

## MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director  
Loryn Clark, Housing and Neighborhood Services Manager

SUBJECT: Public Hearing: Proposed Town-Initiated Zoning Atlas Amendment for a  
Moratorium for an Area Including the Northside and Pine Knolls Neighborhoods

DATE: June 20, 2011

### PURPOSE

Tonight, the Council is receiving public comment in support of and in opposition to a proposed Zoning Atlas Amendment to establish a development moratorium for areas in and around the Northside and Pine Knolls neighborhoods, including properties that are within the borders of the Neighborhood Conservation Districts and properties located on the north side of Rosemary Street, South Graham Street, South Roberson Street, South Merritt Mill Road, and Pritchard Avenue Extension (Please see the attached map).

The initial area identified for consideration to be subject to a moratorium, based on the Council's action on May 23, 2011, and the published notice of this hearing and proposed action contained in the notice, is shown on the attached map. The Council may include the area as indicated or some portions of the area identified in any temporary moratorium it determines to enact.

As proposed, the moratorium would apply to applications for residential permits from the Town's Inspections and Planning Departments that have not yet been received, effective May 24, 2011, which is the date on which the Council set the process into motion. This would include applications for:

- building permits;
- site plan approval;
- special use permits;
- zoning compliance permits;
- minor subdivisions; and
- major subdivisions (preliminary plat).

The Council may exempt some types of permits or proposed developments from any temporary moratorium it determines to enact. We recommend that the following applications be exempt from a development moratorium:

- Repairs required due to catastrophic loss or deterioration;
- Foundation repairs;
- Repairs necessary for safety purpose or to correct code or zoning violations; and
- Removal and replacement of an existing structure with one of the same size or less.

The moratorium, as drafted for your consideration, would terminate on January 31, 2012.

Following tonight's Public Hearing, on June 27, 2011, the Council could consider enacting an ordinance establishing a moratorium.

## **BACKGROUND**

On March 28, 2011, the Town Council received a petition from the Sustaining OurSelves Coalition requesting a freeze on development in the Northside and Pine Knolls neighborhoods, enforcement of existing codes and occupation standards, and revisions to the Northside and Pine Knolls Neighborhood Conservation Districts to tighten restrictions.

On [May 23, 2011](#), we provided the Council with a response to the petition and also provided an update on staff initiatives that were underway to develop solutions that recognize the connection between the spirit and intent of the Northside Neighborhood Conservation District Vision Statement and Town-wide discussions about student rental development in residential neighborhoods.

Also on May 23, 2011, the Council scheduled tonight's Public Hearing to receive public comment about a temporary moratorium.

## **PROCESS**

The Town Council has proposed a temporary moratorium on specific development applications for an area in and around the Northside and Pine Knolls neighborhoods, including properties that are within the borders of the Neighborhood Conservation Districts and properties located on the north side of Rosemary Street, South Graham Street, South Roberson Street, South Merritt Mill Road, and Pritchard Avenue Extension (Please see the attached map of the proposed area). Staff has conducted an evaluation of the proposal. We have presented a report to the Planning Board and tonight we submit our report and preliminary recommendation to the Council.

### Public Notice

Notice was published in the Chapel Hill News on Sunday June 5, 2011 and Sunday, June 12, 2011. Copies of the agenda materials on this proposal are available in the Communications and Public Affairs Department and on the Town's website ([www.townofchapelhill.org](http://www.townofchapelhill.org)).

### Process

Tonight, the Council is holding a public hearing to receive public comment on the proposed rezoning. Typically, the Council refers comments made at the hearing to the Manager and Attorney for a follow-up report. We anticipate returning to the Council with a follow-up report for Council consideration of possible action on June 27, 2011.

## **ZONING ATLAS AMENDMENTS**

Zoning determines the type and intensity of uses and development that are allowed on a piece of land. A Zoning Atlas Amendment involves a change to the current zoning, and thus the permitted types and intensity of land uses.

## Moratoria

A moratorium is, in effect, a Zoning Atlas Amendment for a temporary period. Given the time required to complete the procedures for enactment or amendment of development regulations or to rezone property, local governments sometimes enact moratoria on development to preserve the status quo while plans are made, management strategies are devised and reviewed, ordinances are revised, or other development management concerns addressed.

