

Durham Planning Commission

April 9, 2019 Written Comments

Cases TC1800009 and Z1800030 (Patterson Place Compact Suburban Design District)

AL-TURK – I voted to recommend denial. I think many of the technical details in this proposed text amendment are good, and I commend the planning staff for the effort they have put into it. But I think there are some fundamental issues that should be resolved before an amendment like this is passed. I will focus on two, although there were other issues raised at the public hearing (e.g., the 200 foot TUA) that I will not directly address.

The first main concern I have is something that staff, only two months ago, did not really have to address: the discontinuation of the light rail project. With the light rail project now discontinued, I have a real concern with the logic (and boundaries) of the CSD sub-districts. As the map (attachment C) shows, there are three sub-districts whose boundaries are based on the proposed location of a light rail station. Now that there will be no station there, why should the map look the way it does? Some of the proposed policies (e.g., parking, massing, the affordable housing density bonus) have different requirements based on which sub-district a development would be in. And as I understood it, the logic of having a Core district that has different requirements from the support sub-districts is, in many ways, shaped by what we want to incentivize around a light rail station. For example, page 7 of the staff's memo indicates that the density bonus is set up in a way that would incentivize non-residential development in the Core sub-district (i.e., within about a quarter of a mile of a light rail station). Why keep the core where it is, if, say, new plans are drawn up in the near future that suggest that the center of public transit should be somewhere else in the area?

My second concern is related to the density bonus mentioned above. I am concerned that, while the density bonus has been devised in a way to try to encourage builders to use it in the S1 and S2 sub-districts, it will not do enough to encourage affordable housing in this area. As our materials show, the percentage of units in this compact neighborhood that are affordable to a household making less than 60 percent of AMI has, in just a few years, gone from around 30 percent to less than 8 percent. While there are many units affordable to those making less than 80 percent of AMI, I am concerned that a design district---with all of the commercial and office space that it will encourage---will simply make those housing units even less affordable. And an affordable housing density bonus that only would add 15 percent affordable units for those who use it (which will likely be a very small proportion) is unlikely to do much. I recognize that this is not something that only zoning can address, but I am concerned that the proposed text amendment will mostly incentivize commercial development and will make it that much more difficult to add affordable housing units along an important thoroughfare such as this one. Even if there is no light rail here, this will continue to be an important public transit area that needs more affordable units.

These two concerns were amplified for me when a resident and affordable housing advocate spoke at the public hearing and suggested that the Core sub-district be cut in about a third. He suggested that the eastern border of the Core be around Sayward, as to encourage developers to use the density bonus between Sayward and SW Durham Drive. I think this is a good, concrete suggestion, but it also highlights

a larger issue: with the light rail project discontinued, we should not rush this text amendment without a clearer understanding of what kinds of development this design district would incentivize.

I would urge the governing bodies to vote against this text amendment or, at the very least, delay it.

BRINE – The Patterson Place Compact Suburban Design (CSD) District is intended to be a node of intense development on the heavily traveled 15-501 corridor between Chapel Hill and Durham. During planning, it was also anticipated to be the location of a transit station on the light rail transit that was proposed to serve this corridor. While the collapse of the proposed light rail transit changes the picture, it is important that this CSD district remain in some form and that this corridor have some form of transit.

The proposed light rail transit was the second attempt at bringing light rail transit to this corridor. The first attempt collapsed in 1999 when federal funding was not secured. It is unknown if there will be a third attempt at light rail. There are two red flags concerning a third attempt. Firstly, it will be more expensive than the second attempt (unless our ambitions are greatly reduced). That is the impact of inflation. I therefore believe that an important requirement will be a NC General Assembly more favorably disposed than the present one toward light rail transit so that we return to the funding formula of 50% federal, 25% state and 25% local. Otherwise, I fear that the local funding portion will be too much of a financial burden, especially for the citizens of Durham. Secondly, because Duke has taken Erwin Road off the table as part of a light rail corridor, an alternative route needs to be found. Nearly 25 years ago some brief but inclusive discussions were held on this subject. (I was involved in one.) These discussions need to be held again. If no suitable alternative is found, light rail may not be the transit system that serves this corridor.

