



Date: July 13, 2020

To: Wendell Davis, County Manager
Through: Jay Gibson, General Manager
From: Patrick O. Young, AICP, Planning Director
Subject: *Unified Development Ordinance* Text Amendment, Omnibus Changes 14 (TC1900006)

Summary

Text amendment TC1900006 includes technical revisions and minor policy changes to various provisions of the Unified Development Ordinance (UDO). The amendments are identified as necessary corrections, clarifications, re-organization, or other minor changes to clarify the intent of the regulations or codify interpretations of regulations, or reflect minor policy changes, some of which are not solely technical in nature. Additionally, amendments are proposed to specifically address recent state legislation enacted during the 2019 General Assembly session.

Recommendation

That the Durham County Board of Commissioners approve the attached Ordinance to amend Article 1, General; Article 2, Review Authority; Article 3, Applications and Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping and Buffering; Article 10, Parking and Loading;; Article 12, Infrastructure and Public Improvements; Article 14, Nonconformities; Article 15, Enforcement; Article 16, Design Districts, and Article 17, Definitions, of the *Unified Development Ordinance*; and approve a consistency statement declaring the request consistent 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

Thirteen comprehensive technical and minor policy change text amendments since the UDO took effect on January 1, 2006. In each case, both governing bodies adopted the proposed text amendment. This text amendment would continue the practice of making comprehensive technical and other minor policy revisions to the UDO as necessary.

The Joint City-County Planning Committee (JCCPC) was presented with a draft for review and comment on February 5, 2020. Concurrent with JCCPC review, other city and county departments, including respective Attorney's offices, reviewed proposed text changes prior to initiating the public hearing process. The Planning Commission held its public hearing on March 10, 2020, and recommended approval 12-0, including a request for staff to consider revising the terminology used for "administrative withdrawals." 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 based on comments received at the public hearing and the information in the staff report. The Durham City Council approved this amendment at its June 15, 2020, meeting.

Issues

The proposed amendments are listed in Attachment A to this document, with a summary as follows:

Part 1: Amendments to Sec. 12.11, Performance Guarantees, due to Session Law 2019-79.

As described in the ordinance, a performance guarantee is a surety or other financial guarantee provided by an applicant to the city or county to cover the costs of certain required development improvements and infrastructure. Provisions for such guarantees are regulated by state law. Session law 2019-79 included amendments to such state laws. The proposed text amendments reflect these changes, including allowances for projects requiring multiple guarantees; and technical changes regarding the amount of guarantees, timing of a guarantee, and extensions for a guarantee.

Part 2: Amendments due to Session Law 2019-111.

Session law 2019-111 contains two sets, or sections, of amendments to state statutes. The first section includes numerous regulatory reform changes to a variety of different statutes related to land use. The second section implements, effective January 1, 2021, the consolidation of the numerous separate city and county land use, housing, and building regulatory statutes into one, new consolidated legislative chapter- "*Chapter 160D – Local Planning and Development Regulation.*"

The proposed amendments are related to the first section of the session law. Once the 160D statute is reconciled with any necessary legislative changes next spring (as the legislation anticipates), staff will review and submit necessary amendments to comply with the 160D legislation.

The following amendments are proposed:

- Revise the time period for applications to remain active without a response to comments, from 90 days to six months. The 30-day time period is maintained for applications responding to a notice of violation.
- Added text regarding the authority to initiate a "downzoning" zoning map change.
- Added text regarding appeals of an administrative decision and special use permits.

Part 3: Amendments due to Session Laws 2019-131 and 2019-174.

- Session law 2019-131 prohibits municipalities from regulating the use of off-site wastewater systems or other similar systems approved by the state. The proposed amendments clarify that any regulation of such systems apply only to the county.
- Session law 2019-174 specifies when electric transmission lines are not required to be placed underground. The proposed amendments to paragraph 12.9.1, Installation, reflect this limitation.

Part 4: Additional proposed amendments not specifically related to state legislative changes.

