

ENT Related Text Amendments to UDO – Application 2017-665

DATE: October 5, 2017

FROM: Jay Camp

In conjunction with the rezoning request that Proffitt Dixon has submitted for a mixed-use development in the ENT District, we have received a bundle of various proposed text changes associated with the project. I have attached the 21 pages of documentation with the proposed changes highlighted in red by the applicant. Here is a summary of each proposed change and commentary on the staff position on each:

1. Add “Block Length” and “Maximum Build to Line” to list of items that can be modified using flexible design standards.
Staff Response: Suggest adding language to clarify that maximum build-to line can be modified only when a lot has multiple building frontages.
2. Add language allowing private streets in the ENT District.
Staff Response: Remove legal language “Notwithstanding the foregoing” so that code is written in plain language. Private streets create issues with police enforcement i.e. tickets cannot be issued for running a stop sign for instance. Long term maintenance is up to private owners – Town cannot repave roads.
3. Allow a reduced 10x10 sight triangle as measured from back of curb in the Downtown Overlay, C-MF, ENT, MUD and TS Districts.
Staff Response: Town staff has discussed modified sight triangles in some urban areas. Most recently, a variance to sight triangle requirements was granted for the new wall at Pizza Peel. The Town Engineer has suggested a 25x25 sight triangle measured from the face of curb. Sight triangles are not applied on private streets.
4. Allow tree canopy preservation to be met by combination of existing and new plantings in the ENT, C-MF and TS districts and the entire Downtown Overlay.
Staff Response: This text is intended to allow total removal of trees and negate any required trees save but it conflicts with the definition and concept of tree preservation. While it is difficult to preserve a percentage of tree canopy on extremely small infill sites and in proposed urban districts, staff is concerned about entirely stripping out tree save in these districts. The applicant may want to look at a specific exemption for just the ENT area.
5. Eliminate perimeter planting requirement in the ENT District.
Staff Response: No concerns for areas within the ENT.
6. Eliminate perimeter screening requirement for properties within the ENT District
Staff Response: Removal legal language “Notwithstanding the foregoing”; add “identified in the Small Area Plan” to the sentence to clarify the intent that properties that will be in the ENT District in the future are included.

7. Change maximum square footage for microbreweries and brewpubs from 7,500 square feet to 10,000 square feet and 20,000 square feet, respectively and eliminate separation requirement between brewing facilities and dwelling units in the ENT.
Staff Response: No concerns with intent of this change. Correct spelling and grammar errors in text.
8. Change parking space standards so that they must meet the requirements in the Charlotte Mecklenburg Land Development Standards Manual and not the Matthews UDO.
Staff Response: Matthews has a list of standards for parking space dimensions set out in the UDO. It does not make sense to supersede our internal standards with those found in a different land development manual. Staff will work with the developer to identify the issues here and find a solution.
9. Allow an emergency access point to serve as the required second or third point of access for a development.
Staff Response: We are uncomfortable with the text as currently proposed. A variance process may be better for this developer's particular issue, should it be necessary in the future.
10. Remove the PCO Undisturbed Open Space requirement from applicability in the ENT District
Staff Response: We are working with Mecklenburg County to determine if this text change would be legal. The PCO was our way of meeting federally mandated water quality requirements.

Zoning Application 2017-665 Text Changes Regarding the ENT District, With Some Affiliated Paragraphs for Context

The applicants have offered text revisions at 10 places within the UDO that would allow a deviation of current standards for development within the ENT zoning district. Proposed deletions of current text are indicated in ~~green font with a line through it~~, and proposed new text to be added is in red font.

1) 155.401.1.C. 7 through 10.

This section lists what criteria may be allowed to be altered through the “Flexible Design Standards” provisions. The Flexible Design options can be applied in the R-VS, SRN, C-MF, MUD, TS, and ENT zoning districts.