This introduction summarizes the conundrum which we face concerning the Patterson Place CSD District. Plan A is now defunct. Unfortunately we do not yet have a Plan B. At least in the near future, bus transit is probably the most likely remedy for the absence of light rail. But unknowns remain. Will the proposed rail station location function just as well as a bus station? Will there be more than one bus station at Patterson Place? Because Plan B may mean that changes need to be made to the present proposal, I think that it is premature to adopt the present proposal without knowing what effects Plan B will have. This is one reason I voted against the text amendment (TC180009), the zoning map change (Z1800030), and the proposed street layout (attachment F).

Because some alternative to rail transit will be needed to serve this CSD district, I think that the present district needs to be reduced in size. I believe that it is better to start small and have room to grow in the future. If we give away too much up front, it will likely be impossible to recover it later.

How do we reduce the size of the present CSD district? I think that New Hope Commons needs to be removed from the proposal. No one in their right mind is going to want to walk from New Hope Commons across 15-501 to Patterson Place, and if I remember correctly, two people have died trying. If 15-501 becomes a limited access highway, crossing it on foot will be even harder. Thus, in my opinion, New Hope Commons contributes nothing toward a walkable neighborhood centered on transit. Furthermore, any pedestrian crosswalks across 15-501 seem to be in the very distant future.

At the Commission's initial public hearing on this matter, the owners of New Hope Commons, through their attorney, asked to be removed from the CSD district. Now that light rail is off the table I think their arguments for being omitted are even stronger. It should also be remembered that the present

Patterson Place and New Hope Commons are quite different in design. The present Patterson Place was designed with transit in mind. New Hope Commons was not. New Hope Commons was designed for vehicular traffic, and I suspect that it will likely continue that way. To me it makes better sense to determine how alternatives to rail transit work at Patterson Place before attempting to retrofit an older shopping center not designed for transit.

I also concur with the view expressed by Dr. Healy on behalf of the New Hope Creek Corridor Advisory Committee that everything north of 15-501 should be removed from this CSD district. Although there is some danger in doing this, removing the rest of the area north of 15-501 does solve two problems. It removes the property where there is contention about the width of the TUA. It also removes one of the split parcels that is partly in but mostly out of the CSD district (Attachment G, parcel B). If the New Hope Creek Corridor Advisory Committee's suggestion is adopted, then 15-501 becomes the norther boundary of the Patterson Place CSD district. More-over, it would allow the TUA along the remainder of the New Hope Creek Corridor to be 300 feet as recommended by multiple environmental groups. I support the 300 foot TUA.

I also recommend further reducing the size of the proposed CSD district by removing the other split parcel (Attachment G, parcel A) that is also partly in but mostly out. With these reduction the Patterson Place CSD district will be more compact, it will be centered on a shopping center designed for transit, and it will be more easily served by alternatives to rail transit. My belief that the district as presently proposed is too large is another reason I voted against the proposal.

During our April public hearing an excellent argument was made for reducing the proposed Core area from Sayward Street eastward. I think that this reduction should be implemented, especially if we reduce the overall size of the CSD district. Once again I point out that if we give away too much in the beginning, we will most likely not get it back.

There are three other things which I did not like about the present proposal. I strongly disagree with removal of the MTC Overlay. I do not see anything that special about a design district that warrants removal of this important overlay. If the I-40, 15-501 interchange marks a gateway to Durham, I believe that the gateway will be a lot more attractive with the MTC Overlay in place.

I also concurred with Mr. Waldroup's comments concerning the proposed street layout and the block sizes.

Finally, regarding item 5.3.4.I, I do not agree with the idea that restaurants with drive-through lanes should not be allowed in the CSD district. If we allow drive-through lanes for banks and pharmacies, we are admitting that there will be some vehicular traffic present. Why deny these drivers the opportunity to acquire food *via* a drive-through lane as well? As the CSD district is likely to have a higher density of people (i.e., potential customers) location of a restaurant there seems logical. Allowing some to have a drive-through lane simply adds to the available choices. I note that two restaurants at the present Patterson Place (PDQ and Freddy's) have drive-through lanes that are pretty well concealed. I also note that while forbidding restaurants to have drive-through lanes may be reasonable in compact neighborhoods within the urban tier, this proposed compact neighborhood is in the suburban tier if that makes any difference.

Finally, I want to thank planning staff and all their collaborators for their efforts in putting together this proposal.

BUZBY – Following our initial review of the Patterson Place Compact Suburban Design District in February (which we continued for two cycles until this April meeting) my plan was to vote for this proposal. My plan would have included raising a few concerns that I would have liked to be changed.

