



## 05-15-2024 Town Council Meeting Responses to Council Questions

### **ITEM #12: Rewriting Our Rules: A LUMO Update**

#### **Council Question:**

For site plan approvals under new/proposed LUMO, would Planning Commission still be the review board?

#### **Council Question:**

Currently the Planning Commission reviews/approves site plan applications under the 20,000/40,000 Council review limit. Will they have the same role once we increase those limits, or are you looking to move all reviews under the limit to staff administrative review?

#### **Staff Response:**

*The Planning Commission will not be responsible for site plan approvals under the new LUMO. Site plan approval is a purely administrative process and is best handled by staff. The decision to approve a site plan must be based solely on whether an application complies with LUMO standards.<sup>1</sup> There is no discretion allowed in the review of a site plan and public comment based on subjective issues cannot be a factor in the approval.*

*The APA's Equity in Zoning Guide notes that public hearings should only be used in cases where the deciding body has discretion over whether to approve an application. Subjecting site plan reviews to public hearings contributes to a false impression that discretion and public comment are legitimate elements of the process. This can unfairly prejudice applicants by "muddying the waters" in terms of what information (e.g., public comment) is or isn't relevant to their approval. Likewise, it can erode the public's trust if they are invited to comment on a project even though their comments can not necessarily be factored into the approval process.*

#### **Council Question:**

Will we have regulatory design standards completed by the time of the vote to adopt LUMO?

#### **Staff Response:**

*Yes. These standards are intended to be a part of the adopted LUMO.*

#### **Council Question:**

Why aren't we requiring commercial/retail in strategic locations like corners and intersections? If we aren't requiring it, what's the strategy to get it in places we know we want it and it can be successful?

#### **Staff Response:**

*The best way to support commercial/retail development in strategic locations is to be more permissive of this sort of development. The new LUMO will aim to do this through revised thresholds for by-right development, mixed-use zoning districts, more reasonable permitting requirements, and updated design/dimensional standards.*

*Staff strongly recommend against requiring commercial development in any particular area. Past attempts to do so have not been widely successful. Even locations that may seem like obvious options for commercial/retail*



## 05-15-2024 Town Council Meeting Responses to Council Questions

*uses may not actually be able to support a successful business. The market research used to determine whether a site can support a successful business typically considers a wide range of factors. In most cases, this type of research can – at best – indicate that a location may be able to support a successful business.*

*An early analysis suggests that most areas of Town are already relatively well-served by small-scale commercial development like restaurants, coffee shops, and grocery stores. The attached maps show the estimated travel times – by bike – to various amenities. Most of the Town is within less than a 15-minute bike ride to many of these amenities.*

### **Council Question:**

Does LUMO need a process component that allows staff to negotiate for complete community goals, like shared parking, public realm/place making/urban design, commercial, retail, greenways through a site, etc.? How do we create LUMO process standards that support the CC matrix? Which ones can be required administratively or in code?

### **Staff Response:**

*Wherever possible under the law, the new LUMO will strive to support Complete Community goals. For example, developers will be required to adhere to updated design/dimensional standards that help to promote excellence in the public realm. Updated landscaping standards and EV charging requirements will help to make new development more sustainable. Requirements for greenways and multiuse paths in the public right of way will support the Everywhere to Everywhere Greenways network. New mixed-use zoning districts will facilitate in-fill development in the Town's Focus Areas.*

*Certain community benefits (e.g., affordable housing; large-scale land conservation; greenways or multiuse paths outside the public right-of-way; and energy efficiency measures that exceed state requirements) are best secured through the negotiated conditional zoning process. The [staff report for the March 13 Council meeting](#) provides additional details on these community benefits. Staff are heavily involved in this process and currently negotiate extensively on Council's behalf before a project reaches Council. No LUMO process component is needed to formalize this role.*

*Outside of the conditional zoning process, staff cannot negotiate for community benefits that are not explicitly required through LUMO. Even if an applicant agreed to provide such benefits, the agreement would not represent a legally enforceable commitment.*



## 05-15-2024 Town Council Meeting Responses to Council Questions

### **Council Question:**

How are we dealing with variances or modifications and what does transparency look like in this process (to the public, council, and applicants)?

### **Council Question:**

If we move to a high-level review of conditional rezonings (using the Longfellow project as an example), who would be in charge of approving any modifications to regulations that the applicants might request? Board of adjustment? Staff? Planning Commission? Would there be a different approval path for major and minor modifications?

