



Date: March 12, 2019

To: Members of the Durham Planning Commission

Through: Patrick O. Young, AICP, Planning Director

From: Michael Stock, AICP, Senior Planner and Hannah Jacobson, AICP, Senior Planner

Subject: *Unified Development Ordinance* Text Amendment, Expanding Housing Choices (TC1800007)

Summary

Text amendment TC1800007 (Attachment A) includes amendments to the Unified Development Ordinance that would increase the variety of allowed housing choices and allow for more density in a context-sensitive manner predominantly within, but not completely limited to, the Urban Tier. Proposed revisions include expanding the allowance of duplexes, additional opportunities for reducing lot dimensional standards, increasing the opportunities for accessory dwelling units, modifications to residential infill standards, and modifications to other associated standards. These revisions are put forward for consideration after outreach performed throughout the summer and fall of 2018, including attending summer events, meetings with various stakeholder groups, meetings with housing practitioners, community surveys, open house events, and work session presentations to City Council and the Board of Commissioners.

Recommendation

The staff recommends approval.

Background

Fast-paced population growth, limited availability of developable tracts, and a renewed preference for in-town living has led to a housing availability, attainability and affordability challenge in Durham. Over time, zoning rules have restricted development in many neighborhoods almost exclusively to single-family dwellings, eliminating many of the varied small-scale and often more affordable housing options that once existed. This project proposes ways to revise current zoning regulations with the aspirational goals of expanding the choices that people have when it comes to housing types and stabilizing housing prices over the long term. See Attachment B for a review of scholarly articles, journalism and opinion pieces that have informed the policy direction of this project.

Beginning in spring 2018 the Planning Department convened a group of affordable and market-rate housing practitioners (“practitioners’ panel”) to advise staff of the particular challenges

they face in building a diversity of housing options at a range of price-points. Common themes that emerged from these meetings included:

- Restrictive zoning districts. Many zoning districts simply do not allow housing types other than single-family, require large tracts of land that are increasingly expensive and rare, and require too much parking;
- Cost of land, labor, construction materials; and
- Cost of compliance with City regulation, including stormwater control measures, connection fees, commercial building codes, and roadway build-out.

To measure public opinion and concerns regarding expanding housing choices in general, and certain housing types more specifically, a questionnaire was released and made available from June 15 through August 15. The questionnaire was advertised through the City and the County Public Affairs' Offices. In an effort to collect broader participation, Planning staff attended several events throughout the summer, including the Rock the Park concert series, the Durham Farmers' Market, and the Latino Festival. Flyers were also distributed through the Police Department during National Night Out events. Over 1,300 people participated in the survey. The results are summarized in Attachment C.

Based on input from the practitioners' group, results of the questionnaire, and best practices from across the country (Attachment D), staff compiled information regarding concepts for how to amend the UDO in order to allow for a greater variety of housing choices in a context-sensitive manner. These concepts were presented to the City Council and Board of Commissioners at their work sessions in August and September, respectively. Presentations were also made to groups such as the Inter-Neighborhood Council (INC), the Coalition for Affordable Housing and Transit (CAHT), the Triangle J Council of Government's (TJCOG) Housing Practitioners' quarterly meeting, and the Planning Department's practitioners' panel. After receiving positive feedback from those work sessions, staff began developing specific revisions to the current regulations.

A public "Discussion Draft" was made available in late November. Planning staff hosted two in-person open house meetings and created an "online" open house for people unable to attend the meetings held at City Hall. A questionnaire seeking input and feedback on the "Discussion Draft" was available online from November 26th thru January 28th. Attachment E summarizes the results of the questionnaire. Presentations summarizing the "Discussion Draft" were provided to the City Council and Board of Commissioners at their work sessions in December 2018 and January 2019, respectively, and as an informational item for Planning Commission on January 3, 2019.

Representatives from the Planning Department have been available to meet (and continue to meet) with neighborhoods, groups or individuals seeking additional information. A complete list of public outreach events can be found in Attachment F.

