

Information Item

Date: August 14, 2018

To: The City Manager

From: Damon Dequenne, Assistant City Manager
Chris Murphy, Deputy Director of Planning and Development Services

Subject: UDO-283

Strategic Focus Area: Livable Neighborhoods

Strategic Objective: Improve Character and Condition of Neighborhoods

Strategic Plan Action Item: No

Key Work Item: No



The Community Development/Housing/General Government Committee has been considering UDO-283, a text amendment which proposes adding multifamily development to the list of uses permitted in the Highway Business (HB) and General Office (GO) zoning districts, for the past few months. This amendment was forwarded to the Committee without a recommendation from the Planning Board, where the amendment received a 4-4 vote.

After becoming aware of some additional information on UDO-283 which staff presented to the Committee in May, the Planning Board desired to discuss this item further in the hopes that it could give Council an updated recommendation on the item. The CD/H/GG Committee was made aware of the Board's desire and requested staff to initiate a discussion with the Board, which was conducted during its May and June work sessions. The Board also asked the City Attorney to research a question related to a possible different review process for multifamily in HB and GO.

Updated Planning Board Recommendation

Some Board members had originally expressed concerns about allowing multifamily in HB on scattered sites in single-family neighborhoods. Staff previously attempted to limit this phenomenon by including a 1 acre minimum site size for multifamily in HB as part of UDO-283, and suggested Council could further increase this threshold to a 2 acre minimum site size at the May CD/H/GG meeting. At the May Planning Board work session, a Board member (Dunigan) suggested a strategy to further limit the development of multifamily in HB by only allowing such development on sites along *Legacy* Growth Corridors and within Activity Centers. Staff believed this strategy warranted further research, as Activity Centers and Growth Corridors (significant roads which link Activity Centers to Downtown) are recommended in *Legacy* and area plans as the best places to concentrate multifamily development.

Prior to the June Planning Board work session, staff analyzed what effect this proposal would have on UDO-283. Despite it eliminating some locations as candidates for multifamily redevelopment (including most of Patterson Avenue and Reynolda Road beyond Yadkinville Road), this proposal would effectively limit the ability to develop multifamily on scattered HB sites, particularly along South Main Street and Old Lexington Road (see **Exhibit A**, attached).

At the June work session, staff presented this research and expressed support for changing the language in UDO-283 to only allow multifamily in HB-zoned sites which are either adjacent to a defined growth corridor or within the boundaries of a designated activity center. Staff also recommended retaining the currently proposed 1 acre minimum lot size for multifamily in HB as well. If Council is concerned about certain areas (such as parts of Patterson Avenue and Reynolda Road) being excluded from multifamily availability as a result of this additional regulation, growth corridor boundaries could be amended through one of several processes (an amendment to *Legacy*, an area plan update, or a corridor study) to include these sites.

The Planning Board generally agreed with staff's assessment that this new provision would improve UDO-283. An informal vote was taken after discussion at the June work session (since this text amendment was already formally voted upon and sent to Council a few months ago), and the Board favored UDO-283 with this added provision to Council 7-2 (with Board members Bryan and Leak voting against).

Multifamily Review Process Legal Research

At its May meeting the CD/H/GG Committee also asked the City Attorney's Office to research the ability to have a process that would allow for administrative review and approval of multifamily in GO and HB, except that in the event of a submission of a certified petition of surrounding residents, an additional level of review by Council would occur. The City Attorney's Office is of the opinion that such a procedure would be highly susceptible to a successful legal challenge. If the current proposed administrative standards are put in place, then the zoning regulations would not be uniform for each class, as the approval procedure would differ based solely on the position of surrounding residents (see G.S. 160A-382).

If Council is interested in a higher level of scrutiny not based solely on administrative standards, other options are available. Each of these alternatives would require every property to go through the same procedure. One option is to require a special use district rezoning for the use, which would require approval from Council in a legislative setting. Another alternative is to require the property owner to obtain a special use permit for the use, either before City Council or the Zoning Board of Adjustment. This option would be governed by a quasi-judicial procedure. To be clear, Attorney's Office staff is not advocating for any of these alternatives, as they quite possibly could become an obstacle to the goal of promoting mixed-use development. Either option would mean that multifamily residential would not be a use by-right in the HB and GO zoning districts – essentially nullifying the purpose of UDO-283.

Planning and Attorney's Office staff will be at the August 14, 2018 CD/H/GG Committee meeting to assist Council as discussion continues on this item.