- Article 2, Review Authority
 - Technical correction the governing bodies powers and duties, deleting the reference to the Evaluation and Assessment Report, and replacing it with the “Rectification Report.”
- Article 3, Applications and Permits
 - Revise notification requirements for “initial zonings” to be consistent with other zoning map changes (increasing notification distance to 600 feet)
 - Add clarification text indicating properties are “adjacent” even if separated by intervening streets and other transportation corridors. This is consistent for new statutory requirements for zoning map changes due to the 160D enabling legislation approved in SL2019-111.
 - Clarify coordination of the Future Land Use Map with zoning map changes, and removal of the requirement of a separate, concurrent future land use map amendment.
 - Remove the strict prohibition on approving zoning map changes inconsistent with the Comprehensive Plan with text requiring consideration of how the Plan is consistent with a zoning map change request.
 - Remove an erroneous standard for expedited review related to text amendments.
- Article 4, Zoning Districts
 - Add references to Compact Suburban Design districts to the zoning district table
- Article 5, Use Regulations.
 - Add references to use limitations to residential uses in the use table. Some of the references are for recently enacted expansions of different housing types through Expanding Housing Choices. These references do not add any additional allowances.
 - Add a limited allowance for places of worship that have a special use permit to expand, consistent with allowances already in place for schools and government facilities.
 - Correction of a diagram for accessory dwelling units. This correction does not modify any allowance.
- Article 6, District Intensity Standards.
 - Correct the dimensional standards table to remove a density reference for Small Lots in RS-20, and to add additional text clarifying the prohibition of the Small Lot option in RS-20. This aligns with the current prohibition in RS-20, enacted with Expanding Housing Choices.
 - Revise “site area” to “lot area” for height standards for the SRP, IL, and I districts, for consistency of terminology used throughout the section.
 - Add an allowance for non-enclosed, covered porches to encroachment into street and rear yards.
 - Clarify the calculation of density, which was recently adopted through Expanding Housing Choices. This removes ambiguity and is consistent the intent of the standard.
Note: additional modifications for clarity are proposed as discussed below.
- Article 7, Design Standards.
 - Remove erroneous text “*Note: “*” denotes (Suburban Tier/Urban Tier)*” in the zero lot line development standards table.

- Add clarifying text regarding the allowance of the Small Lot Option for certain housing types, enacted through Expanding Housing Choices. This does not change any allowance, and reinforces the additional requirements for the small lot option.
- Remove an erroneous diagram for the Attached House housing type.
- Add “*” for RS-20 development standards in tables for Attached House and Duplex housing types. The “*” indicates a difference between the Suburban and Urban tier standard in the table.
- Clarify the distinction between the Multiplex and Apartment housing types by specifying that apartments contain five or more units, whereas a multiplex is three or four units.
- Clarify minimum dimensional standards for open space. The JCCPC asked about allowing instances of smaller dimensions, but since open space is generally amorphous it would be difficult to regulate on a consistent basis. Additionally, the minimum requirement is already nominal.
- Modify stormwater management and associated features that qualify as open space.
- Article 8, Environmental Protection
 - Clarify text regarding construction in tree coverage areas and specimen tree surveys.
 - Clarify references to the CSD district in steep slope protection standards.
- Article 9, Landscaping and Buffering
 - Remove the allowance for a minor special use permit for additional fence height, and add additional height allowance for fences along street sides yards on corner lots. Requests for additional fence height along the street side of a corner lot are the most common and are generally granted for six feet. Allowing this height for street side yards addresses this common request and approval, and thus a use permit would not be a needed option. A variance to the height allowances can still be sought.
 - Clarify diagram regarding fences in sight distance triangles.
- Article 10, Parking and Loading
 - Add text expanding the “change of use” exemption for required parking. This allows more flexibility for reusing existing buildings.
 - Add text allowing for additional reduced parking through specific by-right provisions, and adding a new parking reduction allowance for tree preservation or planting. This allows more trade-off opportunities for parking reductions.
 - Remove redundant handicap accessible parking standards with Building Code, and add specific on-site handicap accessible parking requirement.
- Article 12, Infrastructure and Public Improvements
 - Add clarifying text related to ingress/egress access to lots, recognizing that in certain ordinance provisions require access easements such as the Attached House housing type and the Small Lot option.
 - Remove text related to agricultural exemptions for a land disturbance permit. The Sedimentation Control Commission (SCC), from whom the county gets its locally delegated authority for its erosion control program, approved the UDO amendments adopted last fall *contingent* upon removal of paragraph 12.10.2A.3b. The SCC did not approve of not allowing the assumption of an agricultural exemption or that the regulation required proof of continual agricultural activity. They also expressed concerns about enforcement of these requirements.

