Since learning about the EHC, residents and groups spent significant amounts of time and

effort to understand the draft proposal and express concerns or support for the EHC at the March and May Planning Commission meetings, the EHC committee meetings, at events attended by the Planning Department staff, at meetings held among the various groups and through various emails to and meetings with Planning Commission members. Although neighborhood stakeholders have had many opportunities to learn about the EHC, their role has been that of responding, not creating parties.

To correct this problem, we recommend that the progress of the EHC through the city-county legislative process be paused long enough for the planning staff to create and work with a broad-based group of stakeholders with representatives of development, neighborhood, housing and other interests working together at the same table. We are not advocating starting over, but the Planning Department should work with stakeholder interests for an EHC package of zoning reforms that belong to everyone.

- 2) Comprehensive Plan Consistency – In reviewing amendments to the Unified Development Ordinance, the Planning Commission must consider whether a proposed amendment is consistent with the Comprehensive Plan. We are concerned that there is not a very firm policy basis for the EHC in the current Comprehensive Plan. Nothing in the plan specifically contemplates the EHC proposals and to some degree, the EHC appears to be inconsistent with express policies in the Comprehensive Plan as they relate to neighborhood preservation, respect for existing developments and development patterns and historic preservation. We note that the current Comprehensive Plan was adopted in 2005 and is overdue for review. The city and county have established a timetable for a robust review and rewrite of the Comprehensive Plan that includes a program of deep public engagement. We are sympathetic with those who have argued that the EHC zoning changes should follow a review of the comprehensive plan rather than precede it. Ideally, public discussion over urban housing and zoning rules begins with public engagement in plan review and follows with zoning rule changes pursuant to the new policies.

We realize that our Comprehensive Plan review process is expected to take three years and that some feel that consideration of the EHC proposals should not wait that long. Rather than wait for a review of the entire EHC, perhaps we should include in our current efforts proposals to amend the policies of our current Comprehensive Plan so that they better contemplate the EHC. We suggest that appropriate plan amendments should be added to the agenda of the broad stakeholder group we have recommended in the preceding section.

Concerns About Unintended Consequences

While we support the goal of increasing housing supply in an effort to stabilize housing prices in the county, we are concerned that EHC may have unintended consequences. Since EHC is estimated to increase the supply of housing only marginally, we question whether EHC will have a mitigating effect on rising housing prices and rent in the county. Supply needs to increase substantially if it is to have such effect on affordability. More importantly, we are concerned about *what* kind of housing the new supply will be and *where* it will be. There is significant

disparity in property values between the two broad zoning designations (the RS zones in the Urban Tier and the RU-5 zone) that EHC will affect and we are concerned that much of the new supply will be in the RU-5 zones in southeast and northeast Durham (both of which contain neighborhoods at risk of economic displacement) and the supply will increase only marginally in the RS zones. We are not arguing that “upzoning” is inherently bad in neighborhoods at risk of gentrification, but we have heard from concerned citizens and groups like the Coalition for Affordable Housing and Transit that without safeguards and guardrails, EHC may put more people at risk of displacement in neighborhoods that are already gentrifying.

If the City Council and Board of County Commissioners determine to consider the adoption of the EHC proposals without addressing our concerns about uneven stakeholder treatment and comprehensive plan consistency as we have suggested, we ask the City Council and Board of County Commissioners to accept and implement the following changes to the EHC:

Timing and Implementation Recommendations

The Planning Commission has received a great deal of feedback from the public during the course of reviewing the EHC. As citizens and organizations have had more time to understand the EHC and its potential impacts we have received thoughtful feedback on how we might structure and implement the EHC to ensure it accomplishes its stated goal of “expanding the choices that people have when it comes to housing types and stabilizing housing prices over the long term” and to address concerns about affordability.

To help guard against negative consequences, we recommend that the City Council and Board of Commissioners consider revising the current EHC proposal to include the following:

- 1) The EHC should be implemented in two stages. Upon approval by the City Council and Board of County Commissioners, the EHC should be promptly implemented for those developments that shall contain affordable housing, provided that compliance measures are adequately in place. As a part of this recommendation, we recommend that the City Council and Board of County Commissioners consider amending the definition (or interpretation) of “affordable housing dwelling unit” to allow more flexibility for both rental and homeownership opportunities. The current definition, with its requirement of annual verification, may actually deter the creation of affordable units.
- 2) Upon approval by the City Council and Board of County Commissioners, other than as set forth in (1) above, the implementation of the EHC should be delayed for twelve (12) months to do the following:
 - a. To provide time for the city to implement a city funding program for the construction of accessory Dwelling units or “ADUs” by qualified residents. Funds for such a program might become available from the housing bonds on the November ballot. Such an ADU funding program should prioritize assisting residents without access to traditional financing and should require that any ADUs financed through such city program are limited to long-term occupancies, rather than short-term rentals (like an Airbnb). During the twelve month period

