

Proposed Ordinance Amendment OA 03-09

Board of Commissioners: April 5, 2010

Planning Board: February 3, 2010

Applicant: Lacy Reaves of Smith, Anderson, Blount, Dorsett, Mitchell and Jernigan, L.L.P.

Request: To consider changes to the Wake County Unified Development Ordinance (UDO) updating Section 4-11, *Use Table*, and the creation of Section 4-59, specifically to create a redevelopment option for nonconforming commercial and industrial uses in the Residential-40 Watershed (R-40W) Activity Centers and related standards.

Background:

Prior to 1997, the Wake County Zoning Ordinance allowed unlimited expansion and change of nonconformities so long as the Board of Adjustment approval determined that the potential adverse impacts of denial on the owner of the nonconformity outweighed the potential adverse impacts of the proposal. This allowed the owner of a nonconforming site to expand and/or change a nonconforming use on their property without having to comply with any regulation with which the existing development did not comply. This process was utilized approximately 15 times in the two years prior to the repeal by the Wake County Board of Commissioners on June 16, 1997 [Ordinance Amendment O-97-24].

Ordinance amendment O-97-24 proposed that the County's treatment of nonconformities mirror those employed by most local governments to allow nonconformities to exist ("grandfather"), but to prohibit their expansion or enlargement other than routine maintenance or repair. It further allowed the routine maintenance and repair of nonconformities and to allow the reconstruction of such structure if only partially destroyed.

This theme was carried over and updated through the adoption of the Unified Development Ordinance (UDO) which was adopted on April 17, 2006.

Analysis:

The proposed amendment seeks to create an option to redevelop sites with nonconforming commercial and industrial uses in R-40W Activity Centers. In general terms, a new use category, *Elimination and Redevelopment of Nonconforming Use*, would be created in Section 4-11 of the UDO. In this section, an 'S' (Special Use Permit required) would be designated under R-40W. The redevelopment option would not be allowed in any other zoning district. A new Section, 4-59, would also be created, implementing use standards for the proposed redevelopment option.

The proposed amendment as written would allow existing nonconforming commercial and industrial uses in R-40W Activity Centers to be redeveloped to a wider range of uses if the Board of Adjustment approves a Special Use Permit site plan. The proposed uses which would be permitted would differ from those currently permitted by the UDO in R-40W. For example, commercial uses such as eating and drinking establishments and banks would be options under the proposal; however any commercial use would have to be located in an Activity Center as

designated on the Wake County Land Use Plan. **Countywide, there are nine Activity Centers in R-40W Districts that contain a total of 14 properties that appear eligible to use this proposed text amendment.**

The proposal also differs from current standards in that setbacks for all sites redeveloped subject to the text change would be thirty (30) feet for front, corner, and rear and fifteen (15) feet on the sides. The UDO currently places more restrictive setbacks for some uses. For example, neighborhood retail uses must meet a fifty-foot (50') front and twenty-five-foot (25') side setback.

Chapter V. of the Land Use Plan references in section 4. Water Supply Watershed Protection Policies that nonresidential uses should be "special uses" and notes low impact uses. The UDO defines low impact as uses having a floor area ratio of .15 and impervious surface coverage of <30%. Noting the latter, the proposed text appears to be in line with this and may potentially benefit water quality in water supply watersheds with redevelopments being required to meet current standards. All other existing stormwater and watershed regulations would also need to be met. For example, all nonresidential uses would have an impervious surface limit of 24% or less, depending on the water supply watershed in which the site is located. In anticipation of pending regulations from the North Carolina Environmental Management Commission, the proposed text was revised to mirror the draft Rules for the Falls Lake Nutrient Management Strategy.

The proposal as written would have a significant impact on the Board of Adjustment. They would be given an increased amount of discretion and flexibility, including the authority to approve uses and development standards that differ from the base R-40W district regulations. The UDO currently has standards in place for limits on floor area of commercial buildings (e.g. 15,000 square feet). Under the proposed text change, no limit is set, as the Board of Adjustment is given authority to determine whether a proposed structure is of an appropriate size. Another example of increased discretion given to the Board of Adjustment by the proposed text change is that they may approve off-site parking and outside storage, both of which are currently limited or prohibited for most uses by current standards in the UDO. The number of parking spots required appears to be determined through the site plan. Finally, the Board of Adjustment would have discretion to approve the number, type, height, and size of signs on a site developed subject to the proposed text change.

Staff Findings:

In summary, the text changed as proposed would create a new process allowing for the redevelopment of nonconforming sites in R-40W Activity Centers to a wider range of uses, subject to approval by the Board of Adjustment. The proposed change has potentially positive and negative impacts, and changes the role that the Board of Adjustment has historically played in reviewing development proposals. The proposed amendment would establish a tool to upgrade existing nonconforming sites in watersheds requiring redevelopment to meet current impervious and stormwater standards. These protection measures would be consistent with the Land Use Plan and advance the public health, safety and general welfare.

Staff Recommendation:

The Special Use application and Board of Adjustment proceedings allow for review of development proposals on an individual basis. As part of that review, applicants must

demonstrate consistency with the Land Use Plan and withstand scrutiny of the Findings of Fact. The Board of Adjustment can establish conditions more stringent than UDO requirements in order to address site specific concerns. Staff recommends Approval of OA 03 09.

Staff would further recommend updating the Land Use Plan regarding redevelopment and non-residential uses in watersheds.