- Article 14, Nonconformities
 - Add a limited grandfathering provision for existing buildings or uses that normally would require a special use permit, allowing for a limited amount of by-right expansion. This is adapted from the previous Merged Zoning Ordinance.
 - Re-organize nonconforming lot requirements, and clarify the prohibition for structures in the regulated floodplain.
- Article 15, Enforcement
 - Technical corrections to Sedimentation and Erosion Control standards.
- Article 16, Design Districts
 - Add no rear yard requirement subdivisions in CSD-S2.
 - Re-organize and clarify Required open space standards.
 - Add reference to other utility poles for streetscape construction specifications.
- Article 17, Definitions
 - Add abbreviation references for the Compact Suburban Design District.
 - Revise definition for “Agricultural Uses”; add a definition for “campground.” The JCCPC inquired about the temporary occupancy provision and the ability to regulate tenure. This was deemed not an issue since campgrounds are a commercial use (Outdoor Activity), not a residential use.
- **Subsequent to the Planning Commission hearing**
 - As requested by the Planning Commission, staff included additional amendments to revise the term “withdrawal” or “administrative withdrawal” when an application is voided due to applicant inaction. Amended text is in:
 - New paragraph 3.2.4G, Active Application Time Period.
 - Paragraph 3.5.7, Deferral and Withdrawal of an Application for Zoning Map Change.
 - Additional modifications to the Planning Commission version are proposed for clarity or other technical purposes:
 - Paragraph 1.10.3, Timely Submission of Information, to conform with the six-month allowance established in SL2019-111 and consistent with other similar amended text.
 - Relocation of proposed text from paragraph 3.4.1 to 3.4.2, including new associated paragraph titles in paragraph 3.4.2.
 - In paragraph 6.12.3, Required Yards, a minimum setback of five feet is added to the allowed encroachments for uncovered porches; and
 - In paragraph 6.12.4, Density, “Calculation of Density” is reworded, including a change in title to “Number of Units allowed.” As mentioned above, this clarifies the regulation and does not change the intent.
 - In the definition of “agricultural uses”, text is added to exempt the definition to allowed domesticated chickens per Sec. 5.4, Accessory Uses and Structures, to maintain the intent of the deleted text.

Consistency with the *Comprehensive Plan*; Reasonableness and in the Public Interest. The purpose of this and similar text amendments that have preceded this one is to update, clarify, and implement minor changes to a significant regulatory tool (the UDO) that implements various development policies found within the *Comprehensive Plan*; a reasonable undertaking and in the public interest. Additionally, certain proposed amendments maintain compliance with state

enabling legislation, also reasonable and within the public interest. Ultimately, the amendments are intended to further the *Durham Comprehensive Plan Vision*, which states:

- “Promote the creation, enhancement and sustainability of a healthy, livable, safe and beautiful community for all Durham citizens.
- Promote a range of choices in transportation, education, housing and economic opportunities to effectively serve a diverse community.
- Promote the identity of our distinct neighborhoods by encouraging design elements and public facilities appropriate to the character of each area.
- Protect our historic heritage, open spaces and natural resources.
- Provide opportunities for high quality growth and development.”

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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 Various Provisions of the Unified Development Ordinance (TC1900006)

Attachment C: Planning Commission comments