On February 25th, Planning staff released the Proposed Expanding Housing Choices UDO Text Amendments (Attachment A). The draft reflects several modifications based on the insightful and constructive feedback of many stakeholders. Attachments G-J document the changes that have been incorporated into the Planning Commission draft. Additional detail for each of the central proposals can be found in the following attachments:

- **Accessory Dwelling Units (ADUs):** Modify UDO regulations to increase viability for more properties (Attachment G).
- **Duplexes:** Allow duplexes as a housing type in more locations, especially within the Urban Tier (Attachment H).
- **Density and Lot Dimensions:** Allow opportunities for smaller lot sizes and increased density limits, while prescribing additional standards and limitations, to allow more and varied opportunities for small-scale infill (Attachment I).
- **Infill Standards:** Modify residential infill standards to promote more context-sensitive development (Attachment J).

Issues and Analysis

Growth Management, Equity, Incrementalism, Environmental Impact and Community Character are discussed below.

Growth Management

Durham County is projected to grow by 160,000 people by 2045. In order to accommodate that level of growth, an additional 2,000 dwelling units will be needed county-wide every year. Planning for where that growth occurs is an emphasis for the Planning Department. Research suggests (see Appendix B) that promoting a denser pattern of development in areas closer and more connected to jobs and services and more easily served by existing infrastructure, can reduce our carbon footprint and be a more fiscally sound pattern of growth. Diminishing availability of developable and serviceable land on the fringes of the City means that some amount of new growth will need to be accommodated through dense redevelopment (“growing up”), or through incremental infill of existing neighborhoods (“growing in”). EHC addresses strategies for how to “grow in”, particularly in the Urban Tier.

Every four years the Durham Chapel Hill Carrboro Metropolitan Planning Organization (DCHC MPO) completes a Metropolitan Transportation Plan (MTP) to help guide federal, state, and local transportation investments. It uses a land use model with data inputs from the adopted Comprehensive Plan and Future Land Use Map to inform where future growth is likely to occur in order to prioritize transportation projects. It also provides a benchmark of where growth needs to occur in order to accommodate additional households and jobs. As the table below shows, the Urban Tier is expected to absorb approximately 15 percent of new dwelling units by 2045 (approximately 9,500 units total or 300 annually) in order to accommodate new growth. Efforts to increase density like EHC are needed in order to meet these benchmarks. Over the last ten years, building permits show only an average of 94 dwelling units per year were built in the Urban Tier.

Projected New Dwelling Units by 2045		
Tier	Dwelling Units	Percentage of Growth
Rural	30	0.05%
Suburban	32,366	51.72%
Urban	9,510	15.20%
Downtown	5,732	9.16%
Compact	14,941	23.88%

Equity

As urban planners today, we recognize that zoning has had a historical role in perpetuating segregation, economic exclusion and the disparity of outcomes for multiple generations of Durham residents. In many instances, current zoning is a legacy of the past. While we are still learning and uncovering the role of institutionalized systems, like zoning, have had on these disparities, several recent resources have helped to illuminate our understanding:

- *The Color of Law*. A Forgotten History of How Our Government Segregated America. Richard Rothstein. 2017. A seminal book that details how segregation today is the byproduct of explicit government policies at the local, state and federal levels.
- Uneven Ground. Bull City 150. https://www.bulldcity150.org/uneven_ground/ A website/exhibit that presents major historical themes in the story of housing and land in Durham, underscoring the role of both race and class, from the time of colonial settlers through the 1960s. This work unearths how disparities today in Durham are rooted in institutional racism.
- *The role of racial bias in exclusionary zoning: The case of Durham, North Carolina, 1945-2014*. Economy and Space. Andrew Whittemore. <https://journals.sagepub.com/doi/abs/10.1177/0308518X18755144>
A detailed analysis of all rezoning cases in Durham between 1945 and 2014 concluded:
 - a. Downzonings occurred in areas that were significantly Whiter but not significantly higher-income or with significantly higher homeownership rates than average,
 - b. That denied upzonings occurred in areas that were significantly Whiter and with significantly higher homeownership rates but not significantly higher-income than average, and
 - c. That both downzonings and denied upzonings occurred in areas that were significantly Whiter but not with significantly higher incomes or higher homeownership rates than the areas where upzonings took place.

