

MEMORANDUM

TO: Lisa Miller, Durham City-County Planning Department
FROM: Patrick McDonough, Manager of Planning and Transit-Oriented Development
Jay Heikes, Transit-Oriented Development Planner
DATE: November 13, 2018
SUBJECT: Proposed Patterson Place Design District Zoning Regulations

Dear Lisa,

We view the proposed Patterson Place Design District Zoning Regulations and accompanying rezonings as a transformational piece of public policy that will allow the creation of compact, walkable, transit-supportive development and enable equitable access to prosperity at the proposed Patterson Place light rail station. We commend the work of the Durham City-County Planning Department both in previously establishing Patterson Place as a compact neighborhood and in conducting extensive resident and stakeholder engagement to draft these regulations. Following a thorough review of the draft proposal, we believe that the regulations, as proposed, strike an appropriate balance between the important goals of preserving the natural resources that surround the station area, accommodating future growth, and providing regulatory mechanisms to support the joint goal of the City Council and Board of County Commissioners of creating and preserving affordable housing within the light rail station areas.

In the spirit of collaboration, we offer the following comments and recommendations to strengthen the degree to which these regulations enable, encourage, and compel property owners to develop their properties in a walkable, transit-supportive manner that results in an improved public realm, quality public spaces, the creation of new taxable property value, and opportunities for new and preserved affordable housing.

- Consider calibrating residential density minimums and maximums according to national best practices for transit-oriented development, future market projections, and recent projects along the US 15-501 corridor between southwest Durham and eastern Chapel Hill.
- Consider additional policy mechanisms to encourage private property owners to take steps toward shared, unbundled parking
- Consider additional policy mechanisms to encourage the provision of meaningful and usable public spaces
- Consider expanding the boundaries of the CSD – C sub district to maximize the highest and best use of land within ¼ mile of the station as well as creating a coherent mixed use district that extends toward I-40 and the Gateway station.
- Consider transitioning the affordable housing density bonus program away from cap on height and units and towards height, massing, and other related requirements.

TOD Policy Priorities

Station Area Density

We are fully supportive of establishing minimum and maximum unit densities per net acre to support the affordable housing density bonus program in its current iteration. We recommend calibrating these proposed minimum and maximum densities according to national best practices for transit-oriented development, future market projections, and development occurring nearby today.

Based on the analysis and recommendations from the draft *TOD Guidebook*, we believe that Patterson Place fits the definition of a “Suburban Center” as defined by the Federal Transit Administration (FTA) in terms of Transit-Oriented Development station area typologies. According to FTA, in partnership with the Center for Transit-Oriented Development, a Suburban Center would ideally have new projects in the station area ranging from 35-100 units per net acre, depending on the proximity to the station. Lindbergh Center in Atlanta, Georgia is an example of a lower density Suburban Center, with buildings in the core that range from 5-10 stories in height. Silver Spring, Maryland is an example at the higher density Suburban Center with 10-15 story buildings in the core as well as a more expansive core area.¹

Accordingly, we recommend attaining the minimum transit-supportive density for a suburban center of 35 units per net acre by setting minimums that range from 20-35 units per net acre, and maximums that range from 25 – 45 units per acre without a density bonus, as detailed in Table 1.

We believe that increasing both the minimum and maximum densities will better support the creation of a transit-supportive, walkable, and compact center without compromising the viability of the current iteration of the affordable housing density bonus program. As discussed later in this memo, we do believe that the program should be eventually transitioned away from a density bonus based on the number of units. However, we believe that our recommended densities are beneficial to transit-supportive density and the affordable housing density bonus program in the interim.

Table 1. Density Recommendations (Without Affordable Housing Density Bonus)

Zoning District	CSD - Core		CSD – Support 1		CSD – Support 2	
	Min	Max	Min	Max	Min	Max
Draft Amendment	22	30	16	21	9	15
<i>GoTriangle Recommendation</i>	35	45	25	35	20	25

The *TOD Guidebook* projects that in the future, the market will support buildings with densities that range between 135 units per net acre in the core and 60 units per net acre in surrounding areas. Comparing those figures to our proposed maximums would result in a pent-up demand of 90 units per net acre in the core sub district and 35 units per net acre in support-2 sub district. We believe these differentials would still represent a significant density bonus to developers, and are sufficient to support the affordable housing density bonus program in its current iteration.

¹ TOD 202 Station Area Planning. Center for Transit-Oriented Development
<http://ctod.org/pdfs/tod202stations.pdf>

As evidence that the market along the 15-501 corridor is already delivering densities above the maximum thresholds recommended by GoTriangle, we have gathered data on existing projects with densities that exceed our proposed maximum, as detailed in Table 2.

