

MEMORANDUM

TO: Mayor and Town Council

FROM: W. Calvin Horton, Town Manager

SUBJECT: Nonconforming Status Issues in proposed Land Use Management Ordinance – Report from Planning Department

DATE: September 27, 2002

Given the level of community concern that we have been hearing regarding the proposed new Land Use Management Ordinance and its possible impacts on existing properties, I asked our Planning Department this week to prepare a discussion paper on this topic. I attach here a memorandum from our Planning Director in response to that request.

I believe that, in working with our consultant on preparation of the Third Draft of this ordinance, we did not see clearly enough the potential impacts that would result from a combination of tightened regulations and nonconforming rules. We have often spoken of “unintended consequences” of proposed rules. I am sorry that we did not anticipate the level of threat that citizens would perceive in the proposed new rules.

We are working to develop options that will give the Council better choices than the ones that are currently on the table. We will outline these options in a memorandum that will be on your agenda for your October 7 meeting.

We regret the level of community discomfort that has been precipitated by the Third Draft. We also appreciate the value of public process and Public Hearings, and are convinced that in this case, as is so often the case, the final product will be a better one than initially proposed because of public participation.

Attachment: Memorandum from Planning Director Roger Waldon



MEMORANDUM

TO: Cal Horton, Town Manager

FROM: Roger Waldon, Planning Director

SUBJECT: Nonconforming Properties and the Proposed New
Land Use Management Ordinance

DATE: September 27, 2002

There has been considerable community discussion about the proposed Third Draft of the new Land Use Management Ordinance. We had a vigorous and robust Public Hearing last week, and have heard many concerns (at the Hearing and since) about what happens to properties that might become nonconforming under proposed new regulations. This memorandum addresses those concerns, and suggests procedural options.

WHAT DOES IT MEAN TO BE NONCONFORMING?

Development regulations change over time. That happens everywhere. A standard concept in most ordinances is the treatment of development that was lawfully established under regulations in place at the time development occurred, but which does not meet new, changed regulations. An example might be a restaurant that was built in a commercial zone, where the property was subsequently rezoned to a residential district (**nonconforming use**). Another example might be a house that was legally built within five feet of a property line, where the required setback was later changed to be a minimum of ten feet (**nonconforming feature**). A third example might be a lot that was created at a size of 5,000 square feet, in a location where subsequent zoning requires a 5,500 square foot minimum lot size (**nonconforming lot**).

Most ordinances (including our current ordinance) contain provisions that make it clear that nonconforming uses and nonconforming features, should, over time, be changed so that they conform to current regulations. In our current ordinance, the time allowed for a nonconforming property to come into compliance varies depending on the situation.

Here are three examples from our current regulations:

- Front-yard parking in Historic Districts, which existed before current regulations were enacted to limit such parking, can continue for 6 months after the Town has notified the property owner of the nonconformity; after that time the parking may not occur.

- A nonconforming use involving a structure, by contrast, may continue in its present use for 40 years after such notification.
- If a structure devoted to a nonconforming use is destroyed to more than 50% of its value, it cannot be rebuilt.

Those are our **current** rules.

WHERE WE ARE NOW

Work on this new ordinance began in January, 2001, and we are on the Third Draft. The Council decided to schedule an extended review of the Second Draft, which lasted from August, 2001 through June, 2002. During that period we had multiple workshops, forums, and Public Hearings. On June 10, the Council adopted a resolution giving direction to consultant and staff for changes to be made in preparing a Third Draft.

Many of the changes that were discussed during the spring of 2002 were of a nature that would substantially raise the bar of development standards for Chapel Hill. Of particular concern were issues related to stormwater management, environmental protection, and neighborhood conservation.

In June we made a series of recommendations to the Council. Included was a discussion where we suggested to the Council that many of the changes were of a nature that would create many nonconforming situations throughout Chapel Hill. Accordingly, we suggested that the Council, along with the proposed new standards, consider loosening our existing regulations regarding nonconforming properties. The Council did so instruct us on June 10.

Over the summer we worked with our consultant to make changes according to the Council's instructions. We took care throughout to follow the Council's June 10 directions. Accordingly, the Third Draft did contain tougher standards and an expanded Resource Conservation District. It also contained changes that would loosen restrictions on nonconforming properties. For example, we eliminated the provision that would prohibit the replacement of a destroyed nonconforming structure.

On August 23 we received the Third Draft from our consultant, and started distributing the draft on August 26. What became immediately clear by community reaction was that we had not gone far enough in loosening the nonconforming language. Particularly in the context of a potentially expanded Resource Conservation District, many citizens expressed concern that their homes would become nonconforming, and that the regulations in the Third Draft, even with the loosening, were not acceptable. We heard testimony that the presence of a nonconforming label would cause problems in financing, resale, and ultimate value of existing properties.

It is apparent that the Public Hearing Agenda materials provided with the Third Draft, as well as statements and explanations provided at the September 18, hearing by the Town Attorney and our Consultant in response to concerns raised by citizens and members of the Council, did not adequately and fully explain the non-conformity provisions proposed in the Third Draft or the alternative approaches that could be considered in addressing the issues related to non-conformities.

We do not agree with some of the statements that have been made about the impact of nonconforming status. But public input received at the September 18 hearing and in written communications has made it clear that the language of the Third Draft would create new non-conformities, both uses and features, that would have significant impacts which were not fully considered during the preparation of the Third Draft. It is clear that concern is widespread, and that an appropriate response would be to offer options for the Council to consider that would loosen nonconforming regulations further. That can be done.

POLICY OPTIONS

There are several alternate approaches to address nonconforming properties, from very rigorous to very permissive. Here are examples of four approaches:

- **Standard:** Describe limits on expansion of nonconforming properties; establish time periods after which use of property must meet current regulations.
- **Moderate:** Define nonconforming uses and features. Establish that these uses and features can continue indefinitely, but cannot be expanded subject to certain conditions.
- **Less Stringent:** Define nonconforming uses and features. Establish that these uses and features can continue indefinitely, and may be expanded.
- **Least Stringent:** Establish that nothing will be made nonconforming by the new regulations. Lots that existed prior to new regulations can be developed under previously existing regulations. Structures that exist today but which would not meet new regulations would not be nonconforming, and could expand under the terms of previously-existing regulations.

Another alternative would be to attach this last category only to some of the proposed new regulations. For example, the Council could choose to expand the RCD boundary from 100' to 150', and include language that the change would not apply to any lot existing prior to the date of change; or that the change would not render any existing structure nonconforming.

When the Third Draft returns to the Council for consideration on October 21, it is our intention to offer these and other options to the Council, so that the Council will be in a position to respond to the concerns that have been raised.

SUMMARY

We helped our consultant prepare a Third Draft of the proposed Land Use Management Ordinance in a manner that we believed followed the Council's directions to staff and consultant on June 10. Included in the Council's June 10 resolution was direction to tighten standards, expand the area of coverage of certain regulations, and simultaneously loosen nonconforming language so as to minimize hardship on property owners. We did all of those in the Third Draft, but it is increasingly clear that we did not go far enough in loosening the nonconforming language. Adjustment is clearly called for.

We intend to offer additional options to the Council when the Third Draft is next before the Council, on October 21. We believe that the September 18 Public Hearing accomplished an important purpose in focusing attention on these issues. We believe that we can draft language that will address many of the concerns that have been raised.