Whittemore's findings suggest that other possible drivers of exclusionary zoning practices (higher incomes and higher homeownerhip rates) offer less likely explanations than racial prejudice in causing exclusionary practices prior to 1985 in Durham.

Moving forward, we are called to be more mindful about how zoning rules may or may not be applied in ways that influence equity. In conversations we have had with individuals and communities three main threads that relate to equity have surfaced: Affordable Housing, Economic Displacement and Teardowns.

Affordable Housing for Low Income Households. We agree that stand-alone zoning strategies will not be a silver-bullet solution for the production of housing that is truly affordable for low-income households earning less than 60 percent AMI. Fortunately, the EHC initiative is not standing alone. The City's Department of Community Development is aggressively leveraging federal grant money, local tax dollars dedicated to housing, institutional relationships, publicly owned land, and a proposed \$95 million affordable housing bond to implement Durham's 2016-2021 Affordable Housing Goals.

While the net cast by EHC is intentionally large in order to begin to stabilize prices of all housing, it does help developers of Affordable Housing on a site by site basis. Using the Affordable Housing Density Bonus, developers like Habitat for Humanity or the Durham Community Land Trust will be able to yield more units on the limited land they have through increased site design flexibility, reduced parking requirements, and increased density. The illustrative development scenarios in Appendix K demonstrate how projects built under the proposed rules and the Affordable Housing Density Bonus might increase the production of affordable units.

Economic Displacement. People moving to Durham bring on average over \$10,000 more in annual income than the average current Durhamite – making new residents better able to compete for scarcer housing opportunities than existing Durham residents. We see this happening all over the city, but particularly in central neighborhoods. If someone moving from Boston or San Francisco, where incomes are higher and real estate is worth more, cannot find a home to buy in Trinity Park or Watts Hillandale, for example, they might look to Walltown or East Durham where they can outbid middle income homebuyers and invest money in repairs, remodels and additions. In situations with limited availability of housing, upper income buyers will outbid middle income buyers, and middle income buyers will outbid low income buyers. This phenomenon of economic displacement leaves the fewest choices for those at the bottom of the income spectrum. Strict single-family zoning rules that limit housing opportunities in the most in-demand neighborhoods can send the dominos into motion.

An aspirational goal of EHC is to make it *possible* (legal under the zoning ordinance) to build market rate housing for middle income households, which in turn, may reduce economic displacement of low income households. Along with the increasing cost of

labor and construction materials, zoning rules that require large lots (land is increasingly expensive) and limit housing types make it very challenging to build a housing unit that is market-rate affordable for middle income home buyers. While developers will still build luxury housing (if the market demands it), EHC aims to make it *economically possible* to build for middle income households by allowing smaller lots, more housing types, and more flexibility with accessory units.

An additional policy goal behind the proposals for Accessory Dwelling Units (ADUs) and the option to subdivide to a small flag lot is to help existing homeowners who are ‘land rich’ but ‘cash poor’. Building an ADU can provide rental income to help with mortgage payments or tax bills, but can also be a complex and expensive process. Simplifying the approval process and providing access to financing mechanisms for middle and low income households is a logical next step. Subdividing the backyard into a separate flag lot for a small house is an alternative to building an ADU and could offer the existing homeowner an opportunity to access equity they have tied up in the land, allowing them to stay in place.

Additional programs should also be developed to better inform current residents of their rights as homeowners, and help understand the value of their property. Speculators currently send out letters offering cash for a home (many Planning staff receive letters a few times a year, at a minimum), and this can appear as an attractive offer (especially to low and moderate income households). The Community Development Department is currently investigating programs to provide aid and advice to homeowners in order to make informed decisions about their property. This is a needed service whether or not the proposed revisions are adopted.

