



Date: January 14, 2019

To: Wendell Davis, County Manager

Through: Jay Gibson, General Manager

From: Patrick O. Young, AICP, Planning Director

Subject: *Unified Development Ordinance* Text Amendment, Text-Only Development Plan (TC1800008)

Summary

Text amendment TC1800008 would establish a limited, text-only development plan option for zoning map change requests to allow proffers that limit the uses allowed within the requested zoning district. This alternative is limited in scope as staff develops a more comprehensive set of revisions for alternatives to the current development plan requirements.

Recommendation

That the Board of Commissioners approve the attached Ordinance to amend Article 3, Applications and Permits; and Article 5, Use Regulations, 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 UDO allows for two types of zoning map change requests. The first is a request for a new zoning designation without a development plan¹. If the request is approved, the property is allowed to develop any use or uses allowed in the zoning district. This process does not allow for applicants to proffer binding commitments to address concerns raised through the public hearing process.

The second type of zoning map change request includes a development plan. Development plans allow the governing bodies to consider proffers submitted by the applicant of a zoning map change that are binding and part of the zoning designation for the site. This functions as a form of conditional zoning². The City of Durham received development plan zoning authority originally through the City's charter provision in a 1975 session law (SL) (SL1975-671) then further amended in 1990 (SL1990-380) and 1999 (SL1999-70). Durham County first received enabling legislation for development plan zoning in 1989 (SL1989-950) and then amended in 1999 (SL1999-70).

¹One caveat is that zoning districts within the "Planned District" category would require a development plan as part of the zoning map change request.

² Conditional zoning has been explicitly allowed by state zoning enabling legislation since 2005.

Development plan requirements have changed over the years and with different zoning ordinances. The current requirements, as modified in 2009, require professionally sealed plans depicting existing conditions, minimum commitments that reflect current UDO standards, and allow for additional graphic and/or text commitments that provide for proffered limitations or development aspects beyond UDO minimum requirements. The type of proffers (a.k.a. “commitments”) range from basic proffers such as building height or specific use limits, to more detailed or complex proffers such as traffic impact analysis roadway improvements, building and access placement, additional buffers and landscaping, and so forth. Development plans are expensive (generally costing tens of thousands of dollars to draft), can be complicated to read for a layperson, and time consuming not only for the applicant but also for staff in terms of application review. Thus, City Council has indicated interest in a type of zoning request that would allow more flexibility for applicants to make certain limited proffers that do not warrant drafting a set of professionally-sealed plans.

The Joint City-County Planning Committee (JCCPC) reviewed a draft at its October 3, 2018, meeting. No substantial changes were requested, although the committee did note that once implemented, the applications should be monitored to determine how it is used. The Planning Commission recommended approval, 12-0, of the text amendment on November 13, 2018. The Planning Commission determined that the Ordinance request is consistent with the adopted *Comprehensive Plan* and that the request is reasonable and in the public interest. The Durham City council will consider this amendment at its December 22, 2018 meeting.

Issues

As defined within the UDO, a development plan is “a type of plan that becomes part of the zoning of a property that establishes the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance.” Considering the City and County development plan enabling legislation and charter provisions do not specify the form of the plan, staff has proposed a “text-only” development plan option for use limitations. This initial proposal is intended to be subsequently updated with a broader set of revisions for development plans, and specifically for the text-only option.

The need for the initial step is to provide a timely, although limited, response to frustrations voiced by City Council, the Planning Commission and many applicants for zoning map change requests, and to have an initial set of standards available to certain anticipated zoning map change requests. The proposed changes, as previously mentioned, will allow for text-only development plans where commitments will be incorporated into the ordinance for adoption. Commitments will be limited, at this time, to proposed uses and can be proffered any time during the review and adoption process. The “D” designation will still be appended to the zoning designation.

The proposed changes will not allow for a waiver of special use permit requirements, or to allow for the development plan to serve as a site plan, since more detail within the proposed plan would be required. A text-only development plan will not be permitted for requests to Planned Districts (PDR, MU, UC, CC, or IP), and any illustrative graphic depictions shall require a standard development plan zoning map change application. As noted above, the JCCPC noted that monitoring the implementation and use of this type of application should be done to determine how it is used.

Consistency with the *Comprehensive Plan*; Reasonableness and in the Public Interest

Although not specifically addressed within the *Comprehensive Plan*, the proposed amendments do not conflict with any policies, goals, or objectives of the plan. Since the proposed amendments are to address concerns raised by City Council and limited in scope, the proposed amendments appear reasonable and in the public interest.

Contact

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Attachments

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

Attachment B: An Ordinance to Amend the *Unified Development Ordinance* Regarding Text-Only Development Plans (TC1800008)

Attachment C: Planning Commission Comments