### **Staff Response:**

#### Conditional Zoning

*Only Council has the authority to grant modifications to regulations on a project-by-project basis. Applicants going through the proposed high-level conditional zoning process would continue to have the ability to request modification to regulations. Ultimately, the goal is to significantly reduce the number of modifications to regulations applicants need to ask for. Outdated regulations for height, FAR, lighting, etc. tend to represent a major share of modifications to regulations granted by Council. Updating these standards in the new LUMO should significantly reduce the need for modifications.*

*To ensure transparency in the process, any modifications that applicants do end up needing would continue to be a part of the public hearing for a CZ. Staff would also continue to review the modification requests and advise Council on whether the modifications are reasonable.*

*Applicants will still be responsible for providing sufficient information to justify their modification requests.*

#### Administrative Approvals

*Staff do not have the authority to grant modifications to regulations. Therefore, applicants going through a purely administrative approval process would not be able to request modifications to regulations in the traditional sense. Because the administrative approval process does not allow modifications to regulations, we are being thoughtful about updating standards that could become inadvertent sticking points for a project (e.g., floor area ratios, setbacks, etc.). In some cases, the new standards could grant staff the ability to make minor adjustments based on specific criteria defined in the new LUMO.*

*Applicants could also request a formal variance from the Board of Adjustment. This is a quasi-judicial process in which the BOA must publicly deliberate about whether a variance should be granted. Like all quasi-judicial processes, the BOA's decision must be based on competent, material, and substantial evidence on the record.*



## 05-15-2024 Town Council Meeting Responses to Council Questions

### **Council Question:**

Staff is proposing that residential development under 20 units be by right. Would these smaller projects be exempted from inclusionary zoning requirements?

### **Staff Response:**

*Staff are still considering what changes may be needed to the Town's inclusionary zoning requirements. The LUMO's official inclusionary zoning requirements are generally interpreted as only applying to for-sale projects.*

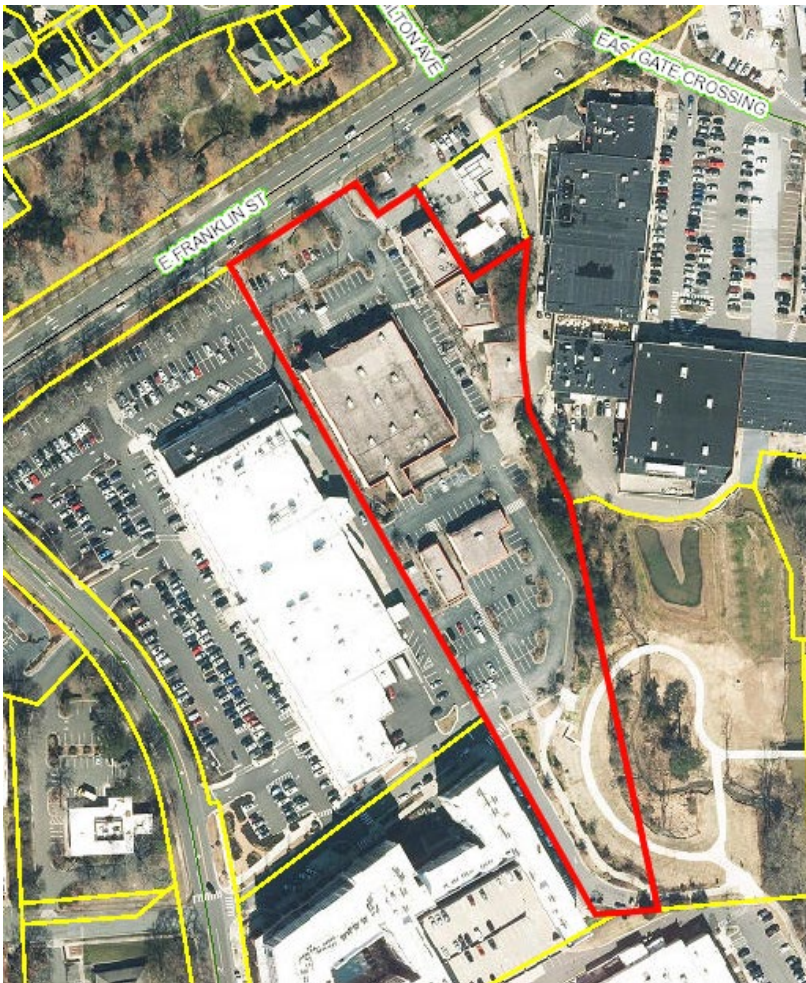
*Since the Town cannot impose rent controls, rental developments that are approved administratively would not be required to provide affordable units. This is in line with the findings of the economic analysis that was shared during the April 24 Council meeting. The analysis suggested that smaller scale projects cannot bear the cost of providing affordable housing.*

### **Council Question:**

Can you give me some examples of commercial projects that are about 40,000 square feet, the proposed new limit for administrative approvals?