Teardowns. As we have seen, the high demand for housing in Durham, especially in our in town neighborhoods, has led to teardowns and conversions of previously affordable housing to new, less-affordable housing. People often say that teardowns change the “character” of the neighborhood, sometimes referring to the diversity of people, and sometimes referring to the physical characteristics of the neighborhood (building height, bulk, rhythm, aesthetic). Market forces outside of our control are creating the pressure for teardowns, and they will likely continue to happen with or without the zoning changes introduced by EHC.

Today, if a home is torn down, in many zoning districts the only building that can be rebuilt is a single family house, which will likely be much larger and more expensive than what it replaced. By allowing duplexes and providing options for small houses, EHC would make it possible to replace that one unit with more units, which would be smaller and less expensive on a per unit basis.

An important component of EHC is to address some neighborhood concerns that homes rebuilt after a teardown are “out of character” with the existing neighborhood. Mostly, that new houses are too big, too bulky, and do not preserve canopy trees. When

Planning staff talks about “character” we often mean elements of the built environmental that contribute to the basic feel of a street: the rhythm of buildings and lots, setbacks, bulk, height, trees, parking, etc. To address these concerns, EHC proposes:

- Limits to building coverage,
- Limitations on impervious area used for driveways, and
- Additional trees

Planning staff has heard a lot of concern about this issue, and so we have attempted to calibrate the recommendations to allow for only an incremental increase of density, but not to the degree that it would make it economically advantageous to teardown an existing house. Monitoring metrics are being put in place to track the impact these regulations have on teardowns (both numerically and geographically). Planning will continue to monitor trends to ensure these proposed regulations are not having unintended or negative consequences.

Incrementalism and Infill

The intent behind EHC is to allow an additional increment of density and development over what is currently allowed under existing zoning rules. An incremental approach both minimizes the risk of teardowns and can be less disruptive to the neighborhood character.

Illustrative Development Scenarios (Attachment K) were created in order to help conceptualize and visualize the maximum extent of change the proposed recommendations could have after applying limits to permitted uses, density, lot area and lot width. Proposed maximum height and building coverage are not taken into consideration in this analysis, but are additional limitations to development.

The scenarios demonstrate an incremental intensification. The table below offers a summary of the maximum that can be built under current standards in the UDO versus what is proposed under EHC. In most scenarios, one (1) additional unit can be accommodated using the proposed standards; however, additional units are allowed for developers providing affordable housing via the Affordable Housing Density Bonus (UDO Section 6.6), as can be seen in Attachment K.

RU-5				
	Maximum under Current Standards	Total Units	Maximum under Proposed Standards	Total Units
5,000 SF Lot (50' x 100')	1 Single Family; 1 ADU	2	1 Duplex	2
7,500 SF Lot (50' x 150')	1 Single Family; 1 ADU	2	1 Single Family; 1 ADU; 1 Narrow Pole Flag Lot	3
15,000 SF Lot (75' x 200')	2 Single Family; 2 ADU	4	2 Single Family; 2 ADU; 1 Narrow Pole Flag Lot	5

RU-5(2)				
	Maximum under Current Standards	Total Units	Maximum under Proposed Standards	Total Units
5,000 SF Lot (50' x 100')	1 Single Family; 1 ADU	2	1 Duplex	2
7,500 SF Lot (50' x 150')	1 Duplex	2	1 Single Family; 1 ADU; 1 Narrow Pole Flag Lot	3
15,000 SF Lot (75' x 200')	2 Single Family; 2 ADU	4	2 Single Family; 2 ADU; 1 Narrow Pole Flag Lot	5

RS-8 (Urban Tier)				
	Maximum under Current Standards	Total Units	Maximum under Proposed Standards	Total Units
5,000 SF Lot (50' x 100')	1 Single Family	1	1 Duplex	2
7,500 SF Lot (50' x 150')	1 Single Family	1	1 Duplex	2
15,000 SF Lot (75' x 200')	1 Single Family; 1 ADU	2	2 Single Family; 2 ADU	4

