

Development Law Digest

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

by Charles F. Marshall and Andrew T. Tripp

RALEIGH INFILL DEBATE

STUDY COMMISSION TO BE ESTABLISHED. The debate over whether the City of Raleigh should impose additional zoning regulations on homes that are remodeled or rebuilt continues to burn. Yesterday the City's Comprehensive Planning Committee (CPC) recommended that the City Council establish an Infill Study Group to determine whether additional—and more restrictive—zoning regulations are needed to govern “infill” development (that is, homes that are remodeled or rebuilt in established neighborhoods).

The CPC's support for an Infill Study Group sends the signal that some members of the CPC and the City Council may still favor imposing new zoning regulations on infill development. The Study Group would include three citizens who oppose new restrictions on infill development and three citizens who support such restrictions. Former Planning Commission chair Dickie Thompson has tentatively agreed to chair the Study Group. If the Study Group cannot find common ground on a “resolution” to the infill development issue by April 1, 2008, the CPC may “consider other measures to move the negotiations forward.” Clearly the debate is far from over.

EARLIER PROPOSALS DEFEATED. Yesterday's hearing was the latest chapter in a story that began unfolding shortly after the November 2007 elections. The Council first considered a text change (TC-8-07) that would reduce height limits and increase set backs for certain residential zoning categories. The homeowners of Raleigh mustered in opposition, and the Council voted down TC-8-07 unanimously on December 4, 2007.

The City Council then asked the CPC to consider two other options to address infill development that were presented by Planning Department Director Mitchell Silver. “Option 2” would require Planning Commission approval to remodel or rebuild any home that exceeded between 125% and 130% of the home's original square footage. “Option 3” would expedite the process for establishing Neighborhood Conservation Overlay Districts (NCODs) and impose changes to the NCOD process. NCODs allow a majority of residents in specifically-defined neighborhoods to impose special zoning regulations within that neighborhood.

At its meeting yesterday, the CPC voted to recommend that the City Council pursue the expedited NCOD option but not the square footage restriction option. Expediting the NCOD process requires a text change to the City Code that likely will be considered at a public hearing in April 2008.

NEXT STEPS: The recommendations of the CPC will be forwarded to the Council and likely acted on at the Council's next meeting, presently scheduled for Tuesday, January 22, 2008. The Council may adopt the recommendations, with or without modifications, or may choose to take no action at all.

WHAT IS A TEXT CHANGE?

A text change is a change to the text of the Raleigh City Code, Part 10, Planning and Development. A request for a text change can be filed by any person using a form available on the City's website. A \$250.00 filing fee is assessed.

Once a text change is proposed, the City Council must authorize a public hearing. The proposed changes would then be considered at a joint hearing of the City Council/Planning Commission, which are scheduled to occur periodically each year. The public hearing for the amendment to NCOD regulations in the Code would likely occur at the April 2008 joint hearing.

After the public hearing, the matter moves to the Planning Commission for a recommendation. The Planning Commission has 105 days to report back to the Council.

After receiving the Commission's recommendation, the Council has the power to approve the text change by a simple majority vote. If less than 75% of the Council supports the change, the change must be approved again by a simple majority vote at the next meeting of the Council.

PROTEST PETITIONS: Neighborhoods have another means at their disposal to ensure that all parties are given a fair hearing in zoning matters. If a document known as a “statutory protest petition” is filed in connection with the Council's consideration of a proposed re-zoning, including the creation of a particular NCOD, 75% of the Council must approve the proposed re-zoning in order for it to be enacted. In order to be valid, a statutory protest petition must be signed by either the owners of 20% or more of the property included in the area to be re-zoned or the owners of 5% or more of the property included in a 100-foot-wide buffer around the area to be rezoned (N.C. Gen. Stat. § 160A-385). A protest petition was filed in the Council's recent determination not to down-zone certain parts of the Five Points and Fallon Park neighborhoods.

January 17, 2008

1

BROOKS PIERCE

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, LLP
www.brookspierce.com Attorneys at Law

The Law Firm of
BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.
has been serving North Carolina businesses since 1897.
The Firm's Raleigh offices are located at:

Wachovia Capitol Center
150 Fayetteville Street, Suite 1600
Raleigh, North Carolina 27601
(919) 839-0300

Copyright 2008, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.

**The authors cite to David Owens' authoritative text, *Land Use Law in North Carolina*, UNC School of Government in 2006, in drafting this Digest.