

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director
Gene Poveromo, Development Manager
Phil Mason, Principal Planner

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

DATE: January 11, 2010

INTRODUCTION

Tonight the Town Council continues the public hearing from [November 16, 2009](#). Approval of the ordinance at the end of this memorandum would enact the proposed Land Use Management Ordinance text amendments regarding occupancy limits identified in the definition of shelter as well as permitting for shelters to require Special Use Permits.

BACKGROUND

On [June 8, 2009](#), the Town Council adopted a resolution, which granted expedited processing of the Concept Plan and Special Use Permit applications for the Interfaith Council men's shelter. The resolution also asked the staff to initiate a Land Use Management Ordinance (LUMO) text amendment regarding occupancy limits for a shelter. 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 initiate an amendment to the LUMO definition of "shelter" to increase the maximum residential occupancy.

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

DISCUSSION

A public hearing was held on November 16, 2009. Several residents spoke on this item. A Council member made an inquiry to which we've responded below.

1. **Three Findings Clarification**: A Council member requested further clarification to support the three findings that the Council must consider to amend the Land Use Management Ordinance.

Staff Response: In response to the Council member's inquiry, we note that one, or more, of three findings must be made to enact a Land Use Management Ordinance Text amendment. The three findings are as follows:

- 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.

We think that arguments can be made to support all three of the findings in this case. However, we note that the Council needs to make only one of the three legislative findings in order to enact the text amendment. Please refer to the Zoning Amendment discussion section in this memorandum to see respective arguments for each finding.

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.”

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.

PROPOSED LAND USE MANAGEMENT ORDINANCE TEXT AMENDMENT

We recommend two changes to the Ordinance. We recommend that the proposed text amendment amend the definition of “shelter” in Appendix A of the Land Use Management Ordinance to remove an occupancy reference 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, be 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	-	-	-	-	-	-	-	-	-	-	-	-	IS P	-	IS P	IS P	IS P	IS P	IS P	-	-	-	-	-	-	-	-	-

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. We did not find reasons, nor can we determine why a seemingly arbitrary limit was applied to the definition of shelter use. There could be circumstances under which larger facilities, with greater occupancy, would be appropriate for more efficient delivery of services. There could also be circumstances under which a small facility would be appropriate. 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, site, and circumstances, if a Special Use Permit is required.

Additionally, we believe it was a manifest error to classify shelter as a *permitted use* rather than a *special use*. According to the Ordinance, a Special Use is a land use that because of its inherent nature requires special care in the control of its location, design, and methods of operation. The shelter use elicits strong responses among members of the public and we therefore believe should be required to have a corresponding public process with a public hearing and Town Council approval. We think that requiring a Special Use Permit for the shelter use, in the zoning districts where it is allowed, would correct this error.

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

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 the Council could find 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 at Churches throughout the Town. The organization is now engaged with a significantly larger homeless population and provides a range of services intended to assist the homeless in earning a living and establishing a residence. We believe it can be argued that there are changed conditions in the jurisdiction.

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

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 at their [October 20, 2009](#) meeting 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 recommendation is that all shelter applications require a Special Use Permit. Since the Town Council is the body that approves Special Use Permits and the Fire Marshall is part of the development review process, we believe the insertion of this additional text is unnecessary.

Staff Recommendation: We recommend that the Council enact the attached Ordinance to 1) amend the definition of the “shelter” in Appendix A of the Land Use Management Ordinance (LUMO) and 2) amend Article 3.7, Table 3.7-1, the Use Matrix to require that the shelter use require Special Use Permit approval.

ATTACHMENTS

1. Combined Comments in Support and Opposition of Proposed Text Amendments (p. 8).