RS-10 (Urban Tier)				
	Maximum under Current Standards	Total Units	Maximum under Proposed Standards	Total Units
5,000 SF Lot (50' x 100')	1 Single Family	1	1 Duplex	2
7,500 SF Lot (50' x 150')	1 Single Family	1	1 Duplex	2
15,000 SF Lot (75' x 200')	1 Single Family; 1 ADU	2	3 units (single family or duplex in any combination) limited to 1200 SF	3

Environmental Impacts

Multiple stakeholders have raised concerns about the environmental impact of adding additional density in the Urban Tier. Major issues raised include the impact to the tree canopy and the addition of impervious surfaces leading to stormwater runoff and flooding.

Impact to tree canopy. A tradeoff to adding additional housing in existing neighborhoods is the potential loss of trees. The urban canopy serves many purposes, from providing habitat, to reducing the urban heat island, to helping to define the character of neighborhoods. Even without adding additional housing units, the tree canopy faces looming challenges. A report issued by the Environmental Affairs Board in 2015 entitled *Recommendations for Sustaining a Healthy Urban Forest in Durham, NC* estimated that in 20 years, most of the City's large willow oak trees planted in the 1930s will reach the end of their natural lifespan. The City's Urban Forestry Manager estimates that an average of 650 large trees will be lost every year over the next twenty years. Major city-wide initiatives are underway to address this issue. For instance, the City's General Service Department completed in 2018 an *Urban Forest Management Plan* which calls for planting at least 1,000 trees each year.

The proposed EHC Text Amendments address trees in a number of ways:

- a. As part of these proposals, revision to the current landscaping section for Infill Standards would more clearly prescribe maintaining or planting a tree,

in addition to any street tree requirements. This standard would implement what was developed for the Old West Durham NPO.

- b. The proposed lot reduction options would require additional tree protection or planting, requiring a minimum of one canopy and one understory tree, in addition to any required street tree.

Additionally, a separate tree and landscaping revision text amendment (TC1800005) recently received a recommendation of approval from the Planning Commission. Some of the proposed changes include:

- a. Residential development sites that are large than four acres (not infill development) would have a required minimum tree preservation of 7% and up to 10% with a combination of preservation and planting. The current standard is 3%.
- b. Nonresidential development sites would have a required minimum tree coverage requirement (preservation and/or planting) of 3%. The current standard is zero.
- c. Street trees will be required to be placed no further than 10 feet from right-of-way, instead of the current 30 feet.
- d. If understory street trees are planted, they shall be in the amount of 1 per 30 feet of frontage, instead of the current 1 per 40 feet.

More impervious surface. Another tradeoff to adding additional housing units is the possibility of adding impervious surfaces. Impervious surfaces impede the infiltration of water into the soil, thus leading to an increased amount of stormwater flowing at faster speeds toward local streams. The effect can lead to more frequent and damaging flooding, erosion of stream banks, and increased water pollution.

Per state law, single and two-family developments are currently exempt from stormwater regulations that might otherwise require on-site capture and treatment; however, several measures have been included in the EHC text amendments that seek to encourage more permeable surfaces for residential infill in the Urban Tier, including:

- a. A proposed maximum building coverage of 40%.
- b. Revisions to the current vehicular use area (parking) section for Infill Standards to limit driveway width to 12 feet, to minimize the amount of driveway paving allowed, utilizing standards adopted with the Tuscaloosa-Lakewood and Old West Durham NPOs.
- c. If opting for the lot reduction/density bonus (see Attachment I for additional details), ribbon driveways shall be required, which further limits the amount of impervious surface.
- d. As mentioned in regards to tree canopy, in order to receive a lot reduction/density bonus, there is a new requirement to maintain or plant two trees.
- e. If opting for the lot reduction/density bonus, no downspout connection to underground piping shall be allow, requiring storm water roof run-off to be directed over pervious areas.

