

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director
Gene Poveromo, Development Manager

SUBJECT: Public Hearing: Land Use Management Ordinance Text Amendments –
Revisions to the Definition and Permit Requirements for Shelters

DATE: November 16, 2009

INTRODUCTION

Tonight's public hearing has been called to consider a proposed Land Use Management Ordinance text amendment regarding the definition of shelter as well as permitting requirements for shelters. We recommend that the Council open the public hearing and receive comments regarding the proposed Land Use Management Ordinance text amendments.

BACKGROUND

On June 8, 2009, the Town Council adopted a resolution asking the staff to initiate a Land Use Management Ordinance text amendment and granting expedited processing of Concept Plan and Special Use Permit applications for the Inter-Faith Council Men's Shelter (Attachment 3). The resolution was in response to a May 4 petition from the Inter-Faith Council regarding the Community Center Men's Shelter application. The June 8 Council resolution directed the staff to amend the Land Use Management Ordinance definition of "shelter" to increase the maximum residential occupancy.

Related to the proposed amendment to the definition of shelter, we recommend that the Council consider amending permitting requirements for the shelter use to require Special Use Permits for this use.

The Council reviewed a Concept Plan proposal for the shelter on October 19, 2009. The proposed shelter includes a potential residential occupancy of 52.

CURRENT LAND USE MANAGEMENT ORDINANCE

Appendix A (Definitions) of the Land Use Management Ordinance (LUMO) defines "shelter." This section of the ordinance is copied below:

"Shelter: A building or group of buildings owned or operated by a non-profit organization intended to be used solely for temporary occupancy by not more than twenty-five (25) homeless persons, with on-site supervision during all hours of operation, with or without board for the occupants and staff of the shelter."

The current permitting requirements for the shelter use, as excerpted from Section 3.7, Table 3.7-1, (*Use Matrix*) including footnotes at the end of the table, are as follows:

Table 3.7-1: Use Matrix

USES	General Use Zoning District													Planned Development (PD-)															
	Use Group	R-LD5	RT	R-LD1	R-1A	R-1	R-2	R-2A	R-3	R-4	R-5	R-6	R-SS-C	TC-1, TC-2, TC-3	CC	NC	OI-1	OI-2	OI-3	OI-4	I	MH	H	SC(N)	SCI	OI	MU	I	
Shelter	B	-	-	-	-	-	-	-	-	-	-	-	-	P	-	P	P	P	P	P	-	-	-	-	-	-	-	-	-

•Definitions of uses are listed in Appendix A

KEY:

- “-“ Not Permitted;
- “S” Permitted as a special use;
- “A” Permitted as an accessory use;
- “P” In OI-3, OI-4, and MH: Permitted as a principal use;

In all zones except OI-3, OI-4 and MH: For all use except existing public elementary and secondary schools. Permitted as a PRINCIPAL USE if floor area of proposed development is less than 20,000 square feet, and area of disturbed land is less than 40,000 square feet; otherwise permitted as a special use. For existing PUBLIC elementary and secondary schools, “P” indicates permitted as a principal use.

Note: The use groups established in the 2nd column of Table 3.7-1 are used to determine whether a site plan is needed for a change in use (see Section 4.7.1(f), and the applicability of buffers (see Section 5.6.6, Schedule of Required Buffers).

Currently, shelters are a permitted use in six zoning districts, including Community Commercial, (CC), Neighborhood Commercial (NC), and four Office/Institutional districts. A shelter can be approved: 1) as a Site Plan Review approval by the Planning Board, or 2) in situations where the floor area is equal to or exceeds 20,000 square feet or where land disturbance is 40,000 square feet or greater, as a Special Use Permit by the Council.

DISCUSSION

The applicant requested that the Land Use Management Ordinance definition of shelter be amended to increase the maximum residential occupancy from 25 beds to 50 beds. Accordingly, the Council directed the staff to process an Ordinance text amendment to increase the maximum allowable occupancy to 50 persons.

We understand the current occupancy at the Inter-Faith Homeless Shelter on West Rosemary Street is 54. We understand the occupancy limit at the Women’s Shelter on Homestead Road is 56.

