

Durham Planning Commission

December 12, 2017 Written Comments

Case TC1600005 (Compact Neighborhood Interim Affordable Housing Bonuses)

AL-TURK – I voted for approval. I commend the Planning Department for coming up with interim strategies to encourage affordable housing near transit hubs. I do, however, still have my doubts that these density bonuses will provide the needed incentives to developers to include affordable housing units in their developments. My main concern is that, as was pointed out in the public hearing by the planning staff, the market conditions (e.g., market rents) of each of the compact neighborhoods varies considerably. For example, if a developer expects to get over \$2,000/month in rent in the Ninth Street area, it seems unlikely to me that she will be willing to provide units for \$750/month (60 percent of AMI), even if she's allowed more units because of the bonus or if the City provides some funding (more on this point below). What this suggests to me is that, if we stick with the 60 percent (or even 70 percent) of AMI condition, then we're likely to cluster affordable housing in some parts of town (like Alston, where the expected monthly rent is currently just over \$1,000). If the goal of the City is to encourage affordable housing in all parts of town, then we may have to think about other strategies. The City Council will need to consider whether it's willing to spend money to subsidize the larger revenue gaps that developers will have to take if they provide affordable housing in places like Ninth Street, Erwin Road, or Patterson Place. Or, as I suggested in the public hearing, we need to consider whether the 60 percent of AMI should be a hard and fast rule. While I think it's laudable to offer apartments at that rate, it may also make sense to offer relatively affordable units in more parts of town that may not be as low as 60 percent of AMI. In any case, these issues suggest to me that a more comprehensive approach is needed in the near future.

BRINE – The proposed text changes strike out the present sections 6.6.1 and 6.6.2 in the UDO and replace them with new language as well as modify other sections of the UDO. The purpose is to provide enhanced incentives to developers to provide affordable housing units, especially in the compact neighborhood tiers surrounding the proposed light rail transit stations. The proposed incentives include enhanced density and height bonuses, a reduced parking requirement, and a process that involves administrative approvals.

I voted to send this case forward to the governing bodies for further review and consideration. However, I have several comments and questions. These are detailed below.

1. The introductory memo speaks of an administrative approval process by which developers opting to use the density or height bonus would be able to forego the public rezoning process. However, it is not clear from the proposed text just how this process would work. I think more detail is needed on how the administrative approval process would work.
2. While I understand where staff is coming from, I agree with Coalition for Affordable Housing and Transit that the two-step process (proposed section 6.6.2B) deviates from the adopted goal of having 15% of all housing units near light rail transit stations be affordable to households with incomes less than 60% AMI. If we start allowing alternatives such as an average of 70% AMI, we lessen the probability of achieving the adopted goal.

3. TC1700005 had proposed several changes to parts of old sections 6.6.1 and 6.6.2. These are presently under going further review. I have some comments about these.
 - A. One proposed change would delete the wording “for new projects with a minimum of 15 dwelling units, or for projects adding at least 15 dwelling units to an existing development” from the new section 6.6.1A. I disagree. I think some minimum number of units is needed. If this wording is eliminated here, then it should probably also be eliminated from proposed section 16.1.4C.d(2) on page 6 of the draft.
 - B. A second proposed change would eliminate paragraph B from the new section 6.6.1. I am not sure I see the need for this. (I also agree that the older wording in the old section 6.6.1B was better.
 - C. A third proposed change would have the new section 6.6.1E read as follows: “In single-family and duplex developments, required minimum lot area, lot width, and yard requirements can be reduced up to 20% in order to incorporate the additional units”. I think this proposed change is reasonable.
4. I applaud the increase in the term of affordable housing from 15 years to 30 years (section 17.3, Affordable Housing Dwelling).
5. It is my understanding that the AMI is revised annually, and that the affordable housing costs must not exceed 30% of a family’s income as verified on an annual basis. It sounds like that a family qualified for affordable housing must be requalified on an annual basis. Is this correct? What happens if a family does not qualify after the annual review? Is that family evicted?
6. How is eligibility for affordable housing determined? Are there standards that are followed?
7. How is rent for affordable housing units determined? Will there be some formula to be used so that everyone does the determination the same way?
8. I realize that the proposed text changes focus on compact neighborhood tiers near light rail transit stations because the City and County have an adopted affordable housing goal for those areas. However, can the proposed ordinance provisions be applied elsewhere in the City and County to encourage affordable housing?
9. The adopted affordable housing goal specifies that the affordable housing should be located with ½ mile of the transit station. In the designated compact neighborhood tiers established around the proposed light rail transit stations, is there land within ½ mile of the station that is available for residential use? If so, will the governing bodies take any steps to preserve that land until affordable housing ordinance provisions are in place?