Neighborhood Character

An important component of Expanding Housing Choices is to address concerns voiced by some that new homes are “out of character” with the existing neighborhood. Mostly, staff heard that new houses are too big or too bulky, and lead to excessive parking congestion.

Change to neighborhood character or “feel”. When Planning staff talks about “character” we often mean elements of the built environment that contribute to the basic feel of a street: the rhythm of buildings and lots, setbacks, bulk, height, trees, parking, etc. To address concerns, the proposed EHC Text Amendments proposes limits to building coverage and bases height on the context area. Attachment I addresses revised Infill standards in greater depth.

More parking congestion. Additional housing units could add more cars to neighborhood streets. While the City is implementing several transportation plans to encourage more walking, biking, and transit use, the predominant method of transportation is still the car. The UDO currently requires each dwelling unit must accommodate a minimum of two parking spaces on-site. Current UDO parking requirements do not require parking for:

- ADUs;
- Affordable Housing Dwelling Units; and
- Narrow (less than 40 feet) lots where the required street yard would create a conflict with minimum parking requirements.

Additionally, current requirements allow one parking space to be accommodated with on-street parking if the lot has at least 23 feet of frontage to accommodate the parking space. At least one required parking space must be placed on-site.

No changes to minimum parking requirements are proposed. As mentioned above, limitations to driveway widths and design are proposed, including requiring ribbon driveways and locating driveways to the side of primary structures if choosing to utilize a lot reduction/density bonus option.

Monitoring and Future Steps

Planning staff is committed to tracking and monitoring trends to ensure these proposed regulations are not having unintended or negative consequences. While community members have asked for a sunset clause, staff recommends annually monitoring and reporting to City Council the number and location of ADUs, Duplexes, and Demolitions as well as Building Coverage and Percentage of New Units by Development Tier. City Council can direct staff to modify regulations as appropriate.

A common question posed during public outreach was, “How many new units are expected based on the proposed changes?” While staff would emphasize a whole host of factors, apart from zoning, influence what actually gets built, we are developing a methodology to answer the

question. It will be included in subsequent staff reports prior to consideration by the governing boards.

In addition, further work in partnership with other departments is important. These include, but are not limited to:

- Property owner educational outreach (Community Development)
- Accessory Dwelling Unit Handbook (Triangle J Council of Governments)
- Utility connection fee relief or abatement for ADUs (Public Works)
- Comprehensive Stormwater Solutions (Public Works)

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

The proposed densities (maximum of 12 units per acre) are in line with the prescribed density ranges on the Future Land Use Map for the Urban Tier (6-12 dwelling units/acre).

These amendments are supported by the *Comprehensive Plan* under the Summary of Issues in the Community Character and Design Element:

“Both urban and suburban infill development become more important as the population of Durham continues to grow. Infill development, including residential, non-residential, and mixed use, are an important aspect of smart growth and will help support transportation alternatives and alleviate congestion related issues.”

The amendments are further supported under Objective 4.2.2, *Encourage attractive and varied residential development throughout the community*. Policy 4.2.2a, states,

“Through the Unified Development Ordinance, continue to provide variability of lot size and allow a variety of housing types and styles in new residential developments to avoid monotony.”

The proposed standards appear reasonable and in the public interest as documented in the body of the staff report.

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Attachments

- Attachment A:** UDO Text Amendment TC1800007, Expanding Housing Choices
- Attachment B:** Expanding Housing Choices Article Review
- Attachment C:** Summer 2018 Questionnaire Results
- Attachment D:** Zoning Ordinance Research
- Attachment E:** Discussion Draft (November 2018-January 2019) Questionnaire Results
- Attachment F:** Public Outreach Overview

- Attachment G:** Accessory Dwelling Units
- Attachment H:** Duplexes
- Attachment I:** Lot Dimensions and Density
- Attachment J:** Infill Standards
- Attachment K:** Illustrative Development Scenarios