



Date: November 13, 2018

To: Wendell Davis, County Manager
Through: Peri Manns, Acting General Manager
From: Patrick O. Young, AICP, Planning Director
Subject: *Unified Development Ordinance* Text Amendment, Private Streets (TC1800006)

Summary. Text amendment TC1800006 is a privately-initiated request to amend paragraph 12.2.2, Other Forms of Access, to allow an additional instance where private streets would be allowed. Specifically, private streets would be allowed for single-family developments only when as an addition to an existing development that already has private streets and that crosses the county line where the adjacent county allows for private streets. This would apply only within the County jurisdiction (see Attachment A for the application, as amended). Additionally, existing text is revised to more explicitly require private streets to meet or exceed public street standards and adds specific certification criteria.

Recommendation. That the Board of Commissioners approve, if appropriate, the attached Ordinance to amend Article 12, Infrastructure and Public Improvements, of the *Unified Development Ordinance*; and approve the appropriate consistency statement regarding consistency 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. The text amendment application is a privately-initiated amendment submitted by Mr. Mitch Craig of CE Group, Inc. The proposed amendment would be an additional instance in which private streets would be allowed. Under paragraph 12.2.2, Other Forms of Access, residential private streets are currently allowed in four circumstances:

1. For a maximum of six single-family or duplex lots;
2. For multifamily developments;
3. If shown on a development plan; and
4. In conservation subdivisions.

Private streets must be designed and constructed to City or the NCDOT standards, as applicable, but are not maintained by either the city or State.

The JCCPC was presented with a draft for review and comment on August 1, 2018. No substantial changes or modifications beyond technical corrections were requested. Concurrent with JCCPC review, other city and county department, including respective Attorney's offices, reviewed the proposed text changes prior to initiating the public hearing process.

The Planning Commission recommended denial, 5-7, of the text amendment on September 11, 2018. The Planning Commission determined that the Ordinance request is not consistent with the adopted *Comprehensive Plan* and that the request is not reasonable and in the public interest.

The original request, reviewed by the JCCPC and acted upon by the Planning Commission, would allow private streets for any single-family subdivision only within the County jurisdiction. Subsequent to the Planning Commission hearing, revisions were submitted by the applicant narrowing the scope to the request.

Issues. The Planning Commission recommended denial of the request, primarily concerned that the scope of the requested amendment was too broad. Thus, subsequent to the Planning Commission hearing, the applicant submitted revised text (Attachment A). The request would still add a fifth circumstance to allow residential private streets, but revised the request to read as follows (with minor adjustments from staff):

A. Private Streets or Roads

Private streets or roads are allowed in the following circumstances. Such streets shall be designed and constructed ~~according to~~ meet or exceed public street standards of the City of Durham Public Works Department or NCDOT standards, as applicable. If the City or NCDOT does not conduct the inspection to certify the design and construction of the private street(s), inspection and certification by a third-party engineering firm approved by the City or NCDOT, as applicable, shall be provided.

1. Residential

- a. For up to six single-family detached or duplex lots. Lots permanently protected as open space, on which no development rights remain, shall not be counted in determining the number of lots on a private street;
- b. For multifamily developments or multifamily areas of development;
- c. If shown on an approved development plan as private streets; ~~or~~
- d. Within Conservation Subdivisions designed and established pursuant to paragraph 6.2.4, Conservation Subdivision; or
- e. (County only) For single-family subdivisions that meet both of the following conditions:
 - (1) The private street(s) are within an additional phase to an existing single-family subdivision that already maintain private streets; and
 - (2) The subdivision as a whole crosses a County line in which the other county allows private streets.

The additional changes under paragraph A, above, clarify and provide more explicit requirements to existing text. The UDO currently maintains the requirement that private streets must be designed to City or NCDOT public street standards, as applicable. The proposed changes clarify this and utilize suggested text by the applicant.

In regards to the specific situation of the applicant, the text amendment would allow a new phase of a subdivision in the County jurisdiction to maintain streets as “private” in order to have consistent and full control over the maintenance of the streets and not rely on the

NCDOT. All the other streets within the existing portions of the development are private streets due to being within a conservation subdivision, which as noted above, allows private streets. The development also crosses into Chatham County, which allows and maintains private street standards. All other neighboring counties (Orange, Wake, Granville, Person), at this time, also allow and maintain standards for private streets.

As noted above, maintenance responsibility would be with the homeowners of the subdivision, and not the NCDOT or the County*. Petitions to the NCDOT to accept a private street for maintenance will require the street to have been constructed and maintained to the NCDOT standards. In addition to specific construction and design standards of the NCDOT, the NCDOT will accept maintenance if:

1. At least 20 percent of the lots bordering the road are individually owned; and
2. There must be at least two occupied residences for each one-tenth of a mile. A minimum of four occupied homes is required for the addition of roads less than two-tenths of a mile in length. If four occupied homes are not served, it will be treated as a private drive. An exception may be made if the cul-de-sac is fully developed, serves at least four platted lots, and has four occupied homes that abut the road. A minimum of two homes must have primary access to the cul-de-sacs.

An alternative to the requested text amendment would require the applicant to seek approval of a rezoning with a development plan specifying private streets. This would utilize a current allowance within the UDO. At the Planning Commission meeting, the applicant indicated that multiple property owners would need to consent to the development plan submittal.

Consistency with the *Comprehensive Plan*; Reasonableness and in the Public Interest. The application (Attachment A) includes justification for the amendment based upon the *Comprehensive Plan*, and in regards to reasonableness and in the public interest. Additionally, the amendment would not conflict with Policy 8.1.2C, Typical Roadway Cross Sections, of the *Comprehensive Plan*, since the proposal would maintain adherence to NCDOT street design standards.

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Attachment:

Attachment A: TC1800006 Application

Attachment B: Statement of Consistency Pursuant to NCGS § 153A-341

Attachment C: An Ordinance to Amend the *Unified Development Ordinance* Regarding Private Streets (TC1800006)

Attachment D: Planning Commission Comments

* Almost all regulatory authority regarding roads within the county jurisdiction resides with the NCDOT.