I thank staff for their efforts on this proposal. I also recognize that some of my questions are more general and may not directly relate to the proposed text changes.

BUZBY – I commend the staff for their continued diligent work to address the growing affordable housing situation in Durham.

While this proposal still causes me concerns, I believe we need to move forward for approval and I hope the City Council and County Commissioners will look to make the following changes to strengthen this proposal before voting for its approval:

- We should re-affirm the goal of 15% affordable housing at 60% AMI within a half-mile of light rail transit stations
- Of particular concern is Section 6.6.2 – Compact Neighborhood Tier – where in subsection B there is a two-step process. This proposed process essentially moves away from the 60% AMI goal set by the City Council and the County Commissioners, by allowing a move to 70% AMI. We should not give up our 60% AMI goal so quickly. In addition, the two-step process seems likely to lead to a race to the bottom with developers quickly moving to the 70% AMI option when the City or County are not able to provide financial to a project (which is likely to happen in a number of cases).

I do want to conclude by encouraging a continued commitment to meeting our 60% AMI goal in our affordable housing policies, if Section 6.6.2B removes the two-step process and simply return to a one-step process with 15% affordable housing for households earning 60% AMI or less, then I believe this is a proposal worthy of approval.

GHOSH – I could write a lot about this item, but I decided against it because there is only one thing to be said: this is better than what we currently have on the books.

GIBBS – Illegal to Codify “requiring” targeted affordable housing, this approach with 60% AMI, attempts to move issue forward.

HYMAN – Voted yes with the understanding that more consideration be given to adjusting to 60 AMI vs 60-70 AMI. While approach is robust and aggressive, it lacks specifics that will allow for vigorous acceptance by developers.

JOHNSON – I voted in favor of the proposed Compact Neighborhood Interim Affordable Housing Bonuses (case TC1600005), as I think that this issue warranted continued deliberation and conversation. I do, however, have concerns and I also recognize the limitation of this proposed initiative. The limitation reality is that this proposed housing bonus incentive, on its own, likely will not address the issue of focus – a meaningful increase in new development of affordable housing. While the incentive appears at least somewhat attractive in theory and on paper, real estate and economic development ultimately comes down to a dollars and cents exercise – you develop what you can afford to develop in a manner that optimizes financial performance. Thus, if a developer approaches City/County leaders and request subsidy funding in order to incorporate affordable housing in their development plans, and leadership does not comply, then affordable housing is likely to fall out of the development plan.

Allowing more market rate units for the inclusion of an additional affordable housing unit will not necessarily equate to a more attractive project for a developer – from a financial performance standpoint. Various factors will determine financial performance, including the cost of land, construction cost, project financing structure, etc. So additional affordable housing, even with the housing bonus, could actually result in a lowered return on investment for a developer. It is important to remember, just because a developer is allowed, for example, to build five more market rate units along with one additional affordable housing unit, doesn’t mean the developer will be able to actually fund this marginal cost to the project (e.g. the cost of incorporating more units into a project). So it also becomes a question of project feasibility.

My other major concern is the two-stage process for a developer pursuing the housing bonus allowance. What the two-stage process essentially does is makes the 60% median income threshold a sacrificial lamb. Again, if a developer requests a certain amount of subsidized funding from City/County leadership

to meet the 60% median income threshold and the request is denied by leadership, a developer will only consider going up from this threshold – meaning individuals and families in the 60% median income population is no longer a part of the discussion. As such, the subsequent question I have is “What will be done to address the fact that this underserved population of individuals and families (at 60% median income and below) still demands affordable housing.” The menial affordable housing proffers (e.g. a one-time \$30,000 to the City) that I have seen as part of applications brought before the Planning Commission will not move the needle in addressing the affordable housing challenge the City of Durham faces. Furthermore, funding dedicated to affordable housing via the recently approved property tax increase (as of the most recently approved budget by the City of Durham) is only a start. So, if this proposed housing bonus incentive is ultimately approved by the City Council, then a more deliberate and intentional conversation (followed by action) will need to take place regarding the potential and likely “losers” from this proposal – e.g. those at or below 60% of median income threshold.

KENCHEN – I vote to move forward. However, I strongly support using 60% AMI. To me, this gives us the best shot to increase the number of affordable units.

This is also in line with the resolution passed by both the City Council and County Commissioners.

