



ATTACHMENT D:

PLANNING COMMISSION RECOMMENDATION AND INDIVIDUAL COMMENTS JUNE 11, 2019

Case TC1800007 (Expanding Housing Choices)

PLANNING COMMISSION RECOMMENDATION

The Planning Commission finds that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

On June 11, 2019, the Planning Commission recommended approval of the following with a vote of 12-1 (Williams, No).

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 be 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.

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.

PLANNING COMMISSIONER COMMENTS

AL-TURK – I voted to recommend approval of EHC, subject to the governing bodies taking up the recommendations in the Planning Commission's EHC Committee's combined comments.

BRINE – The text amendment requested is no reasonable and in the public interest due to noncompliance with comprehensive plan.

Recommendations contained in the combined comments of the Durham Planning Commission.

I voted to send this proposed text amendment forward to the Governing Bodies with a favorable recommendation subject to the recommendations contained in the Combined Comments of the Durham Planning Commission as amended. (All of the amendments were minor and did not change the substance of the combined comments.) I urge the City Council and the Board of County Commissioners to give these comments careful consideration during their deliberations on EHC.

I want to comment briefly on two points. Durham has a thriving Airbnb business (presently unregulated). For example, during graduation weekend, Durham Airbnb hosts took in \$273,000 and had 1,900 guests (Simone Jasper, *News & Observer*, May 17, 2019). My own research into the Durham Airbnb business discovered that many rentals involved ADUs. My concern is that Durham is not careful

with how EHC is implemented, an unintended consequence will simply be the addition of more Airbnb rental units.

A second concern is stormwater runoff. I know that staff tried to keep stormwater in mind when developing TC1800007. However, the fact remains that some urban neighborhoods (Tuscaloosa Lakewood, for example) presently have problems with stormwater runoff. Where such problems presently exist, I believe that they need to be fixed prior to the addition of any further housing density.

BUZBY – Please see the Planning Commission's combined comments, including our recommendations.

DURKIN - Subject to collective comments of the Planning Commission.

HYMAN – Including combined comments on EHC provided by Sub-Committee.

JOHNSON – My vote is to move forward the EHC subject to the recommendations provided by the Planning Commission. I AM NOT in favor of the EHC in its current content absent the recommendations provided by the Planning Commission.

MILLER – I urge the City Council and Board of County Commissioners to move forward with the Expanding Housing Choices initiative in a manner consistent with the Planning Commission's combined majority comments.

MORGAN – I support the committee's recommendations.

We should be willing to allow further neighborhood specific implementations. I do believe it isn't a "one size fits all" option.

Also, we should apply these principles into the suburban tier to build out new neighborhoods.

More work is needed with the community. We need that input further.

We do need to address short-term rentals and guide lines such as AIRBNB guidelines.

SANTIAGO - I would first like to recognize and commend residents and city leaders for trying to come to a compromise on housing issues.

While I recognize some residents' concerns about timing, I worry that waiting for a new Comprehensive Plan that will take years to design and implement will exacerbate our current housing issues. As such, changing the language in the UDO defining a single family residence would be an immediate action to help alleviate some of the economic pressures we see. Individuals have a right to define who they live with, and who they consider family, giving people greater freedom of choice and autonomy. In my work as a private citizen, I have witnessed community members fearful of retribution from landlords and law enforcement in situations of last resort, causing greater distrust in the community, as well as stress and mental health implications associated with potentially facing homelessness.

I would like to note that the committee's document was a consequence of compromise, which, in part, led me to vote in favor of the motion. However, I would like to identify some of my concerns with the

Committee's recommendations. My main concerns relate to the exemption of local historic districts from the EHC. A study from 2005 titled *Gentrification and Historic Districts: Public Policy Considerations in the Designation of Historic Districts in New York City* finds that "in specific instances historic district designation has been followed by gentrification, [but] in most cases gentrification either precedes designation or does not occur"(225).

In the urban tier, we have seen houses torn down and prices go up - sometimes astronomically - and this is especially apparent in the East Durham and Southside neighborhoods. Gentrification occurs in many areas, but as local groups have identified, it has been primarily driven by decades of disinvestment dating back to urban renewal in the '60s in Durham. This is reason why I recommend placing other financial tools/programs in place alongside EHC to mitigate what has/is/and for the meantime, going to occur. I believe it is significant that there are very few local historic districts in the urban tier, as the Committee's document identifies as only 4.8% of the lots, because "in many cases undesignated areas experience similar - or, in some cases, greater - change than those that are designated"(222).

While this document mentions there is room to accommodate EHC and historic preservation, it is my concern that this language still places more priority and protections on some neighborhoods over others. In particular, neighborhoods that have been ignored and disinvested in for as long as can be remembered. EHC is about being equitable and pushing the city's vision for shared prosperity. This should include sharing the public spaces and neighborhoods that this prosperity has created.

It is difficult to gather data to determine the role of historic designation on changing neighborhood dynamics, but there "is clear evidence of changes in a neighborhood following designation" with regards to socioeconomic demographics (Page 144, Brian McCabe and Ingrid Gould Ellen). In their article, McCabe and Ellen conclude that a number of reasons may help explain the difference between designated districts and non-designated districts. They outline how "previous research often reports a bump in property values" after designation, how incomes rise and poverty falls because the number of housing units available to rent within a district declines. The number of housing units decreasing in historically designated neighborhoods has shown to increase homeownership rates as a result of the conversion of multi-family dwellings into single-family homes. Finally, differences in preferences for historic neighborhoods may exist between populations that are college-educated or not, as college graduates place a premium on historic districts.