Many of these projects are built in a compact, urban format that generally matches the proposed form and Urban Design requirements in the proposed CSD districts. These walkable and transit-supportive projects include densities that range from 48 - 90 units per net acre, with an average of 68 units per net acre. All of these projects would exceed our recommended maximum densities within the CSD Districts and require a density bonus in order for them to be built. On average, these existing projects would have needed a 33% density bonus above the maximum of 45 units per net acre that we propose for the CSD-C sub district.

Finally, we anticipate that the adoption of the rezoning and the FTA's Full Funding Grant Agreement decision will cause land prices and market potential to increase beyond the present average market potential for 78 units per net acre, further supporting the affordable housing density bonus program.

Table 2. Projects in US 15-501 Corridor that Match Proposed Form and Urban Design Requirements

Name	Units / Net Acre	Height (stories)	Ground Floor Use	Parking
Link at Glen Lennox <i>Note: Density would be greater without shared parking.</i>	48	3-5	Residential	Structured (oversized for partial sharing with future office), on-street
Hillstone Chapel Hill	58	4-6	Residential	Structured, Podium, Surface, On-street. Awkward lot shape.
Berkshire Chapel Hill	67	5-7	Retail	Structured, on street
Witherspoon Apartments <i>Residential portion of site only.</i>	78	5-6	Residential	Structured, on street
Fordham Boulevard Apartments	90	5-6	Residential	Structured
Other Recent Projects				Note
Patterson Place Apartments	12	3-4	Residential	Project would not meet form and Urban Design requirements in CSD Districts.
University Hill Apartments <i>Residential portion of site only.</i>	40	3-4	Residential	Project would not meet form and Urban Design requirements in CSD Districts.

Parking

We are strongly supportive of the efforts to right-size parking supply and provide flexibility for the development community to select the right amount of parking for their projects, while leveraging policy levers to encourage structured parking and shared parking. We offer the following suggestions to consider:

- Lower parking maximums for “household living” similar to the lower default maximums in place for non-residential uses. We suggest a default maximum of 1 space per unit to encourage developers to take advantage of the policy mechanisms in Section 10.3.B.8.e(1)

- We suggest the addition of the following policy mechanisms to 10.3.B.8.e(1) and consider requiring use of three of the five proposed mechanisms.
 - Legally binding agreement to unbundle rent for parking spaces from leases of building space
 - Allowing a certain percentage of parking to be publicly available, say at least 30%, at times that are countercyclical to the property's peak generation (i.e. nights and weekends for office, daytime for residential and hotel)
- In addition to choosing three of the five (or two of the three, if the above two recommendations are not incorporated), we recommend that projects that use the mechanism in 10.3.B.8.e(1) also be required to submit a peak parking occupancy survey 18 months following certificate of occupancy, and every five years thereafter to the Planning Department or assign (such as a parking district). We believe that this type of data will be helpful in future years in establishing and maintaining parking districts, as well as optimizing the use of existing parking spaces.
- In addition to the provision in 10.3.B.8.3.e.1(c), which requires all street-facing, street-level portions of parking to be enabled to be converted to interior usable space in the future, we recommend providing an additional alternative that dedicates a strip of land 35-40 feet in width between the parking and the street to a public or non-profit land bank for affordable housing.
 - In this case, the parking deck should also be designed so that elevators and stairs within the deck could also be used by future affordable housing on the land banked site.
 - The dedication to the land bank should also entitle the developer or manager of the affordable housing to lease a certain number of spaces at a to-be-negotiated or set rate.
 - This mechanism could also be a part of the affordable housing density bonus program. For example, a project could obtain a density bonus for both dedication of land next to a parking deck, and a certain number of spaces within the parking deck.
- Allow a small portion (say 30-40%) of residential parking areas to serve as off-site parking for non-residential uses by including an exception for this type of sharing within design districts in section 10.3.C.1.h
- Allow on-street spaces to count towards the parking minimum for single and two family lots in CSD-S2 Districts in section 10.3.C.2.f

Public Space

We are generally supportive of increased public space requirements in the CSD Districts given that public space is a critical component in establishing new and retrofitted walkable, transit-supportive neighborhoods. We offer the following recommendations for your consideration to strengthen requirements and incentive structure with respect to the size, placement, and quality of public space.