155.401.1 Use of Flexible Design Standards

- A. CERTAIN ZONING DEVELOPMENT STANDARDS MAY BE MODIFIED. The quantitative dimensions and locational zoning standards listed here which would normally apply to development may be modified through the flexible design process.
1. Lot area.
 2. Lot width.
 3. Public street frontage.
 4. Setbacks and yards.
 5. Building separation.
 6. Height of fences and walls.
 7. **Block length.**
 8. **Maximum build-to line.**
 9. Location of off-street parking (distance from site and/or on-site or off-site provisions; partially within a sight triangle; partially within perimeter planting or required screening; **distance of parking areas and access drives from lot lines in the ENT District**).
 10. Specific standards set within the Conditional Only zoning districts for “Building and Structure Design Principles” (within subsection G of each district’s section at 155.503) when they would result in new development concepts, innovative design, unique circumstances, or public/private ventures.

2) 155.503.8.F.2.f.

This is within the Site Plan Layout general design criteria for parcels within the ENT zoning district. The ENT district and Small Area Plan calls for all streets to be created in a coordinated, connected grid, and therefore should all be public. Private alleys and drives are allowed. This proposed text change would allow internal streets in the ENT district to be public or private.

155.503.8. Entertainment District (ENT)

F. SITE PLAN LAYOUT GENERAL DESIGN.

1. GENERAL URBAN DESIGN PRINCIPLES.
2. STREET NETWORK.
 - e. Permanent dead end streets are not permitted, except for side or rear access alleys.
 - f. Private streets or gated streets are prohibited~~+~~, and all streets must be dedicated to the public. **Notwithstanding the foregoing, streets that provide vehicular access to a building or buildings containing residential uses may be private provided that all private streets must be constructed to public street standards and a public access**

easement must be provided over and across all private streets to allow public use of such private streets.

3) 155.601.13

The UDO today calls for sight triangles at street intersections and where driveways intersect streets, to create adequate open areas for clear visibility of vehicles and pedestrians. There is a reduced 25' x 25' sight triangle allowed on a case by case basis in the Downtown Overlay today. This requested change would further reduce the sight triangle in urban locations in size and by how it is measured.

155.601.13 Sight Triangle

C. REDUCED SIGHT TRIANGLE FOR CERTAIN DISTRICTS. A modified sight triangle with dimensions no less than ~~twenty five feet by twenty five feet (25' x 25')~~ **ten by ten feet (10' x 10')** as **measured from back of curb** may be allowed within the Downtown Overlay district and within the C-MF, MUD, TS, and ENT districts with the approval of the Town Engineer. This provision may only be applied adjacent to Town-maintained streets (not state roads) **and private streets**, and only when the adjacent building or approved outdoor amenity is at, or less than, twenty feet (20') from the public street right-of-way **line or the private street right-of-way**. Outdoor amenities that may justify a reduced sight triangle may include, but are not limited to, a retaining wall or substantial sharp change of natural grade, stairs, fire escape, or low wall that visually and physically separates the public right-of-way from the adjacent private use area and cannot efficiently be relocated elsewhere on the site. The reduced sight triangle must be located where the travel lane closest to the building is controlled by either a signal or signage.

4) 155.606.6.7.A.2.b. through e.

This portion of the UDO provides the requirements for preserving existing trees that form the overall tree canopy. The proposed text amendment is intended to say that in certain zoning locations where urban design is anticipated – the Downtown Overlay, C-MF, MUD, TS, and ENT districts – trees don not have to be saved, but instead can be cleared and new trees planted.