However, between our February and April meetings the light rail project officially ended. In my opinion, although it pains me, is to urge that we hold off on approving this plan at least for a short period. This would allow us the ability to think about this plan and make any adjustments based on our evolving thinking, in a post-light rail world.

I recognize this recommendation is counter to staff's recommendation. I respect their work and opinion but believe a short pause would be wise, rather than rush into a decision that we would have to unwind, which may cause challenges that we regret.

GIBBS

- Retain 15-501 Roadway
- Take out New Hope Commons from CD

JOHNSON – Motion failed 5-6. I voted “not in favor”

My “No” vote for the proposed Patterson Place Compact Design District (PPCD) zoning changes is influenced in large part to the recent developments regarding the now-defunct Durham-CH light rail project. Prior to the April 2019 Planning Commission meeting, the expectation was that the light rail would be part of Durham's future transportation infrastructure and network. This is no longer the case, and as such with such uncertainty regarding what comes next, I am not convinced that proceeding ahead to adopt the proposed PPCD zoning changes is necessarily the best approach for Durham.

While few changes look to have been made to the PPCD proposal voted on during the April 2019 Planning Commission meeting compared to the prior consideration of the proposal, in which a continuance was voted favorable by the Commission. While I remain in favor of a 300 feet buffer rather than the current 200 feet mandate in the PPCD, this component does not warrant a deal breaker from my perspective. However, the implications of the less restrictive buffer area may pose adverse consequences and outcomes that we may not be aware of today – however, I cannot say what those outcomes will be.

The issue of particular concern to me is the maintaining of the central core land area for the proposed PPCD. This core location and its scale were largely based on the anticipated light rail station that was expected to be located within the Patterson Place boundaries. This is no longer the case, which makes my prior concern regarding starting out offering a lot regarding to the relative expansive size of the core and what's allowed in this defined space. As I started on public record during the April 2019 meeting, pulling back and taking things back once they have been granted tends to be a difficult, tenuous, and timely process. I experienced this reality during my eight years working on state tax policy issues and land-use planning issues seems to be a similar area of concern where this is likely the reality.

My preference would be to reduce the size of the proposed PPCD central core area, particularly given that Durham must now determine a path forward (hopefully) now that the light rail project is not a not-go. What do we lose as an overall Durham community by being more cautious with how the Patterson Place area builds out? A scaled-down central core better positions Durham (and the Planning Department) to learn from what takes place going forward and be more responsive, rather than

reactive, in our planning decisions. The PPCD proposal aims to accomplish multiple outcomes with the zoning changes – e.g., transit mobility, affordable housing, increased density, regional connectivity, etc. A more cautious approach seems to be the wise approach – particular given the latest development light rail developments and the sense of feeling the need to do something sooner rather than later now reduce to some degree.

KENCHEN – This is an excellent plan and I’m in favor of it. It’s not perfect, but is a solid step in the right direction. There are many variables and we don’t have all of the answers. However, this has enough positive elements for us to approve. For one, the affordable housing density bonus is one that deserves a chance. When we continued this case two months ago, we outlined three main concerns. Staff has taken the 60-day delay to address all of these concerns. We have a professional planning staff for a reason. When they put forth a very good plan that has the potential to move us forward, I am inclined to support it. Again, not perfect. However, it does move Durham forward.

MILLER – The City Council should not approve this text change and its attendant rezoning at this time. With the abandonment of the Durham-Orange Light Rail project, the policy basis for these changes has been significantly undermined and action on the changes should be rethought.

During the Planning Commission discussion of this case, I was very much persuaded by the remarks of Mr. Brine and Mr. Al-Turk. I commend their comments to the City Council. I am not persuaded by the staff’s argument that even without light rail we should create a Patterson Place design district anyway. Without light rail and without an identifiable serious, long term public transit alternative to light rail, concentration of high intensity development on the heavily congested Durham-Chapel Hill Boulevard seems to me to be more like urban guessing than urban planning. I realize that a great deal of work and resources have gone into developing this case, but given the fact that the circumstances and underlying assumptions are now are so very different than they were just two months ago, the expenditure of effort alone is insufficient to justify moving forward.

