Winston-Salem

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Memorandum

TO: Patrick Pate, City Manager
FROM: Aaron King, Assistant City Manager
DATE: April 29, 2025
SUBJECT: Concerns Related to HB765
CC: Angel Wright-Lanier, Assistant City Manager; Camille French, City Attorney; Chris Murphy, Director – Planning & Development Services

On April 7, 2025, State Representatives Zenger, Brody, Winslow, and Cunningham introduced a Local Government Development Regulations Omnibus Bill (hereafter referred to as HB765) for review by the NC General Assembly. The bill is wide-ranging and contains elements which have the potential to significantly change and possibly negatively impact the regulatory climate for planning and development in Winston-Salem. Staff has reviewed the bill and compiled comments below that speak to areas of concern with HB765 and its impact on the City.

Section 1.(a) – This section would nullify the provisions of the recently passed SB382, which eliminated the ability of local governments to approve zoning regulations or map amendments (rezonings) which have the effect of down-zoning property. While many of our rezonings and UDO amendments would not be considered down-zonings, the restoration of this ability ensures that municipalities have the option to adopt regulations which could be considered "more restrictive" where appropriate.

Section 2.(a) – This section would only allow local governments to regulate development as explicitly authorized by NCGS 160D (the section of the Statutes where most development-regulated regulations reside). Local regulations and review processes would not be allowed to be more restrictive than those established by State law, except as provided by a local act. It is worth noting that Winston-Salem does have unique local Planning enabling legislation that allows for, among other things, legislative Special Use rezonings.

Section 6. – This section relates to vesting for development which becomes nonconforming due to a regulatory change adopted after the development is approved. Under the proposal, UDO amendments which would "impair, prevent, or diminish" a previously approved development or use would not be able to apply to previously developed property without the written consent of the owner of said a property. Any nonconformity would be allowed to continue until it was "intentionally and voluntarily discontinued." However, if the use were to be discontinued within 24 months, new regulations could apply to any subsequent redevelopment/reuse of the property - our UDO currently allows new regulations to apply to such sites within 12 months. Planning staff would be forced to create a process to track development which would be affected by this provision.

Section 7. - This section addresses conflicts of interest and legislative review. Most significantly, it would not allow ex-parte communication to take place on legislative matters (such as rezonings). This would be a major change from our current situation, where ex-parte communication is only prohibited for quasi-judicial proceedings. Council members would no longer be able to have conversations with applicants regarding proposed rezonings prior to the public hearing on the matter. Such communication has historically been important to our elected officials and has helped facilitate compromises and design changes to make developments more compatible with their surroundings.

Section 12. – This section limits a local government's ability to establish regulations addressing a variety of development factors:

The City would no longer be able to establish or enforce any parking requirements, except those required by the ADA. In addition to the minimum number of required parking spaces, we would be unable to regulate the dimensional requirements for spaces or drive aisles, as well the placement of parking on site. Additionally, the City would not be able to set design standards for public roads within a development in excess of those of NCDOT. Staff does not have concerns about losing the ability to regulate the number of parking spaces required of development, as our UDO has trended towards decreased parking requirements over the past 15 years, and some level of on-site parking is often required to secure financing for new development. The elimination of formal parking requirements may also encourage the use of multimodal transportation (transit, sidewalks, greenways) per Forward 2045 (comprehensive plan), and should reduce the amount of unnecessary impervious coverage created in the City. However, staff is concerned that new parking spaces and drive aisles may be undersized if there are no regulations in place governing dimensional requirements.

Sidewalks are also addressed in Section 12, with HB765 only allowing new sidewalk to be required of development when said sidewalk would connect to an existing sidewalk, or when then local government believes sidewalk would be constructed adjacent to the site within two years. This would be detrimental to our ability to establish a complete sidewalk network along major corridors such as Peters Creek Parkway, where sidewalk construction has taken place incrementally or we have received a fee-in-lieu of construction. It is worth noting that this bill does not explicitly address fee-in-lieu, so it is unclear whether such an arrangement would continue to be allowed moving forward.