155.606.7. Tree Canopy Requirements

A. CANOPY PRESERVATION REQUIREMENT.

2. REQUIREMENTS.

- b. **Subject to paragraph d below, whenever the existing tree canopy is greater than twenty percent (20%) of the total property area, then a minimum canopy must be preserved, as defined in the above table at § 155.606.7.A.2.a.**
- c. **Subject to paragraph d below, whenever the existing tree canopy of the site prior to land disturbance is less than twenty percent (20%) of the total property area, then the percentage of canopy, as defined in § 155.606.7.A.2.a, must be achieved by a combination of preservation and new planting.**
- d. **With respect to property located within the Downtown Overlay district or within the C-MF, MUD, TS or ENT districts, the percentage of canopy, as defined in §155.606.7.A.2.a, may be achieved entirely by new plantings, the preservation of existing tree canopy or a combination of preservation and new plantings.**
- e. Tree save areas

5) 155.606.4

When developing new Conditional-Only zoning districts for the UDO that would encourage a more urban design, including the ENT, one of the criteria was to eliminate requirements for perimeter planting around each individual parcel, and instead promote cross connections and an atmosphere of shared space. This proposed text change supports this.

155.606.4. Perimeter Planting

Plantings along those property boundaries not facing a public right-of-way are designed to provide a sense of boundary between nonresidential land uses. Perimeter landscaping is not mandatory in zoning districts such as the ENT district which are intended to create and achieve a mixed-use urban environment and where pedestrian connectivity between land uses and parcels is encouraged.

6) 155.606.6.A.

The UDO requires landscaping to be used to visually screen, or block view of, nonresidential properties from single-family properties. This requested text change is intended to say that visual screening along property edges within the ENT district is not required.

155.606.6. Screening

A. SITE PERIMETER SCREENING. Screening is required along all side and rear yard property boundaries abutting an existing residential use or residentially zoned area. **Notwithstanding the foregoing, the screening requirements of §155.606.6 shall not apply to any boundary line of property located in the ENT district where the boundary line is adjacent to residentially used or residentially zoned property that is located within the ENT district or is recommended to be in the ENT district pursuant to the Entertainment District Small Area Plan.** . . .

7) 155.506.45

In the UDO, we have prescribed conditions for microbreweries and brewpubs, both of which are defined in the code as places where beer or malted beverages are manufactured on-site, and may be sold there. This requested change increases the size of buildings in which a microbrewery or brewpub can be located when in the ENT and other nonresidential districts. It also intends to eliminate any separation between one of these uses and residential uses in the ENT district only.

155.506.45 Alcohol and Alcoholic Beverages, Wine, and Beer.

B. STANDARDS

1. In the HUC district a brewpub cannot exceed five thousand (5,000) square feet gross floor area. A microbrewery in the HUC district shall not exceed five thousand (5,000) square feet gross floor area.
2. In the B-1, B-3, I-1, B-1SCD, MUD, TS, and ENT districts a **microbrewery cannot exceed ten thousand square feet (10,000 sq ft) gross floor area. In the B-1, B-3, I-1, B-1SCD, MUD, TS, and ENT districts, a brewpub or microbrewery cannot exceed a total of seven thousand five hundred (7,500) square feet twenty thousand square feet (20,000 sq ft) of gross floor area in size, and the maximum gross floor area of a brewpub that may be devoted to the production or manufacturing of beverages with alcoholic content shall be ten thousand square feet (10,000 sq ft).**
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7. Any distilling or manufacturing of alcohol and alcoholic beverages shall be separated by a minimum of five hundred feet (500') from any dwelling unit in existence at the time the manufacturing facility receives any related building permit for construction or upfit.

Notwithstanding the foregoing, there shall be no minimum separation requirement between a brewpub located in the ENT zoning district and a dwelling unit located in the ENT zoning district.

8) 155.503.8.F.4.c.

This is part of the Site Plan design criteria for off-street parking in the ENT district. It calls for off-street parking spaces along private drives and alleys in the ENT district to meet the same dimensional criteria as other similarly-located parking spaces in other zoning categories. The intent of this requested change is to use alternative parking space dimensions for private on-street parking spaces.