Staff, however, has done the analysis and believe that 70% AMI gives us the best choice to insist developers to use this tool. While I prefer 60% AMI, I am compelled to heed the advice of staff. 70% AMI is not ideal, but it is a good start.

It also moves this process forward, which I think is in the best interest of Durham. Having said that. We must continue to push this issue.

If this is approved by the elected officials and we later find that our policy goals are not being met, then we need to re-visit ASAP.

MILLER – The City Council and Board of County Commissioners should vote against this text amendment. It is not quite ready for approval.

There are several significant problems with the proposed text amendment. First, the approval or denial of bonuses to be made by the planning staff at the administrative level is an impermissible delegation of discretionary decision-making under North Carolina law. Under the proposed text amendment, a developer need not ask for the affordable housing bonus as a component of a rezoning request. The developer would be able to ask for approval of the bonus as a part of site plan review. Site plan review is handled by staff and does not involve the exercise of discretion. If the affordability bonus question to be determined at site plan review were merely empirical, such a procedure would be appropriate. But under the proposed text, it would not be empirical. The staff would be required to evaluate the types of units proposed (one bedroom, two-bedroom, three bedroom, efficiencies, etc.), and the prices proposed for the units and determine whether, given the mix, they satisfy and broad and unstated standards for affordability. Further, the staff would also have to evaluate whether a project including bonus units meets the design standards described in the staff memorandum describing the bonus program (human scale, etc.). Since the package given to planning commission members did not describe or include these design standards it is difficult to understand how the staff, as a part of the site plan approval, may exercise its discretion to approve, or more importantly, deny a request for the bonus. Under the statutes that authorize cities and counties to regulate development through zoning, discretionary approval of certain voluntary uses is handled by means of use permits granted by the

elected body or the board of adjustment using a quasi-judicial process. What this proposed bonus program does is set up a use permit process to be exercised by staff, not the proper authorities, without the essential elements of due process. This flaw can be overcome by either eliminating the discretionary aspect of the approval decision or by creating a proper use permit process. Either way, clearer standards for what units and prices meet the minimum test will be necessary.

The second problem is a policy rather than a legal issue. The proposed 60% vs. an average 70% AMI option contemplated in 6.6.2.B is a false option inasmuch as it reposes in the applicant the sole power to determine the adequacy of the government's offer of financial assistance for 60%. The applicant does not like what is offered, he may refuse it and move straight to the 70% average. This essentially eliminates the affordability benefit for a wide swath of working people –the very class of people for whom our affordability policy was developed – firefighters, school teachers, police officers, emergency medical technicians, etc. As written, the proposal simply moves the affordability line from 60% AMI to 70% AMI. If that's what we are going to do, then let's remove the ritual associated with government financial assistance. That will be there in any event – whether or not it is written into the code. Leaving it out of the UDO will not preclude the government and a developer from partnering for affordability.

The third problem and the last I will mention here is that the program still offers a carrot that the development community probably will not want. With baseline densities already high, the carrots in the system are already plentiful and come at no cost. If we do not reduce baseline densities to increase the incentive value of the affordable housing density bonus, we will accomplish nothing. Not too long ago, I listened to a presentation the staff made to the JCCPC concerning affordable housing density programs in other parts of the country that worked. The take-away was that for our program to work we must increase the bonus ratios from one-for-one to three or four-for-one AND we must decrease base-line densities so that the only way to access the development potential of target properties would be to use the enhanced ratio bonus.

The staff has recognized this issue in its analysis in the memo covering this proposal. The fear is that if we reduce base-line densities in the target areas (near transit stops), we put federal funding of our rail program at risk. I recognize the problem, but I, for one, no matter how badly I want light rail, am beginning to become concerned that neither the state nor the federal government are going to fund a Durham light rail program. It is my hope that they will, but the prospect is becoming dimmer and more remote. Congress will soon pass a tax bill that will dry up any money for infrastructure improvements. The rail program is speculative. What is not speculative is the need for affordable housing. I am willing to risk our attractiveness to the feds in order to get an affordable housing bonus that works. I believe that if we do it carefully and explain it carefully to our would-be federal partners, we can have a bonus that works and minimize any possible federal negative reaction.

SATTERFIELD – A formula and/or specific criteria for determining whether the city/elected board will provide financial assistance for these types of projects needs to be developed to ensure the integrity of the approval process, and that the intent of the bonus program is fulfilled.

VANN – There are a number of issues enclosed in this proposal that deserve to be further reviewed although I am voting to move this forward. Motion carried 12-1