



Date: January 27, 2020

To: Wendell Davis, County Manager
Through: Jay Gibson, General Manager
From: Patrick O. Young, AICP, Planning Director
Subject: Unified Development Ordinance Text Amendment, Outdoor Lighting (TC1900002)

Summary

Text Amendment TC1900002 is a privately-initiated request to amend *Unified Development Ordinance* (UDO) paragraph 7.4.2B.2, Outdoor Lighting, Applicability. Currently, per paragraph 7.4.2B.2, outdoor lighting that is used exclusively for recreational activities, is at least 100 feet from residential uses, and is not illuminated during late hours¹ is exempt from the lighting standards set in place by Section 7.4. This amendment would allow lighting that operates during late hours to maintain its exemption from the standards of Section 7.4, provided that a minor special use permit (mSUP) is issued by the Durham City-County Board of Adjustment (BOA). Per the proposed text amendment, review criteria related to lighting (glare, traffic safety, economic effect, and compatibility with adjacent property) would have to be adequately addressed in the minor special use permit hearing. In addition to the minor special use permit, lighting that is illuminated during late hours would still have to be an exclusively recreational use and be at least 100 feet from residential uses to maintain its exemption from Section 7.4. Finally, even with the approval of a mSUP, the expansion of the allowable hours of illumination would be capped at 5:00 a.m. for Friday and Saturday, and 3:00 a.m. for Sunday through Thursday, and this expansion of hours of illumination would only be available to development on parcels in the Industrial (I), Industrial Light (IL), and Industrial Park (IP) zoning districts. See Attachment C for the proposed ordinance language.

Recommendation

That the Board of Commissioners approve the attached Ordinance to amend Article 7, Design Standards, 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.

¹ Late hours are defined per UDO 7.4.2B.2 as between 1:00am and 8:00am on Friday and Saturday and between 12:00am and 8am for all other days.

Background

Section 7.4 of the UDO creates standards to assure that “adequate exterior lighting is provided for nonresidential and multifamily developments to facilitate crime prevention, security, and safe passage, and that exterior lights be shielded so that the light cast beyond the property line does not exceed the limits in accordance with these standards.”² Specifically, these standards include a table of minimum and maximum intensity of light (measured in foot-candles) allowed at different parts of the site, height limitations for certain types of lighting, and requirements that lighting be oriented so as not to direct glare in a manner that may distract or interfere with the vision of drivers, among other standards.

Per paragraph 7.4.2, certain lighting is exempted from the standards and limitations described above. To secure this exemption, the lighting must:

1. Be used exclusively for recreational activities, concerts, plays, or other outdoor events open the public, and
2. Be located at least 100 feet from adjacent residential uses, and
3. Be shut off by midnight or 1:00am, for weekdays and Friday/Saturday nights, respectively, (except in the UC, UC-2 zoning districts or Downtown Tier, where there is no hour of operation limitation)

This item was presented to the Joint City-County Planning Committee (JCCPC) on October 2, 2019. The JCCPC did not raise issue or concern with the proposed text amendment.

The Planning Commission recommended approval, 9-4, of the text amendment on November 12, 2019. 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.

After presenting this item to the Planning Commission on November 12, and per guidance from the Planning Commission, the applicant submitted via email (See attachment A, dated December 3, 2019) a revised version of the text that limits the applicability of this change to only the IP, IL, and I zoning districts, and puts a limit on the allowable expansion of the hours of illumination. The material provided by the applicant via email was then used by staff to generate the final text amendment format – which was approved by the applicant. The proposed text is in Attachment C.

Finally, a typo was found in the establishment of the dates and times that constitute late hours in paragraph 7.4.2B.2. This typo has been corrected by removing the word “Friday” (replaced with “weekday hours”) and including the word “Sunday” – See Attachment C.

² Per UDO 7.4.1

Issues

In a scenario where development is exempt from standards and limitations related to lighting intensity, direction, and height, the unique characteristics of the proposed development site and adjacent development are particularly important and may vary on a case-by-case basis.

The issuance of a minor special use permit requires that the Board of Adjustment (BOA) make a number of findings specific to the development in question. In this way, the minor special use permit process is well suited to assess specific impacts (in this case, lighting) for the unique characteristics of a site such as topography, impact on adjacent development, and impact on adjacent drivers. Specifically, to issue a minor special use permit, the BOA must find that the use:

- Is in harmony with the area and not substantially injurious to the value of properties in the general vicinity;
- Is in conformance with all special requirements applicable to the use;
- Will not adversely affect the health or safety of the public; and
- Will adequately address the review factors identified below.

There are fourteen review factors that must be addressed. A number of them specifically relate to potential impacts from lighting, and are listed below:

- Lighting – Location of exterior lighting with reference to glare, traffic safety, economic effect and compatibility in the area
- Effect on Nearby Properties – Effects of the proposed use on nearby properties, including, but not limited to, the effects of noise, odor, lighting, and traffic.
- Compatibility - The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties.

Overall, the minor special use permit process is an appropriate avenue for assessing unique and individualized development issues, such as lighting for a particular site. Via the special use permit process, concerns related to lighting for a particular development could be assessed in a transparent and evidence-based manner. Even with the adoption of this amendment, and subsequent issuance of a minor special use permit, lighting exempt from Section 7.4. would still be required to conform to basic land use protections like the 100-foot residential setback. The most recent change made by the applicant to this proposed language would further reduce the scope of impact – only allowing the opportunity to expand the hours of illumination with approval of a minor special use permit for a few additional hours, and only within three zoning districts.

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

The initiation application (Attachment C) includes justification for the amendment based upon the *Comprehensive Plan*, and in regards to reasonableness and in the public interest. Although the *Comprehensive Plan* does not include any policies specifically relating to nonresidential

lighting, this text amendment does not conflict with any of the *Comprehensive Plan* goals or policies.

Staff Contact

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Attachments

Attachment A: TC1900002 Application

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

Attachment C: An Ordinance to Amend the *Unified Development Ordinance* Regarding Outdoor Lighting (TC1900002)

Attachment D: Planning Commission Comments