

MEMORNDUM

TO: John Richardson, Community Resilience Officer
FROM: Ralph Karpinos, Town Attorney
DATE: March 12, 2019
SUBJECT: Environmental Stewardship Advisory Board Petition on Energy Efficiency

On December 5, 2018 the Chapel Hill Town Council received the attached from the Town’s Environmental Stewardship Advisory Board. The petition was referred to Town Staff. You have asked me to comment on the extent to which the Town has authority to take the steps proposed in the petition.

The Board’s Request:

The Board’s Petition asks that the Council “require all new building construction and renovations in Chapel Hill which require a rezoning with a Special Use Permit to install roof-mounted solar energy systems over at least 80% of eligible roof areas with the following stipulations”

Legal Authority:

In support of their request, the Board cites North Carolina General Statute Sec. 160A-383.4:

§ 160A-383.4. Local energy efficiency incentives.

(a) Land-Use Development Incentives. - Counties and municipalities, for the purpose of reducing the amount of energy consumption by new development, and thereby promoting the public health, safety, and welfare, **may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives to a developer or builder** within the county or municipality and its extraterritorial planning jurisdiction **if the developer or builder agrees** to construct new development or reconstruct existing development in a manner that the county or municipality determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption.

(b) Repealed by Session Laws 2009-95, s. 1, effective June 11, 2009. (2007-241, ss. 1, 2; 2008-22, s. 1; 2009-95, s. 1.)

(emphasis added)

Current Town Policies:

Energy efficiency is a goal of the comprehensive plan. The Council has an energy policy for rezonings with special use permits that sets expectations around energy performance. A commitment to energy efficiency could be a condition agreed to as part of a conditional use

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rezoning.¹ Based on the standards for considering amending the LUMO², it could be cited as a basis for granting a requested rezoning.

Moreover, the current Town policies and goals for energy efficiency could be codified, as authorized by the Statute cited above and in the Board's petition. The Council could consider identifying, in an ordinance, the range of density bonuses or other incentives it would offer in exchange for meeting the energy efficiency standards (including, but not necessarily limited to, installation of solar roof panels).

Apart from the increased density that conditional use or general use rezoning could offer as an incentive and bonus, the Town could consider if there are other incentives it might wish to offer a developer who agrees to meet "generally recognized standards" that demonstrate a "significant contribution to reduction of energy consumption." Having a set of energy conservation goals and accompanying incentives or other bonuses spelled out in the Ordinance could provide guidance to applicants and assist preparation of development plans. Thus, the next step, should the Council wish to act on this petition, could be to identify what types of density bonuses or other incentives it wants to offer and what energy efficiency standards it would expect to see in exchange for any such incentives or bonuses.

Although the petition received proposes the council establish an ordinance requirement, I would recommend that any LUMO amendment be worded to give the Council legislative discretion to consider other factors and circumstances that cannot be foreseen. Establishing standards for bonuses that would be mandatory in order to be able to have property rezoned under a conditional use rezoning could unnecessarily constrain the Council's ability and legislative discretion to achieve other Council goals. (In other words, energy efficiency design would be a justification for a conditional rezoning and an accompanying agreed to condition but the Council would not be bound to require the energy efficiency design in order to grant a conditional rezoning. Nor would the energy efficient design proposed entitle someone to conditional rezoning.)

Requiring some energy efficiency standard to be met as a condition of issuance of a special use permit, where no rezoning is needed, would need to be administered carefully. The Statute cited above provides that the incentives (density bonuses, etc.) can be included if a developer agrees to meet energy savings standards. Where rezoning is not requested, or after a rezoning is enacted without a condition calling for energy efficiency in construction, requiring energy efficiency as a condition of a special use permit could be problematic. A special use proceeding is quasi-judicial and the Town's discretion is more limited than it is during a legislative rezoning process. Where both a rezoning and a special use permit are needed for a development, linking an agreement regarding energy efficiency to the rezoning would be preferable. Where there is only a special use permit sought, it would be advisable to seek an applicant's clear agreement to any

¹ N.C.G.S. Sec. 160A-382 provides that conditions may be included in conditional use zoning districts or conditional districts which are "mutually approved by the city and the petitioner" (property owner). The section also provides that property may be placed in a conditional use district "only in response to a petition by the owners".

² LUMO Section 4.4 states that one of the grounds for seeking an amendment to the LUMO is "to achieve the purposes of the comprehensive plan."

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such conditions and show the exchange of the density bonus or other benefit provided in exchange therefor.³

As for the specific requirement proposed in the petition, “roof-mounted solar energy systems over at least 80% of eligible roof areas”, this is just but one of a number of potential ways to include design components which contribute to reduction of energy construction. The Town Council and staff may want to include other options in any ordinance proposed.

The Council may wish to consider writing energy efficiency standards and incentives into the LUMO now, or as part of the broader LUMO rewrite project.

³ N.C.G.S. Sec. 160A-381(c) provides that conditions imposed on special use permits “shall not include requirements for which the city does not have authority under statute to regulate” nor requirements for which the courts have held to be unenforceable if imposed directly by the city.