North Carolina General Statute G.S. 160A-381(e) provides the substantive authority and procedural framework for enactment of temporary development moratoria by municipalities. That section states that:

“Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.”

Provision is made in this North Carolina General Statute for expedited judicial review of enacting a moratorium and the Town has the burden of showing compliance with the procedural requirements of the statute in such challenges.

## **EXISTING ZONING**

The proposed boundary includes property within different zoning districts of the Land Use Management Ordinance. Property zoning in the Northside neighborhood includes Residential-3, Residential-4, Residential-Special Standards – Conditional, Office/Institutional-2, Office/Institutional-3 and Town Center-2. The Pine Knolls neighborhood is zoned Residential-3. Outside of the Neighborhood Conservation Districts, areas within the proposed boundary are zoned Residential-3.

## **PROPOSED AMENDMENT TO THE ZONING ATLAS**

The proposal is to enact a temporary moratorium (excepting statutory exclusions) on residentially zoned properties in and around the Northside and Pine Knolls neighborhoods, including properties that are within the borders of the Neighborhood Conservation Districts and

properties located on the north side of Rosemary Street, South Graham Street, Merritt Mill Road, and Pritchard Avenue Extension and South Roberson Street (See the attached Map).

The ordinance as proposed would apply to applications for building permits (interior and exterior), applications for site plan approval, special use permits, zoning compliance permits, minor subdivisions and major subdivisions (preliminary plat).

Statutory exceptions include, absent an imminent threat to public health or safety, applications for the following if they have been accepted prior to the call for the public hearing to adopt the moratorium (May 23, 2011):

- any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding,
- any project for which a conditional use permit application or special use permit application has been accepted,
- development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1,
- development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, and
- preliminary or final subdivision plats.

Any preliminary subdivision plat accepted for review by the Town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

The Council may determine to exclude from the coverage of the moratorium other development based on their status as of May 23 or June 27 or based on the nature of the proposal, for example minor exterior structural repairs or expansions of less than a certain size or percentage relative to an existing structure. The ordinance as drafted would apply to applications not complete prior to May 24, 2011. It would not apply to those applications exempted by law as well as other minor projects as noted above.

The following provides the status of non-single family developments and development applications in the proposed area and identifies whether they would be stopped by a moratorium.

#### Current Projects Unaffected by a Moratorium

The following projects were underway or under review before May 23, 2011 and would be unaffected by a moratorium:

- 311 Pritchard Avenue (Zoning Compliance Permit application)
- Shortbread Rezoning and Special Use Permit applications
- Town parking lots on South Graham Street and South Roberson Street
- 508 McCauley Street (Zoning Compliance Permit application)
- 321 Brooks Street (Zoning Compliance Permit application)

### Current Projects Affected by a Moratorium

The following applications were received after May 23, 2011 and therefore would be stopped by a moratorium. Full fee payment has not been accepted for these applications. The applications that have been submitted are being held in the Planning Department and are not being reviewed by Town staff pending the Council's decision on June 27, 2011.

- 103 Crest Street (Single-family/Two-family Zoning Compliance Permit application)
- 202 Sunset Drive (Zoning Compliance Permit application)
- 506 Pritchard Avenue (Zoning Compliance Permit application)

### **ANALYSIS OF THE PROPOSAL**

Analysis of this proposal is organized around the requirements of the North Carolina General Statutes concerning Moratoria.

The following discussion addresses the requirements of G.S. 160A-381(e):

- 1. Statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.**

#### Statement of the problems

Because the Northside and Pine Knolls neighborhoods are located close to downtown Chapel Hill, amenities and the University, they have been attractive neighborhoods to many segments of the Town's population for a number of years, specifically University students.

The Town has identified a need to develop methods for addressing incompatible development that is not consistent with the intent of the Neighborhood Conservation Districts. Specifically, the conversion of modest single-family homes into large rental properties that are targeted for student occupancy has been a common practice by investors. We anticipate that we will continue to receive these types of applications. A moratorium could temporarily slow down and discourage this type of conversion and allow the Town and the neighborhood to jointly design an action plan and strategies to address these concerns.