- General Requirements: We recommend setting the public space requirement higher at 8% for CSD Districts and, to incentivize improved outcomes, allowing for a reduction in the public space requirements for developers which do one or more of the following:
 - Locate public space adjacent and connecting to a light rail station or across the street from a light rail station.
 - Locate public space adjacent and connected to public space on a neighboring property
- Projects could also be allowed to contribute 25% or 50% of the space in the form of a payment in lieu towards publicly-constructed public space within the compact neighborhood.
- Given the larger space requirement in the CSD Districts compared to the DD and CD Districts, we recommend allowing some additional flexibility with respect to the build-to-zone requirements - especially for CSD-C and CSD-S1. We recommend either
 - Allowing public space to be countable towards build-to-zone requirement - either fully or partially, or

- Allowing the build-to-zone to be applicable at the back edge of the public space, provided it does not exceed a certain maximum distance instead of 15-25 feet from the curb. This type of requirement could be beneficial for pocket plazas on street corners that may not be allowable as a part of a courtyard frontage.
- As an additional incentive to use the affordable housing density bonus, we recommend allowing qualifying projects to have a lower public space requirement, perhaps at 2-3% of land area.
- Finally, we recommend re-terming this section to "public space" to convey the heightened design and usability requirements that should be associated with such spaces in downtown, urban, and compact neighborhoods, and to distinguish it from unusable landscaped areas in parking lots, drainage swales, forested areas, and so on.

CSD – C Sub District Boundary

We recommend considering all parcels or portions of parcels within ¼ mile of the edge of the proposed light rail platform for inclusion within the CSD-C sub district. Both people who work and live within the quarter mile closest to a transit station have a higher propensity to use transit relative to people who live and work elsewhere in the station area. As an example, an employee whose job is ¼ mile away from a station are 50% more likely to take transit than is an employee whose job is ½ mile away from a station.² Accordingly, we believe that is important to extend the CSD-C sub district to these areas to maximize the amount of activity that occurs within a ¼ mile of the station. We also recognize the importance of and support transitions in urban form and building size between the core of the station area and the fringes, especially adjacent to sensitive natural features and existing lower density residential neighborhoods. To strike this balance, we recommend the following:

- Expand the area of CSD-C District to include to the portions parcels within ¼ mile of the station, where the majority of the parcel is within ¼ mile of the station.
- Apply a transitional intensity control that requires all portions of parcels within 400 feet, for instance, of a compact neighborhood tier boundary to abide by the intensity restrictions within the CSD-S1 District.
- Alternatively, parcels could be split zoned between the CSD-C District for portions of the parcel roughly within ¼ mile of the station and CSD-S1 District for portions of the parcel beyond the CSD-S1 District.

Additionally, given the opportunity for the Gateway and Patterson Place station areas to function as a single cohesive urban center, we believe that at such time the Danziger Drive complete street bridge that would connect the two station areas is funded, that properties between the existing proposed CSD-C sub district and I-40 along Mt. Moriah Road, McFarland Boulevard, and Danziger Drive should be evaluated for inclusion in the CSD-C sub district or perhaps a new sub district that allows an activity level somewhere between CSD-C and CSD-S1 to better support the creation of a cohesive urban center between the two stations. This type of approach of providing a street connection between discrete station areas and allowing additional transit-oriented density is proving successful in the retrofit of Perimeter Center, north of Atlanta, from an aging suburban edge city into a more walkable, transit-supportive urban environment. Perimeter Center was recently selected by State Farm for a regional headquarters with over 2 million square feet of office space³.

Affordable Housing

²Cervero, Robert. "Is the Half Mile the Right Standard for TODs?" *Access Magazine*. University of California. 2013. <http://www.accessmagazine.org/spring-2013/half-mile-circle-right-standard-tods/>

³ <http://www.georgiatrend.com/May-2015/Perimeter-Area-Business-Bulls-Eye/>

We commend The City and County's commitment to adjusting and testing the affordable housing density bonus to find the right mix of incentives to encourage developers to use it. We also acknowledge that amendments to the Affordable Housing Density bonus are not currently proposed. In that light and in the spirit of collaboration, we offer the ideas listed below, which we hope will be useful in the next round of adjustments to the program.

Primarily, we believe that the program should be transitioned away from a bonus based on the number of units and instead towards a bonus based on building massing requirements, among other related requirements. We believe that doing so would offer a greater incentive to use the program and fewer side effects when projects chose not use the program.