Due to countless years of social injustices for communities of color related to housing, employment opportunities, and education, to name a few, I would like to highlight how these studies' observations over decades helps identify how we must be cognizant of the systemic issues that create and perpetuate the predicaments we find ourselves in today. By excluding local historically designated neighborhoods in the urban tier, I worry that we are voting to perpetuate systemic injustices. As mentioned earlier, the areas at greatest risk of continuing to gentrify more rapidly - and most importantly, displacing long-time residents - are largely communities that do not have this designation. Placing the onus of EHC on non-designated neighborhoods adversely affects mixed-income and lower-income citizens in Durham, especially communities of color. I am concerned that this would then render EHC ineffective and inadequate from its inception.

In turn, one of the concerns in the EHC Committee's document speaks to my concerns for different reasons. The committee states they are concerned about what kind of housing the new supply will be and where it will be. The longer we wait to act as a community, more residents will be displaced by new

housing supply that will be single-family homes, especially in impoverished at-risk areas (i.e. Southside). If we pass EHC and place the focus of new development on non-designated neighborhoods, then this is, in effect, exclusionary zoning. It undermines the mission of implementing a citizens' choice to live where they want in the urban tier. We have seen how the average new resident has more income, but they don't get to choose to live in areas they, as McCabe and Ellen argue, place a premium on. This, in turn, takes away a low-income family's agency to stay in their neighborhoods due to higher living costs and being unprotected rental tenants in many cases. I admire citizens' commitment to providing more funding for ADU funding programs, eviction diversion and neighborhood stabilization, but they would be working on their own, rather than in conjunction with EHC, to help remedy our housing issues. I worry that exempting local historic districts would set a precedent for other neighborhoods to follow suit as a countermeasure against EHC.

In my work as a private citizen, I have seen firsthand the pain and anger it causes our community members to be sequestered into parts of the city they do not want to live in solely because those are the only places they can afford. This can, to some extent, undermine the mission of nonprofits in our city trying to operate the best they can with addressing housing needs. Community members in transitional homes and shelters sometimes stay much longer because of the fact that a home they can afford isn't in a neighborhood they want to live in. As residents have pointed out in past public hearings, most neighborhoods in the urban tier were zoned for much higher density by-right before urban renewal. Citizens from Neighbors for Housing Equity have expressed how frustrating it is that 42 duplex units have been demolished and replaced with only 48 over eight years, less than one new duplex every year. Consequently, I would like the city to be intentional about defining what a neighborhood's 'character' is, if it aligns with historical context, and if it preserves our community's values and priorities as we continue to grow, because people come first.

The Suburban Tier & Housing Solutions: Echoing my concerns previously mentioned, I am worried this places the onus of development onto others. I believe our city's growth should not only be a concern for all citizens, but also shared between all citizens. Our growth is driven by our high quality of life, which has increased with the development and densification of downtown, so I have reservations about placing our development in the suburban tier.

As a person welcomed by people from all walks of life while living in the urban tier, I think the city should consider the message we are sending new residents if we are sequestering them in areas that are not as close to the amenities that brought them here in the first place. There still exist areas in the urban tier that can be identified as future nodes of development. While the Committee's recommendation calls for density in the suburban tier, I worry that prematurely relying on the suburban tier for urban development would then make development in the urban tier even more difficult legislatively and procedurally, threatening to push our city's boundaries outward. This, in turn, would encroach on the vast network of green spaces residents love, as well as pose a greater threat to not only our city's, but also region's, watershed.

I recommend the city invest in transit opportunities and make them the best possible system within the urban tier before trying to expand that system further to the suburbs. Our transportation system is good, but there is always room for improvement. In my line of work, I have seen members living in the urban tier lose their jobs because they couldn't reliably make it on time using our current transportation network. Pushing development to the suburban tier will increase our system's inefficiencies, thus

increasing our community's reliance on personal vehicles, which brings its own infrastructural headaches and decreases our region's quality of life if we have longer commutes.

Links of interest/referenced:

<https://www.heraldsun.com/news/local/counties/durham-county/article204694739.html>

http://www.allisongroup.com/ericwallison/wp-content/uploads/2012/08/EWA_Dissertation_Full.pdf

<https://historynewsnetwork.org/article/158487>

<https://pdfs.semanticscholar.org/5924/a3aa551473e02f2afc56dcead7e81c25c3a4.pdf>

WILLIAMS – This text amendment is not in the best interest of the many but of the few, The definition of what we should be doing in terms of going forward with the need for a new plan coming up for the city. My feelings on the direction Durham is headed in is because of the lack of a better phrase is a band aide on a broken leg. I believe though well intended there are still a lot of voices in this community that are not addressed in this community that are not addressed in this document nor the proposed text commitments.

Having not been inclusive with the persons not of historical neighborhoods, well to do neighborhoods, well established neighborhoods, but lifelong citizens that are for and about Durham. Well beyond the preveriable Pat on the back for trying to compromise.

I think that many of the citizens are still left out and this entire process needs to be scrapped. The voice of the comments and of the text do not represent a path by which we are living responsible both to the entirety of the city, it's citizens and it's future. I'm against the affordable Housing clause under the premiss that there will be funds available to benefit Affordable Housing interest. Affordable Housing is the issue and quite frankly adding ADUs as a mean for "some" to drive income into their pockets does not help unless there are a large # of persons doing so. Everyone still cannot afford to build these ADUs.

I think it needs work and we are not there just yet. I'd be more than happy to discuss this with anyone and more than happy to participate in any activity that is required.