Complaints to the Town associated with a student rental property in a residential neighborhood include: late-night noise, litter, and several vehicular-related issues including increased traffic, presence of excessive numbers of automobiles, both on the public right of way and on private property, illegal parking, and increased on-street and front lawn parking. (The historic narrow streets in these neighborhoods contribute to these vehicle concerns being serious problems for access for residents as well as for service vehicles.) Related to these issues are concerns of Town staff for the well-being of the tenants of these houses and the staff resources needed to address complaints and enforce ordinances on a case-by-case basis.

Another criticism of student rental development in residential neighborhoods is that it drives up the cost of rental housing to the point where families are unable to afford to rent a house in a community. In addition, residents of the Northside and Pine Knolls neighborhoods have made statements that when houses go on the market they are often bought by investors for student rentals rather than by owner-occupied households.

The draft Affordable Housing Strategy states that the Town should work to develop a plan to address the development pressures on the Northside and Pine Knolls neighborhoods, and that the Town should support a housing and cultural preservation program in the neighborhoods.

Hudson Vaughn, a representative of the Sustaining OurSelves Coalition, offered the following information for the Council's consideration. We note that Town staff has not verified this information:

- There has been a steady trend in the last decade toward investor-owned and student rental housing. For example, the group reports that over 45% of single-family homes in the historic Northside area (excluding major apartments, which would increase this percentage) are now investor-owned and student-occupied.
- There has been a rapid transition in the character of available housing. Approximately 50% of homes in Northside have changed ownership in the last ten years, with most becoming investor-owned student rental properties.
- Many long term residents are no longer able to stay in their homes due to a significant increase in property taxes. They report that most long-term residents have experienced at least a 100% increase of property taxes and values since 2000. While the increase in property values benefits sellers, it is a serious concern for those who wish to continue living in the neighborhood.
- Homes are also becoming unaffordable to existing owners because some homes are in need of significant home repairs and expensive energy efficiency renovations. As a result, the increase in utility expenses has made housing more unaffordable.
- There are over twenty properties in the Northside neighborhood that are empty, abandoned, or "in transition" in Northside. There is a concern that these properties could be purchased by investors and result in more incompatible development in the neighborhoods.
- There is a loss of a sense of community, felt broadly across diverse populations of Northside. Over two-hundred and fifty residents from the area attended community meetings to express their frustrations with the loss of community and their sense that their needs are being ignored, while also discussing their goals for their communities and how they might be achieved. [Information provided by Sustaining OurSelves Coalition]

The following describes other actions that are being considered in lieu of a moratorium, but may not be deemed adequate.

*A. Modification to the Regulations of Existing Neighborhood Conservation District Zoning Overlays*

In 2004 and 2007, the Council established Neighborhood Conservation Districts in the Northside and Pine Knolls neighborhood respectively. A Neighborhood Conservation District is a set of land use regulations that are applied to a specific neighborhood as a zoning overlay. The intent of the designation is to protect distinctive neighborhood characteristics and is useful in areas that contribute significantly to the overall character and identity of the Town, but may lack sufficient historical, architectural or cultural significance at the present time to be designated as a Historic District. Typically, these regulations apply stricter setbacks and height limits and restrict particular land uses such as duplexes and accessory apartments.

*Arguments in Support:*

Regulations included in a Neighborhood Conservation District may discourage some of the incompatible development that occurs in the Northside and Pine Knolls neighborhoods. The Council could consider modifying the regulations of the Neighborhood Conservation Districts to address some of these issues.

*Arguments Against:*

We believe that while the Neighborhood Conservation District regulations may discourage some student rental development, the regulations are not absolutely effective at addressing the desirability of the property for student rental. We have recognized that applicants that are interested in developing student rental properties are capable of submitting plans that technically meet the regulations but still allow the properties to function as student rental units.

Throughout discussions with residents of the Northside and Pine Knolls neighborhoods, we have heard the statement that the Town is allowing development violations to occur in these neighborhoods. After an investigation of the cases that have been brought forward as examples of code violations, we have found that the developments had met the terms of the zoning and Neighborhood Conservation District regulations but that some homes may be in violation of the Town's occupancy restrictions and front yard parking restrictions.

Currently, the Land Use Management Ordinance states that Single-Family Dwelling Units shall be classified as Rooming Houses if occupied by more than four persons who are not related by blood, adoption, marriage, or domestic partnership. Classification as a rooming house would require a more rigorous review and additional standards for approval, typically by the Planning Board, if allowed at all in the particular zoning district.