- Our concern is that a cap on the number of units sets up a perverse incentive structure. When faced with a low cap on the number of units, a developer must maximize the revenue that each unit produces in order to meet lender expectations to get a loan to build the project. This will result in the creation of fewer, larger, and most likely, more expensive units with higher sales prices or rents. Such a policy structure is counter-productive towards adopted goals of increasing the amount of both affordable and market rate units.
- Under a policy structure focused on massing and related requirements this perverse incentive does not exist. Instead, when faced with a cap on the maximum size of a building, in order to meet lender expectations, a developer must maximize the number of units. In effect, a developer who choses to not use the density bonus is instead incentivized to build more, smaller, and more likely less costly units, which is beneficial for both increasing the supply of market-rate units and creating smaller, more affordably-priced units.
- This type of policy structure would also lend itself to the creation of studio and one bedroom units, which could help address the mismatch between one person households and one bedroom units. As noted in the Expanding Housing Choices Report, there are approximately 18,000 more one person households than there are studio and one bedroom units in Durham County.⁴

We recommend the policy mechanisms, listed below, for consideration in inclusion in a density bonus program. We believe that these mechanisms should be in addition to height, but in lieu of a cap on the number of units. These mechanisms are discussed in more detail elsewhere in this memo.

- Reduced public space requirement
- Exemption from upper-story step-back requirements
- Reduced parking form and design requirements
- Reduced build-to-zone requirements in CSD-C and CSD-S1 districts
- Increased flexibility with respect to pedestrian passages, block sizes, and block length.

We are supportive of the City and County's goal to achieve affordability at 60% AMI in 15% of all units within the station area. We also acknowledge that the relatively high costs associated with new construction can make it difficult to achieve that level of affordability without public assistance or non-traditional financing. Focusing only on the onsite creation of new units may take options off of the table that developers may otherwise be willing to consider. This is especially true of rental projects, as lenders are often unwilling to take on both the additional cost and the additional uncertainty associated with requirements for below-market-rate units.

⁴ August 23, 2018 Expanding Housing Choices Presentation. Durham City/County Planning Department.
<https://durhamnc.gov/DocumentCenter/View/23567/Presentation>

To address this dynamic, we recommend evaluation of the contributions listed below to help address the cost differential to encourage developers to use the program. We recommend setting varying levels of height and massing bonuses based on the level of contribution. This incentive structure should be set up to reward developers commensurate with their level of contribution. Further, we recommend allowing developers to be able to choose multiple types of contributions to achieve some level of a height and massing bonus. We recommend consideration of the following types of contributions:

- Construction of offsite units*
- Payment-in-lieu*
- Dedication of land*
- Preservation of existing units, onsite or offsite*
- Dedication of parking spaces within a project's parking deck to support affordable housing. This contribution should be limited to when there is already a dedicated affordable housing site within 600 feet of the parking deck.

The benefit of many of these contributions is that they are either one-time or defined contributions. Lenders and project proformas may be more able to tolerate an extra cost provided that it is a defined contribution that does not add increased uncertainty to a project. A second benefit of these piecemeal contributions is that there is the potential for more affordable units overall compared to the project-by-project construction of onsite units. This is especially true if an affordable housing developer is able to combine previously dedicated land, parking, and payments-in-lieu with traditional funding mechanisms such as 4% tax credits, or non-traditional financing mechanisms such as an Opportunity Zone fund.

Comments by Ordinance Section

Section 4.9 - Major Transportation Corridor Buffer

We are supportive of removing buffer requirements within adopted design districts. We believe that the Urban Design and form requirements within the design districts will provide an appropriate interface with major transportation corridors. We also believe that allowing Architecture and Urban Design to provide this interface will heighten the marketability of the CSD Districts as regional destinations for office, retail, entertainment, and hospitality.

Section 5 – Use Table and Regulations

We believe that the proposed permitted and limited uses within the CSD District will enable the creation of compact, walkable neighborhoods that are supportive of transit.

Section 8.8 – Steep Slopes

We are supportive of the changes to the steep slopes ordinance to protect sensitive natural areas within and surrounding the Patterson Place Compact Neighborhood. Not only does this measure protect natural resources and view-sheds along the New Hope Creek corridor, it also encourages the development community to concentrate activity closer to transit facilities. We believe this measure will lend itself to creating a compact, walkable, transit-supportive community with good public access to preserved natural features. Further, we are supportive of the exemption of land disturbance for the purposes of improving public right of way for transportation facilities, such as streets and light rail lines, which are frequently required to negotiate hilly terrain in order to build out improvements to the transportation system.

* Existing mandatory density bonus programs in place in Chapel Hill, NC and Davidson, NC provide these options.

Section 10 – Parking

Please see above comments.

