



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



**Date:** February 26, 2018

**To:** Wendell Davis, County Manager  
**Through:** Jay Gibson, General Manager  
**From:** Patrick O. Young, AICP, Planning Director  
**Subject:** *Unified Development Ordinance* Text Amendment, Compact Neighborhood Interim Affordable Housing Bonuses (TC1600005)

**Summary.** Text Amendment TC1600005 proposes revisions to existing regulatory incentives for affordable housing located in Compact Neighborhood Tiers. These incentives are intended as interim strategies to encourage development of affordable housing in transit areas prior to the establishment of a long-term approach. Incorporated into this text amendment are other technical changes to Section 6.6 of the Unified Development Ordinance, originally a part of TC1700005, Omnibus 11.

**Recommendation.** That the Board of County Commissioners approve the attached Ordinance to amend Article 6, District Intensity Standards, Article 10, Parking, Article 16, Design Districts, and Article 17, Definitions, of the Unified Development Ordinance; and recommends approval of a consistency statement declaring the request consistent with the Durham Comprehensive Plan and that the request is reasonable and in the public interest. Information supporting these recommendations is found within this memo, attached documents, and any information provided through the public hearing.

**Background.** In May 2015 the Board of County Commissioners and the City Council adopted a resolution in support of affordable housing in planned transit areas. The resolution laid out a goal that at least 15 percent of housing units within one-half mile of light rail transit stations be affordable to households with incomes less than 60% of area median income (AMI).

In support of that goal, elected officials later that year adopted a density bonus to encourage the development of affordable housing in rail transit areas known as Compact Neighborhoods. The bonus was intended to make the voluntary inclusion of affordable housing more attractive to private developers by allowing an additional three market-rate units for every one unit of affordable housing built (3:1). While this was an important initial step, recent experience is that most developers of multi-family housing have requested to rezone to a higher intensity zoning district with a voluntary proffer of affordable housing contributions (e.g. units, land, and money), rather than utilize the 3:1 density bonus program.

The Planning Department is moving towards a wholesale rezoning of Compact Neighborhoods along the Durham-Orange Light Rail Transit (D-O LRT) corridor to form-based design districts, with the goal of promoting density, mixed use and walkability that is associated with transit-oriented development. Doing so advances many of the City and County goals, including fiscally responsible growth management; however, it is also likely to increase the value of land, making it even more expensive and challenging to create affordable units.

Paired with efforts to rezone, a coordinated and long-term strategy to create and preserve affordability is needed for Compact Neighborhoods along the transit corridor. Such a strategy, however, may take several years to develop and take effect. This text amendment is intended to produce an interim approach to encouraging developers of multi-family housing to include affordable units into their projects.

As described in the 2016-2021 Affordable Housing Goals, Strategy 1.e, Enterprise Community Partners proposed the Planning Department further explore an enhanced density bonus incentive. Over the past year, Planning staff has studied existing zoning regulations, engaged developers to create financial models to test feasibility, and held community meetings. The results are draft regulatory incentives for affordable housing that aim to create a more efficient process by providing clear and predictable rules to follow.

The draft text amendment is a result of input from various stakeholders, including the Coalition for Affordable Housing and Transit and a developer's forum convened by the Planning Department. A version of the draft text amendment was presented to the community at two workshops in May and June of 2017. In addition, the draft text amendment was reviewed at the Joint City-County Planning Committee (JCCPC) on August 2, at the Durham City Council Work Session on October 5, and at the Board of County Commissioners Work Session on November 6 of last year. The Planning Commission recommended approval, 12-1, of the text amendment on December 12, 2017.

Key features of the proposed text amendment to the UDO are outlined below. See Attachment B for the complete draft text amendment TC1600005.

To qualify for the affordable housing bonuses, projects of at least 15 total units must be in eligible locations and meet requirements for affordability and design:

- *Eligible Locations.* Properties must be located in a Compact Neighborhood Tier and multi-family housing must be a permitted use within the existing zoning district. This includes a number of non-residential zoning districts, such as Office and Institutional (OI), but excludes industrial zoning districts and single-family residential zoning districts.
- *Affordability Requirements.* At least 15 percent of the total units must be affordable to households earning an overall average of 60 percent of AMI or less. Housing is considered affordable if the cost of housing does not exceed 30 percent of the household's income.