We recommend that the Land Use Management Ordinance be amended to remove the maximum residential occupancy. We recommend that the Council determine an appropriate maximum occupancy number for a proposed shelter during the Special Use Permit process, as individual applications are considered.

Additionally, a text amendment establishing a set limit on the number of beds may not accommodate temporary occupancy needs of the Inter-Faith Council shelters or the proposed Community House on Martin Luther King Junior, Boulevard. There are occasions, during cold weather for example, when the residential occupancy of shelters expands beyond the typical occupancy.

Tonight, we recommend that Section 3.7, Table 3.7-1, the *Use Matrix*, of the Land Use Management Ordinance, be amended to require Special Use Permit approval for shelter uses in limited zones. Currently, proposals that fall short of the 20,000 square-foot of floor area and 40,000 square feet of land disturbance thresholds may be approved by the Planning Board through the Site Plan Review process. Additionally, under today’s regulations, relocation of a Shelter to an existing office or commercial structure that is not encumbered by a Special Use Permit and that is under the 20,000 square foot floor are limit, could be approved through an administrative process. These proposed text amendments would ensure that a proposal for approval of a shelter use would require Council approval as a Special Use Permit.

PROPOSED LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENT

We recommend that the proposed text amendment amend the definition of “shelter” in Appendix A of the Land Use Management Ordinance (LUMO) as follows:

“Shelter: A building or group of buildings owned or operated by a non-profit organization intended to be used solely for temporary occupancy **of by not more than twenty five (25)** homeless persons, with on-site supervision during all hours of operation, with or without board for the occupants and staff of the shelter.”

We also recommend that the proposed text amendment to require that the shelter use, in Section 3.7, Table 3.7-1, the *Use Matrix*, of the Land Use Management Ordinance, require a Special Use Permit approval, as follows:

Table 3.7-1: Use Matrix

USES	General Use Zoning District													Planned Development (PD-)															
	Use Group	R-LD5	RT	R-LD1	R-1A	R-1	R-2	R-2A	R-3	R-4	R-5	R-6	R-SS-C	TC-1, TC-2, TC-3	CC	NC	OI-1	OI-2	OI-3	OI-4	I	MH	H	SC(N)	SCI	OI	MU	I	
Shelter	B	I	I	I	I	I	I	I	I	I	I	I	I	P	I	P	P	P	P	P	P	I	I	I	I	I	I	I	I

ZONING AMENDMENT

Article 4.4 of the Land Use Management Ordinance establishes the intent of Zoning Amendments (including both atlas and text amendments to the Ordinance) by stating that, “In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town it is intended that this chapter shall not be amended except:

- a) to correct a manifest error in the chapter; or
- b) because of changed or changing conditions in a particular area or in the jurisdiction generally; or
- c) to achieve the purposes of the Comprehensive Plan.

Article 4.4 further indicates:

It is further intended that, if amended, this chapter be amended only as reasonably necessary to the promotion of the public health, safety, or general welfare, and in conformance with the Comprehensive Plan.

A) An amendment to the Land Use Management Ordinance (text amendment) is necessary to correct a manifest error in the chapter.

Staff Comment: We believe the information in the record to date can be summarized as follows:

Argument in Support: We think that the 25 person occupancy limit was established in 1985 based on assumptions about space constraints at the West Rosemary Street Inter-Faith Council shelter, and could be considered a manifest error in the Ordinance. There are circumstances under which larger facilities, with greater occupancy, would be appropriate for more efficient delivery of services. We believe the 25 person limitation could be amended and that the Town Council could then determine occupancy limits on a case by case basis, having to do with the specifics of each application.

Argument in Opposition: To date no arguments in opposition have been submitted.

B) An amendment to the Land Use Management Ordinance (text amendment) is necessary because of changed or changing conditions in a particular area or in the jurisdiction generally.

Staff Comment: We believe the information in the record thus far can be summarized as follows:

Argument in Support: We think that a text amendment to the Land Use Management Ordinance is necessary because of changed conditions in the jurisdiction generally in regard to the delivery of services to the homeless. Changing conditions include the size of the homeless population, the evolving needs of the homeless and how public agencies, such as the Inter-Faith Council, meet those needs. In the past, the Inter-Faith Council provided meals and a place to sleep for the homeless. The organization is now engaged in the provision of a range of services intended to assist the homeless in earning a living and establishing a residence.