Section 16.1.3.D – Single-Family and Two-Family Subdivisions in CSD-S2

We support the inclusion of urban-scale single- and two-family building types to help provide an appropriate transition in density and urban design interface to adjoining neighborhoods.

- We are supportive of design standards requiring access from rear of lots and either a five foot minimum setback or forecourt frontage to create an urban streetscape.
- We recommend consideration of specifying a minimum side yard requirement of zero feet in addition to no minimum lot sizes. This would allow building code to govern separation between structures.

Section 16.1.E.3 – CSD District Density Requirements

Please see above comments.

Section 16.1.4 – CSD-S1 Transitional Use Area Major Special Use Permit

We are supportive of the Major Special Use Permit as an interim measure. As a longer-term alternative, we support working with property owners and other interested parties to refine the boundary of the compact neighborhood tier to be an appropriate, agreed-upon horizontal and/or vertical distance from the New Hope Creek floodplain. We see a substantial benefit in development regulations conveying a high degree of certainty and predictability by clearly delineating the areas for conservation and the areas for concentrating people and employment near transit.

16.2.1.A.1 – Build-To-Zone Measurement

We are supportive of the change to measure build-to-zone from back of right-of-way along freeways and similar facilities; we recommend a similar adjustment for rights-of-way or easements for light rail lines, except in cases where a multi-use path or wide sidewalk is provided within the light rail line or easement, provided that the light rail line easement is not contained within a right-of-way for a freight or inter-city passenger railroad track. Additionally, we see an opportunity to reduce the build-to-zone requirement by 10 to 20 percentage points, for instance, for projects that qualify for an affordable housing density bonus as an additional incentive for projects to use the bonus. This measure could be particularly advantageous for projects on irregularly shaped lots within the CSD-C and CSD-S1 districts.

16.2.4 – Open Space

Please see above comments

16.3.2 – Structured Parking

We recommend that all structured and podium parking on ground level and all above-grade floors be setback from the street-facing building façade line by 30 feet on street-facing facades. The effect of this standard would be to provide active building mass and facades along the street increasing both the building's visual interest and the amount of activity on the street. In the case where a parking structure serving a non-residential building is built along a street, a strip of land 35-40 feet wide could instead be dedicated for land banking for future affordable housing. In that case, the parking deck should be designed so that a future affordable housing project could use the elevators and stairs within the parking deck, in addition to the parking. Additionally, projects that include affordable housing should be exempt from this requirement.

16.3.3.C – Height

We recommend that projects using the affordable housing density bonus be exempt from step-back requirements in the CSD-C and CSD-S1 district as an additional means to incentivize affordable housing. From our perspective, the street-level form and function of the building are essential to ensuring walkability. While the upper level appearance of the building is more important for aesthetics, it does not substantively affect walkability. We see this as an opportunity to provide an additional incentive for affordable housing.

16.4.C.2 – Streetscape

We are supportive of the allowance for landscape stormwater control measures to be included as a part of the streetscape. We believe that this type of measure will enhance the quality of the public realm within the CSD Districts.

16.4.4 – Block Standards

We are supportive of the additional flexibility to these standards provided in section 16.4.4.C as redevelopment of suburban, auto-centric development comes with additional challenges related to dendritic, curvilinear street networks as well as non-rectangular parcelization patterns. However, we recommend setting an upper limit to this flexibility and establishing criteria under which projects could qualify for this flexibility.

Additionally, we recommend evaluation of the block standards, as well as the pedestrian passage standards in section 16.2.2, to determine if they could also be used to incentivize developers to use the affordable housing density bonus. Under such a mechanism, projects that do not use the affordable housing bonus could receive up to a 15% adjustment to the maximum block length and size, whereas projects that use the affordable housing bonus could receive up to a 30% adjustment, for instance. We also believe that a similar adjustment to the pedestrian passage requirement could be established for qualifying affordable housing density bonus projects. With established upper limits, we believe that this additional flexibility will allow for Patterson Place to transition to a compact, walkable, transit-supportive environment.

In conclusion, we are very supportive of the Planning Department's proposed Patterson Place Design District Zoning Regulations and accompanying rezonings. We are appreciative of the opportunity to provide comments and hope that you find these comments and suggestions helpful as the regulations are finalized and brought before the Planning Commission, City Council, and Board of County Commissioners. Please do not hesitate to follow up with questions. We are happy to provide any assistance that may be helpful as these amendments continue through the process.

Thank you again for the opportunity to provide this feedback, and we look forward to continued collaboration on these issues in the years to come.

Yours truly,

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