- *Design Requirements.* Basic design district regulations must be met. These are intended to promote walkable urban design and include the following principles:
  - Buildings are placed on the site to create sense of human-scaled design;
  - Visual interest of buildings is created through the use of windows and doors;
  - Primary entrances engage the street;
  - Pedestrian activity is encouraged with accessible sidewalks; and
  - Pedestrian experience is enhanced through streetscape amenities.

Additionally, per UDO Section 6.6.1.D, the affordable units cannot be distinguishable from the market-rate units through the location, grouping or exterior design.

If the above requirements are met, the project would be eligible for the following bonuses:

- *Density.* Density up to 75 units per acre is allowed. If the existing zoning district already allows density that exceeds 75 units per acre, the higher of the two is allowed.
- *Height.* Height up to 90 feet is permitted unless the project is within a 75 foot distance of the Urban Tier or a 150 foot distance of the Suburban Tier and the adjacent zoning or use is for single-family residential. In those instances, the maximum height is 50 feet. If the existing zoning district already allows more height, the higher of the two is allowed.
- *Parking.* Required parking is waived for all uses included in the project.

Several technical changes were considered as part of Text Amendment TC1700005, Omnibus 11. Those technical changes are being reconciled and incorporated into this draft and propose the following:

- In areas outside the Compact Neighborhood tier, affordable housing bonuses are available to projects of any size, not just those over 15 dwelling units;
- Projects in which 100 percent of the dwelling units are affordable housing dwelling units are eligible for the bonuses in Section 6.6;
- Clarification of the provision that allows a 20% reduction of lot area, width and yards for projects that qualifies for the affordable housing bonus program.

#### **Issues.**

- *Income Threshold.* Model pro-formas (i.e. financial spreadsheets) demonstrate that when affordable (below market rate) units are included in a development, it is challenging to recuperate the revenue that is lost due to lower rents. Providing units at lower income levels means that the revenue gap grows larger, and may make the development project less feasible. Additional market data specific to each Compact Neighborhood is needed to know the feasibility of producing units at different income thresholds. In the absence of that information, staff has recommended following the adopted County goal of 60 percent of AMI, with the commitment to evaluate the effectiveness of this policy within one year.

- *Impact of incentives will be limited in the short term, especially without additional public participation or without a major shift in the cost of construction.* The model pro forma that was created with the help of a developers' focus group showed that, in today's real estate market, market rate multi-family housing developments are built with very slim financial margins. On their own, density and height bonuses are not likely sufficient to fill the revenue gap that is created when units are offered at below market rents. In other words, additional financial support may still be needed.
- *Economic conditions vary significantly across Compact Neighborhoods.* The D-O LRT is planned to serve a broad cross-section of Durham, from Leigh Village which is primarily a rural landscape to Ninth Street, a highly developed urban area next to a major institution. Land prices, rents, and current zoning districts also vary significantly across Compact Neighborhoods, which can greatly influence the decisions developers make. In short, the potential impact of these incentives may be felt differently across Compact Neighborhoods. A long term strategy could address these differences.
- *Affordability Period.* The Coalition for Affordable Housing and Transit has advocated for a minimum affordability period of 30 years, as opposed to the 15 year time frame that is currently stipulated in the UDO. Planning staff agrees that the 15 year time frame is short, considering light rail isn't expected to be operational until 2029. The draft text amendment reflects this change.
- *Administrative approval.* If approved, the density and height bonuses for affordable housing could be administered at the site plan process. This means that developers opting to use the bonus would be able to forego a rezoning process that is often long, expensive and uncertain. It also means that development projects with higher densities and heights than what has been allowed under current zoning could be approved without public notice or public hearing.
- *Parking.* More so than the revenue gap created by the inclusion of affordable units, it appears that the high cost of structured parking affects the feasibility of multi-family residential development. In 2015, a text amendment to the UDO eliminated required parking for affordable units in the Compact Neighborhood Tier. While this was an appropriate first step, the JCCPC requested staff explore the elimination of required minimum parking for market rate units and other uses incorporated into the project. Staff agrees that while private lenders may still require parking as a component of the project, removing parking as a regulatory barrier to affordable housing is appropriate.
- *Potential Consequences of proposed interim approach becoming the long-term strategy.* While it is impossible to predict how developers will react to future market conditions, two commonly discussed potential negative consequences of suppressing base densities in Compact Neighborhoods are:
  - Low Density. Because incorporating affordable housing is expensive and administratively difficult, and different from standard practice, developers could opt to build without utilizing the bonus. The result would be lower density development near transit stations, which would not be aligned with