155.503.8. Entertainment District (ENT)

F. SITE PLAN LAYOUT GENERAL DESIGN.

4. OFF-STREET PARKING.

- c. Access to off-street parking spaces shall be provided by one- or two-way private drives or public alleys. Parking spaces immediately adjacent to drives or alleys may be ninety degree (90°), angled, or parallel, and must be of sufficient depth to assure parked vehicles will not impede traffic movement in the drive or alley. ~~Where ninety degree (90°) or angle spaces are provided, they must be a minimum of twenty feet (20') in length, and where parallel spaces are provided they must be a minimum of eight feet (8') in width.~~ Parking spaces in the ENT district must meet the relevant dimensional standards for parking spaces set out in the Charlotte-Mecklenburg Land Development Standards Manual. Any drive or alley with parking spaces immediately adjacent must be paved a minimum of twenty feet (20') in width, with no obstructions, such as doors, dumpsters, planters, bollards, mechanical equipment, street light poles, etc., that could restrict the full width use of the pavement for vehicular maneuvering in and out of the designated parking spaces. Cross access is required between adjoining rear/side parking lots.

9) 155.701.C.4.g.

The Public Improvements section of the UDO calls for additional public street access points to developments as the number of dwelling units increases. One access point is OK for up to 100 dwelling units, 2 access points are needed for 101 through 350 dwelling units, and 3 driveway points are required for any development in excess of 350 residential units. These additional access points are intended to allow traffic coming into and exiting from the development to be dispersed to multiple locations. This requested change says that the second or third access points may be met via an emergency access for those emergency vehicles only.

155.701. Streets

C. DESIGN CRITERIA.

4. VEHICULAR CONNECTIVITY.

- g. SECOND AND ADDITIONAL POINTS OF ACCESS REQUIRED FOR RESIDENTIAL DEVELOPMENTS. At a minimum, a second point of open and functioning vehicular access from the existing public street system (not a stub-out or a temporary dead-end) is required for developments that exceed one hundred (100) residential units, and a third shall be required for developments that exceed three hundred fifty (350) residential units. These second and third points shall be open and functioning prior to the issuance of the 101st and 351st Certificate of Occupancy respectively for the development. The number of further open and functioning vehicular access points shall be controlled and determined by the development's Town-approved Traffic Impact Analysis, described in § 155.701.C.9. If a Traffic Impact Analysis should

establish a higher standard for the number of open and functioning vehicular access points from the existing public street system, the requirement of the Traffic Impact Analysis shall prevail. These requirements shall not preclude a development from also meeting the connectivity index required in § 155.701.C.4.c. For purposes of this Section, a median-divided vehicular access point counts as a single vehicular access point. This Section does not preclude any development from connecting to existing street stubs and/or street stub right-of-ways abutting their property.

Notwithstanding anything to the contrary, where a second and/or third point of access cannot be provided, the additional access requirement may be met by an emergency access point for emergency vehicles.

10) 155.805.

Chapter 8 of the UDO is the Post Construction Ordinance, which was developed as a way for the County and municipalities to meet federal storm water quality/quantity regulations. Within the Post Construction Ordinance, Chapter 8, the definition of "Undisturbed Open Space" is different than how it might be applied for meeting Landscaping standards in Chapter 606. "Undisturbed Open Space" in the PCO allows for both preservation of existing trees and vegetation during and after site development, and may also refer to land that has been partially or completely cleared of trees and shrubs at the time of some development project, and then replanted with new green materials at the end of the construction project. This requested text change would exempt properties in the ENT district from having to meet any "Undisturbed Open Space" requirements.

155.805. Undisturbed Open Space

B. GENERAL DESCRIPTION. **Except as provided below in paragraph C.4,** Undisturbed Open Space is required for all development unless mitigated.

C. UNDISTURBED OPEN SPACE CRITERIA.

4. PROJECT IN THE ENT ZONING DISTRICT. A project located in the ENT zoning district that is the subject of a conditional rezoning plan approved by the Town Board of Commissioners shall be entirely exempt from the Undisturbed Open Space requirements of the PCO.

E. UNDISTURBED OPEN SPACE MITIGATION.