### **Staff Response:**

*Please see the examples below.*



### Example A

1710 E. Franklin Street

Approx 39,000 sq ft of floor area

1-story

1 medium size store (Staples) and 6-8 smaller storefronts



## 05-15-2024 Town Council Meeting Responses to Council Questions

### Example B

400 S. Elliott Road

Approx. 30,000 sq ft of floor area

1-story

1 medium size store (Phydeaux) and 8-9 smaller storefronts





## 05-15-2024 Town Council Meeting Responses to Council Questions

### Example C

121 S. Estes Drive

Approx. 30,000 sq ft of floor area

1- and 2-stories

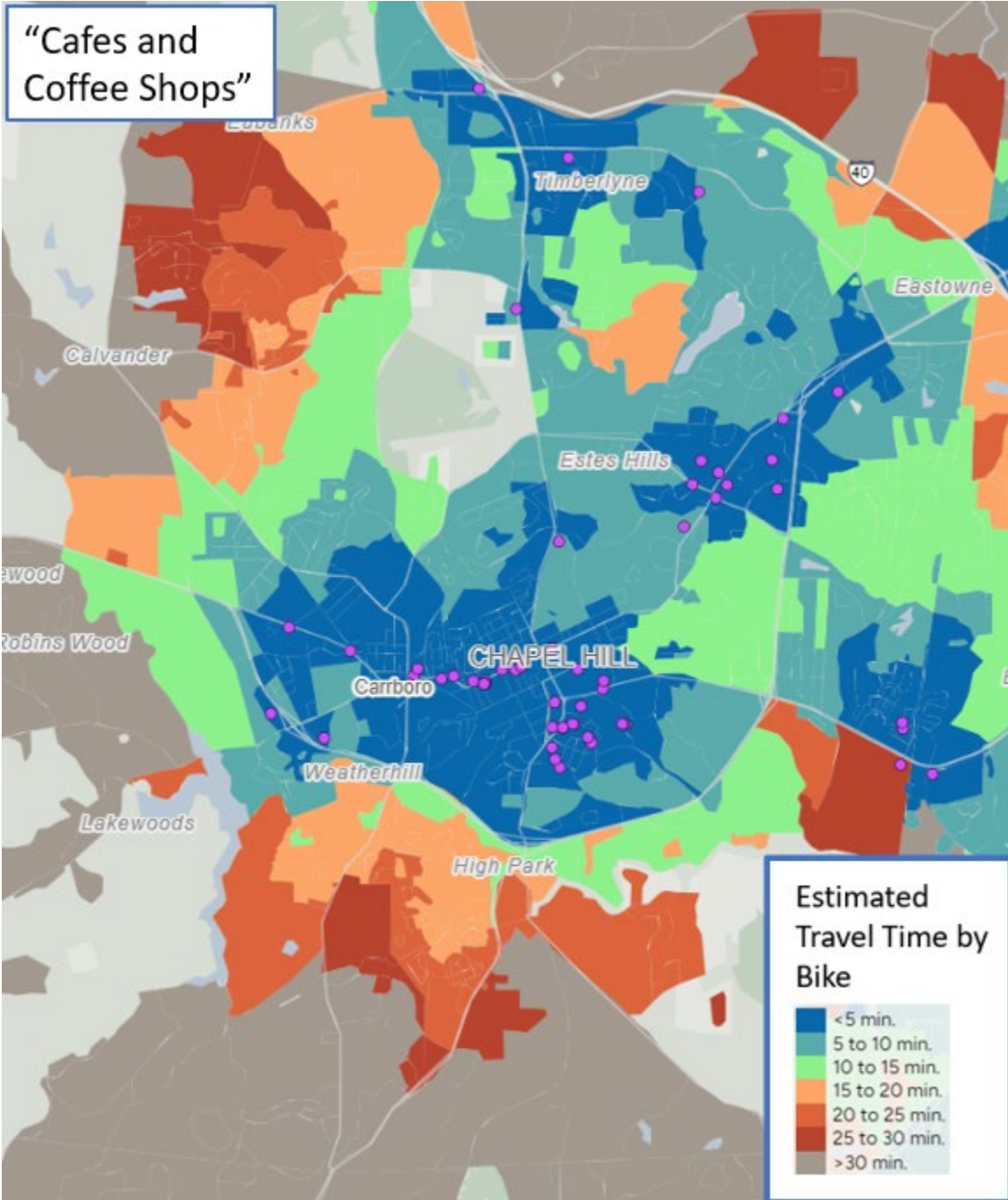
Several small- to medium-sized office spaces