the goal of creating compact neighborhoods *or* maintaining affordable housing choices. With a limited housing supply in high demand areas, the price of all housing would escalate.

- Non-residential development. Similarly, if development of housing is regarded by developers as too onerous, they may only choose to build commercial, office or other non-residential projects. The result would be employment-focused station areas that are not supported or activated 24-hours per day by residential communities.
- Pressure on neighborhoods outside of Compact Neighborhoods. If developers do not find that they can make an economically viable project even with the density and height bonuses, they may opt to build either a nonresidential development or build housing outside of the Compact Neighborhood Tier. While non-residential development can be good for transit ridership, particularly within 600 feet of the transit station, it could add development pressure on neighborhoods just outside of Compact Neighborhood Tiers that are already experiencing rising housing prices.
- New Starts funding. The Federal Transit Administration scores applications for funding for light rail systems based on a demonstration that local jurisdictions are implementing regulations that support high density transit oriented development. A policy of density “suppression” may jeopardize scores and make the Durham-Orange Light Rail less competitive.

- *Future project*. Density and height bonuses for affordable housing are likely to be used for large-scale multi-family developments. During the community engagement process, several questions were asked about incentives for smaller landowners or developers. Many of these questions came from individuals in neighborhoods outside of Compact Neighborhoods who may well see increased development pressure and rising housing costs. As part of the FY18 Work Plan, Planning staff is beginning to examine other tools to expand affordability by design in areas outside of Compact Neighborhood Tiers.

**Consistency with the *Comprehensive Plan*; Reasonable and in the Public Interest.**

The purpose of this text amendment is to allow for regulatory incentives that encourage the development of affordable housing dwelling units in proximity to planned regional rail access. This regulatory tool (the UDO) implements various development policies found within the *Comprehensive Plan*; a reasonable undertaking and in the public interest.

The *Durham Comprehensive Plan* specifically addresses affordable housing within Chapter 3, Housing Element, as a primary issue within its Summary of Issues. Within Goal 3.1, Affordability, the following policy specifically considers the need to evaluate the existing density bonus:

Policy 3.1.1a. Density Bonus. Evaluate the density bonus allowed in the *Unified Development Ordinance* for enhancements or modifications to encourage greater utilization of this affordable housing tool in order to provide a workable density bonus as an incentive for provision of affordable housing units.

Wendell Davis, County Manager  
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Although parking rates in conjunction with affordable housing is not specifically identified within the *Durham Comprehensive Plan*, it is reasonable to conclude that a regulatory adjustment that aids in the provision of affordable housing would comply with Objective 3.1.1, Affordable Housing Enhancements, which states the following:

Objective 3.1.1. Affordable Housing Enhancements: Facilitate the provision of affordable housing by regulatory and incentive-based means.

Developing regulatory tools to aid and encourage the development of affordable housing is a reasonable goal and within the public interest. It encourages a mix of housing options and promotes the ability of all persons to live and work within the same community, both of which aid in creating diverse and thriving communities. To that end, the proposed text amendment also appears reasonable and in the public interest.

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**Attachments:**

Attachment A: Statement of Consistency Pursuant to NCGS § 160A-383

Attachment B, An Ordinance to Amend Provisions of the Unified Development Ordinance, Compact Neighborhood Affordable Housing Bonuses (TC1600005)

Attachment C, Planning Commission Written Comments