During the Commission’s consideration of the case I argued for approving a smaller, less intense version of the project. I argued that the portion of the proposed district on the north side of the Boulevard should be left out of the new design district. The owner of a significant portion of the north side (New Hope Commons) expressly asked to be left out. The remaining portion, developed and undeveloped, border the environmentally sensitive areas of the New Hope Creek corridor. Stakeholders in the area do not agree about the best way to protect the corridor. If we leave the northern portion out of the district, it is not necessary to resolve the stakeholder conflict. My own observation is that design districts should be walkable internally. Dividing a design district with a limited access, multi-lane, high speed highway is bad practice. Nothing could be less pedestrian friendly or walkable than crossing 15-501 on foot. Dividing a compact neighborhood tier or a design district with a major highway is inconsistent with our policy vision. The intent statement for compact neighborhoods in the UDO reads, “The Compact Design (CD) District is intended to encourage development of appropriate urban streetscape and form through bicycling, pedestrian, and transit-oriented development around light rail stations through various sub-districts similar to the Downtown Design District. Compact Design Districts are located within areas designated as “Design District” within Compact Neighborhood Tiers of the Durham Comprehensive Plan.” See UDO 4.5.1. Patterson Place as it is proposed by TC 1800009 and Z1800030 is inconsistent with what compact neighborhood planning is supposed to be about. There is no light rail. No alternative transit plan exists around which Patterson Place can be said to be oriented. Bisected by a major highway, the district is not bicycle or pedestrian friendly.

Further with regard to the northern portion of the proposed district, it is important to note that the proposed 200-ft transitional use area offers essentially no more protection for the environmentally sensitive New Hope Creek corridor than the protections in the existing zoning rules already provided. Existing rules protect most of the land within the proposed TUA with stream buffer and steep slope rules. A TUA itself is not a buffer, but an area that can be developed with a use permit. The standards proposed in the text amendment are legally faulty because they only require that a development proposal for the TUA “adequately address” a list of considerations. There is nothing to indicate what might be “adequate” or whether the considerations are things to be obtained or avoided as a matter of policy. Our courts have struck down as inadequate vague standards or standards which confer upon the quasi-judicial decision-maker essentially unfettered discretion in granting or denying a permit application. Here there is no stick against which “adequacy” might be measured. The sensitive area is currently zoned PDR-6 or so. It is better to leave the land zoned as it is with the zoning protections it currently has than to dramatically upzone to S-1 it with no additional protections. For these reasons, the northern portion of the proposed district, north of 15-501, should be removed from the district.

I also was persuaded by the suggestion of the spokesperson for the CAHT who recommended that in light of the fact that there will be no light rail serving Patterson Place, the Core area in the proposed district should be reduced by eliminating the portion east of the north-south line roughly formed by Sayward Road. He correctly pointed out that under the proposed text amendments, affordable housing, if it were to occur at all at Patterson Place, would most likely occur in the proposed S-1 subdistrict. From a housing point of view, it would better to have more S-1 and less core. I agree. When we rezone land to Core, essentially or most permissive zoning category, we give up all public control over its future development. We cannot bargain for design. We cannot bargain for open space, public conveniences, housing or any other thing. We created the concept of Compact neighborhood tiers and design districts to create densities of development necessary to justify federal funding of our ambitions for light rail. With light rail gone, why should we give away Core zoning with a city-initiated rezoning? Instead of the large core proposed in Z1800030, I would have supported a smaller core. If, in the future, some new concrete and viable transit alternative should emerge for Patterson place, we might expand the core. We should let a developer apply for an expanded core rezoning. A development plan can be appended to core zones just like any other. In that development plan the developer can commit to using the considerably enlarged housing density bonuses now permitted for Compact tiers. Would this not be a better way of proceeding?

My suggestion for a smaller Patterson Place Design District with a smaller core did not receive much support among my commission colleagues.

Before I finish my comments, I do want to note that the Patterson Place proposal does do something I approve of wholeheartedly. The proposed base development maximums for Core and S-1 were set purposefully low to make the incentive quality for affordable housing more attractive. Incentives do not work if the base rules already allow more than enough development potential to satiate the would-be developer. Here, the staff explained that they reduced the development potentials in the base zoning as low as they dared to go without alarming the federal evaluators of the proposed light rail project. Although I voted against Patterson Place as it is proposed at this time, this concept of adding stick to the carrot of incentives makes sense and should be applied as we continue to plan for greater densities, more people, and public transit.

MORGAN – We will need to continue to refine the plan. Even if this plan gets approved, there is enough content to develop this area.

My concern is the traffic is on 15-501 and how this would be affected. However, I do believe this area should have a plan and we should use this as a guide.