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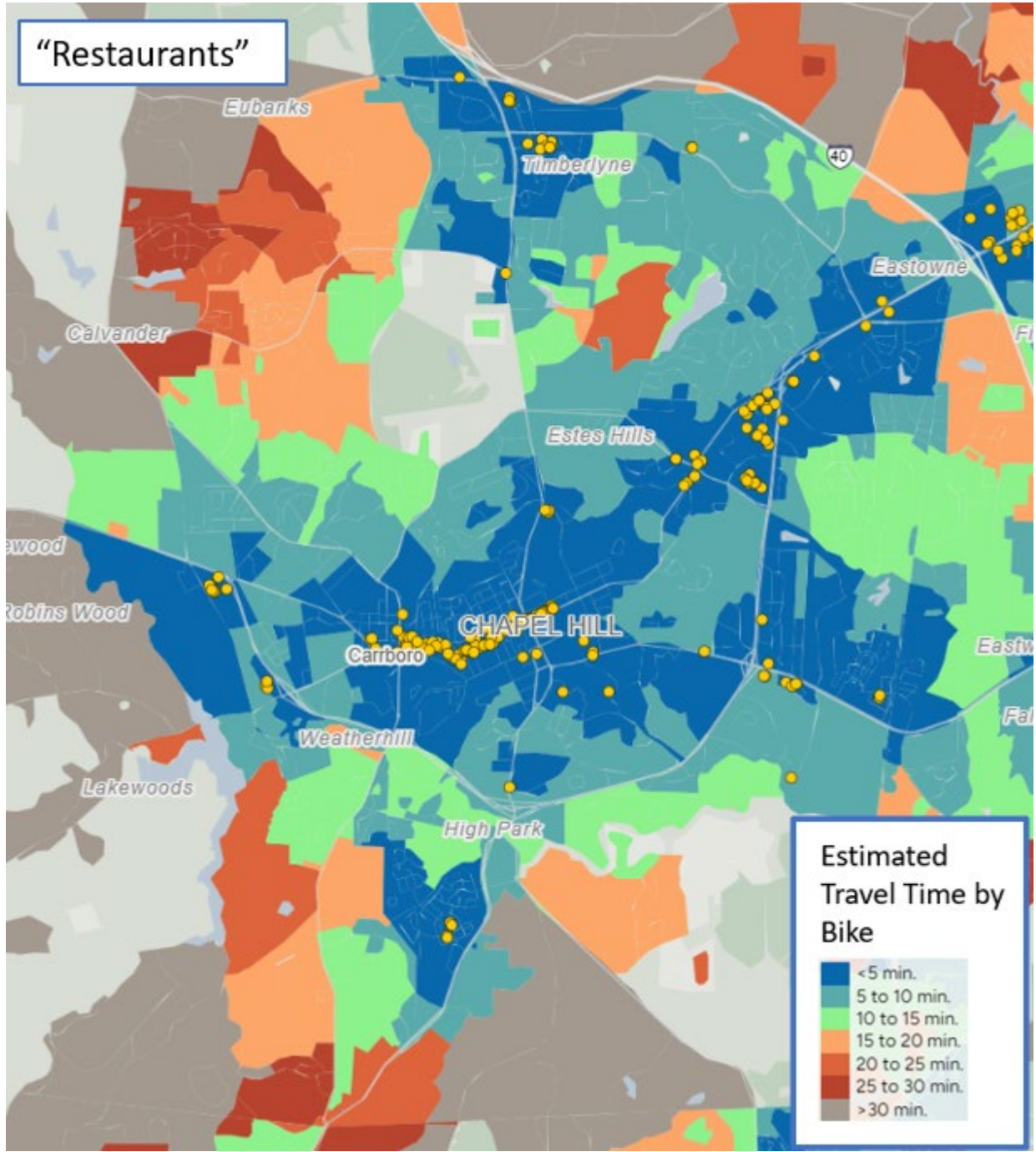
## TRAVEL TIME ESTIMATES





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