Argument in Opposition: To date no arguments in opposition have been submitted.

C) An amendment to the Land Use Management Ordinance (text amendment) is justified to achieve the purposes of the Comprehensive Plan.

Staff Comment: We believe the information in the record thus far can be summarized as follows:

Argument in Support: We believe the justification of the text amendment application is to achieve the purposes of the following major themes of the Comprehensive Plan:

- **Create and preserve affordable housing opportunities**

Staff Comment: Amending the definition of shelter in the Land Use Management Ordinance may allow greater occupancy, thereby enhancing opportunities for those least able to obtain minimum shelter requirements. We think that shelters belong to the continuum of housing needs of residents across the socio-economic spectrum, including: 1) shelter for the homeless, 2) public housing and rental housing for low-income residents, 3) affordable owner-occupied housing for the low and moderate-income residents earning up to 80% of median income, and 4) market rate owner-occupied housing.

- **Provide quality community facilities and services**

Staff Comment: Amending the definition of shelter in the Land Use Management Ordinance may allow greater occupancy, thereby enhancing opportunities for those least able to obtain minimum shelter requirements. The text amendment may allow providers, such as the Inter-Faith Council, additional flexibility building shelters, to better serve the homeless population. The stated objective of the Comprehensive Plan indicates: “locate, design, and operate community facilities and services to promote public health, safety, and well-being within Chapel Hill’s Urban Services Area.”

Argument in Opposition: Arguments in opposition to the text amendment have been received. Details are attached (Attachment 4).

RECOMMENDATIONS

Planning Board Recommendation: The Board voted 6-0 to recommend enactment of the Land Use Management Ordinance text amendment with the following suggested revision (underlined in bold type):

“Shelter: A building or group of buildings owned or operated by a non-profit organization intended to be used solely for temporary occupancy of homeless persons, **maximum occupancy to be determined by the Town Council and Fire Marshall,** with on-site supervision during all hours of operation, with or without board for the occupants and staff of the shelter.”

Please refer to the attached summary of Planning Board Action (Attachment 2).

Staff Comment: Our preliminary recommendation is that all shelter applications would require a Special Use Permit. Since the Town Council is the body that approves Special Use Permits, we believe the insertion of this additional text is unnecessary.

Staff Preliminary Recommendation: We recommend that the proposed text amendment amend the definition of the “shelter” in Appendix A of the Land Use Management Ordinance (LUMO) as follows:

“Shelter: A building or group of buildings owned or operated by a non-profit organization intended to be used solely for temporary occupancy **of by not more than twenty-five (25)** homeless persons, with on-site supervision during all hours of operation, with or without board for the occupants and staff of the shelter.”

We also recommend that Article 3.7, Table 3.7-1, the Use Matrix be amended to require that the shelter use require Special Use Permit approval (See amended table below). The occupancy limit could therefore only be determined by the Council in the course of the Special Use Permit process. Additionally, since the Fire Marshall must approve the occupancy of proposed development per Town Code, reference to the Fire Marshall is redundant.

Table 3.7-1: Use Matrix

USES	General Use Zoning District													Planned Development (PD-)															
	Use Group	R-LD5	RT	R-LD1	R-1A	R-1	R-2	R-2A	R-3	R-4	R-5	R-6	R-SS-C	TC-1, TC-2, TC-3	CC	NC	OI-1	OI-2	OI-3	OI-4	I	MH	H	SC(N)	SCI	OI	MU	I	
Shelter	B	-	-	-	-	-	-	-	-	-	-	-	-	IS P	-	IS P	IS P	IS P	IS P	IS P	-	-	-	-	-	-	-	-	-

We recommend that the Council open the public hearing to receive comment regarding the proposed Land Use Management Ordinance text amendment.

ATTACHMENTS

1. Draft Ordinance (p. 8).
2. Summary of Planning Board Action (p. 10).
3. June 8, 2009 Resolution Directing LUMO Text Amendment and Expedited Processing (p. 11).
4. Arguments in Opposition of Proposed Text Amendment (p. 12).
5. Arguments in Support of Proposed Text Amendment (p. 58).