The last element of Section 12 that warrants addressing relates to bufferyard requirements. Cities of 125,000 or more are allowed to require bufferyards for multifamily development with a density of less than 15 units per acre, but not for development which exceeds this density. Staff finds this counterintuitive, as less-dense development tends to generate fewer impacts on adjoining property than denser development does.

Section 13. – This section relates to residential zoning and uses. Going forward, communities would no longer be able to classify zoning districts based on their minimum lot size (as we currently do with our single-family RS districts, e.g., RS9). Instead, districts would need to be classified based on the allowed units per acre. Winston-Salem would be required to allow no fewer than 6 units per acre in residential districts. In Winston-Salem, duplexes, triplexes, and quadruplexes would need to be allowed in all residential districts. Multifamily housing would also need to be allowed in all commercial and industrial districts. While the "intent" of this language is consistent with the goals of Forward 2045 (comprehensive plan), it does preclude the City from establishing reasonable performance standards for such development.

Section 14. – Like Section 10, this section establishes a "shot clock" for development, in this case rezoning decisions. Under this proposal, the local government has 90 calendar days to approve or deny an application for rezoning. Current regulations allow 120 days for proposals to get through the Planning Board recommendation stage (this allows project "continuances" to address issues before they get to the elected body). It often takes another 6-8 weeks for a project to be heard and decided upon by City Council. It is worth noting that our 180-day review and approval process is seen as a model throughout North Carolina.

Section 15. – This section designates subdivision review as an administrative task and requires such approvals to be made by staff (rather than the Planning Board as currently designated in the UDO). Staff is unclear whether Planned Residential Developments (PRDs) would be considered subdivisions under this language, or whether they would be considered a unique development type and would be eligible for review by the Planning Board. This section also allows preliminary subdivision plats to be valid in perpetuity and never expire (for example, a 50-year-old subdivision plan could be constructed exactly as approved, regardless of any ordinance changes adopted in the intervening years).

Section 21. – This section only allows communities to require a "shell permit" for multifamily development. Certificates of Occupancy for individual units within the development would be allowed to be issued under that shell permit. Staff is unsure of how life safety issues would be addressed under the proposed methodology and there appears to be no mechanism for requiring upfit permits for the construction of each individual unit within the multifamily development.

Section 25. This sections allows members of City Council to be held personally liable for development-related decisions. The basis for facing civil liability in this section is nebulous at best and serves to unfairly tilt the decision-making process toward the applicant. This also intervenes with the qualified immunity provisions that have always been afforded to elected officials operating in their capacity as such.

Section 28.(b) – This section requires municipalities (and counties) to prepare statements addressing housing affordability impacts for any local ordinance amendments. This statement would need to address cost impacts for the first five fiscal years that an ordinance (or repeal of such) would be in effect. It is worth noting that City staff already conducts such an analysis on an informal basis as part of the development of major ordinance amendments. While staff believes this language would help keep housing affordability in focus as Council evaluates future ordinance changes, we would recommend the bill be amended to require impacts to be calculated on a per-unit basis.

Section 29. This section allows property owners to install package plants to serve unimproved properties and also improved properties if the City/County Utilities hasn't made sewer lines available or cannot serve the property when the owner desires. City/County Utilities cannot make those property owners connect to their sewer lines while the package plant remains compliant & operational. City/County Utilities can only make them connect if 1) the package plant fails & cannot be repaired, 2) the LGC provides assistance, or 3) we're expanding or repairing our system & will make sewer lines available to the property w/in 24 months of the property owner's application for a sewer permit.

Section 37. This section establishes deadlines to approve requests to reserve water/sewer capacity & to provide service to connected infrastructure thereafter. It also circumvents the ability to evaluate & deny requests or impose conditions. It requires a reservation capacity for up to 36 months.

While HB765 attempts to advance some development-related policies that have some general alignment with adopted City policies, it contains far too many provisions that outweigh any perceived benefit. The bill as proposed significantly limits Winston-Salem elected officials from their roles of regulating development in our community. The City is opposed to HB765 in its current form and would like to have dialogue with the bill sponsor on changes to the legislation that would align the interests of the bill and the City to support increased housing with minimal negative impacts to the community.