- the policies for this ADU program could be worked out so there is clarity on the program and funds available when the EHC goes into effect;
- b. To develop a system to collect relevant data and monitor the effectiveness of the EHC. The Planning Commission received significant public input about the need to monitor the EHC after its implementation and in order to effectively to do so, the Planning Department needs to compile a comprehensive baseline data set and needs to create an annual reporting process in advance of launching the EHC; and
 - c. To permit the Planning Department to maintain ongoing public input and education regarding the EHC, along with the upcoming Comprehensive Plan revision process.

This two-step implementation process will work to ensure that creators of affordable housing are prioritized in the building of new housing units in the Urban Tier.

Content Recommendations

The Planning Commission recommends the March 2019 proposal with the following specific content changes:

- 1) In Section 7.1.2(C) (the “small houses, small lots” section (Option B)), development on a small lot should be limited to a small house (as defined in option B), a small duplex, or a small house plus an ADU. Under the March draft, only a small house or a small duplex would be allowed. We recommend that these options be expanded by allowing a small house with an ADU. We recognize that as a practical matter the “small lot” will probably have to larger than the minimum 2,000 sq. ft. in area for this option to be realized. And to be clear, a duplex plus an ADU on a “small lot” should not be permitted.
- 2) In Section 6.3.1(A)(6), adjust the proposed infill standards to:
 - a. Remove the possibility of a 45-foot height allowance; and
 - b. Calculate the allowable in-fill building height limit based on the mode of building heights in the block face, rather than the tallest building in the block. Using the mode, rather than the tallest building will more effectively protect the character of buildings in the block.
- 3) In Section 5.4.2(B)(8), limit the height of freestanding ADUs to a maximum of 25-feet (as building heights are measured in the code). At 25 feet, an ADU can be two stories tall or comfortably fit above a garage or other allowable accessory structure on a residential lot. Limiting ADU height in this way will address the concern demonstrated so clearly during our consideration of the Old West Durham neighborhood protection overlay that tall structures in rear yards loom over neighboring properties and intrude upon neighbors’ privacy.
- 4) Exempt local historic districts from the EHC except for the provisions of the EHC concerning ADUs and residential development projects using the Affordable Housing Bonus, provided that both ADUs and affordable housing projects proposed in local historic districts would still be subject to review and approval by the Historic

Preservation Commission. We are concerned that the EHC will incentivize redevelopment of properties in local historic districts resulting in unwanted teardowns of historically important housing and housing in those districts that is already affordable. We note that although the Historic Preservation Commission has authority to guide changes to houses and buildings in historic districts, it has no authority to prevent a house from being torn down. Currently, local historic districts take up only 4.8% of the lots in the urban tier. The exception we recommend is a reasonable balancing of our community's desire to both protect its historic assets and our desire to expand housing choices. There is room to accommodate both policy goals.

Other Recommendations

- 1) Single Family Definition – During our hearing in May, a speaker suggested that we adjust the “three person rule” in our definition of single family residence to perhaps allow for four or even five persons. Under our current definition, no more than three persons not related by blood or marriage may live in a single family residence (regardless of type). We are interested in giving this rule greater scrutiny to determine whether changing it or adopting a different definitional approach altogether might assist in addressing housing needs. We ultimately determined that because the rule touches upon issues which have not been discussed as part of the EHC up to this point and because there are stakeholders with an interest in the rule who have not been involved in consideration of the EHC, the better course is to save consideration of what constitutes a single family to later time. We urge the council and board of commissioners to add it to the planning work plan.
- 2) The Suburban Tier and Housing Solutions – Housing choice is about neighborhood choice, and currently the supply of walkable and diverse neighborhoods is scarce, increasingly out of reach to residents' demand. The urban tier is a substantially built-out urban environment and includes walkable, diverse neighborhoods. The suburban tier, on the other hand, is by far the largest tier and contains the undeveloped and underdeveloped land where Durham's new housing will be created. The suburban tier represents Durham's greatest opportunity to achieve multiple key planning objectives, including greater density, integrated affordability, greater efficiency in land use, more variety in housing types, walkability, more retail and office uses and real connectivity to open spaces, transit and employment. The current comprehensive plan clearly states that land in the suburban tier should be used for walkable and green development. Requiring mixed use, walkable, varied housing developments in greenfield areas should be a priority and doing so as part of the new comprehensive plan should include all stakeholders at the table.