While anecdotal evidence and the number of bedrooms in a structure can suggest that some student rental properties are occupied by more than four unrelated persons, it has been difficult to verify this without lengthy and invasive investigations.

We also note that additional restrictions on the neighborhood would apply to both new and existing development. This could result in unintended consequences for existing homeowners or

new homeowners who may wish to live in the neighborhood but who may not be able to improve or expand their homes as necessary to accommodate their needs.

**2. Statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.**

As proposed the moratorium would apply to applications for building permits (interior and exterior), applications for site plan approval, special use permits, zoning compliance permits, minor subdivisions and major subdivisions (preliminary plat) for residential development on residential zoned property. As recommended a moratorium would not apply to any permits associated with non-residential properties.

A moratorium on these specific development applications would temporarily stop additional development proposals coming forward until the Council has established a vision for the area and considered revised development regulations for future development in the area. The Council could choose to limit the scope of the moratorium in order to allow interior repairs and minor expansions to proceed based on some measurable standard.

We recommend that the moratorium not apply to repairs required due to catastrophic loss or deterioration, foundation repairs, repairs for safety purpose or to correct code or zoning violations, and removal and replacement of an existing structure with one of the same size or less.

**3. Date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.**

The recommended date for termination of the moratorium is January 31, 2012.

We believe the duration is necessary to:

- Slow down conversion of single-family properties.
- Allow for development of a vision statement for the area.
- Provide time for staff to work with neighborhood stakeholders to jointly design an action plan and strategies.
- Prepare recommendations for Planning Board and Council consideration on development regulations.
- Allow the staff work group to implement new initiatives to address the impact of student rental properties on single-family neighborhoods.



**4. Statement of the actions, and the schedule for those actions, proposed to be taken by the Town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.**

During the duration of the moratorium, we propose to take the following actions:

- Meet with neighborhood stakeholders to develop a vision statement, identify issues and develop strategies and an action plan (June – October, 2011);
- Implement new initiatives developed by the staff work group (beginning in June, 2011);
- Review the current guidelines of the Neighborhood Conservation Districts with Town staff and neighborhood stakeholders (June-September, 2011);
- Provide a status report to the Council (September, 2011);
- Consider possible amendments to the Land Use Management Ordinance (June – September); and
- Recommend a strategy and an action plan for Council consideration (November Public Hearing).

## **RECOMMENDATIONS**

Recommendations are summarized below:

Planning Board Recommendation: On June 7, 2011, the Planning Board voted 5-4 that the Council not enact a development moratorium for areas in and around the Northside and Pine Knolls neighborhoods. The Board also recommended that the Council direct the staff to provide a plan for immediate enforcement of all regulations in the Northside and Pine Knolls neighborhoods while working on new approaches. Please see the attached Summary of Planning Board Action.

Preliminary Staff Recommendation: We recommend that the Council enact a temporary moratorium on development in areas in and around the Northside and Pine Knolls neighborhoods, including properties that are within the borders of the Neighborhood Conservation Districts and properties located on the north side of Rosemary Street, South Graham Street, South Roberson Street, South Merritt Mill Road, and Pritchard Avenue Extension. Please see the attached map.

The proposed moratorium would apply to applications for residential permits on residentially zoned property from the Town's Inspections and Planning Departments that have not yet been received, effective from May 24, 2011, which is the date from which the Council set the process into motion. This would include applications for building permits, applications for site plan approval, special use permits, zoning compliance permits, minor subdivisions and major subdivisions (preliminary plat).

We recommend that the Council limit the scope of the moratorium in order to allow:

- repairs required due to loss or deterioration;
- foundation repairs;
- repairs necessary for safety purpose or to correct code or zoning violations; and
- removal and replacement of an existing structure with one of the same size or less.

We believe that a moratorium is an appropriate action to allow for time to review current zoning regulations, and work with neighborhood stakeholders to jointly develop an action plan and strategies for the Northside and Pine Knolls neighborhoods. We believe that such a process could be completed by January, 2012. The Council may exempt some types of permits or proposed developments from any temporary moratorium it determines to enact.

#### **ATTACHMENTS**

1. Map of proposed moratorium boundary
2. Summary of Planning Board Action