

Response to NTAAC Comments

As part of the advisory board review of the draft Land Use Ordinance text amendments to authorize the Board of Aldermen to create site specific, flexible zoning districts, the Northern Transition Area Advisory Commission submitted a number of comments embedded into the agenda materials. The following pages provide responses to those comments, based on the draft ordinance that was presented at the October 13, 2015 public hearing. To read the comment within the context of the agenda materials, please refer back to the advisory comments (Attachment E). The numbers in the margin correlate to the numbers below. The draft ordinance would need to be substantially reworked to accommodate all of the interests expressed by the NTAAC. Staff has made a few minor refinements per the NTAAC recommendations but has not made any major changes, and awaits direction from the Board of Aldermen on whether to do so.

1. *(NTAAC: The themes were retention of the agricultural landscape and the rural character of Old 86, and support of a village characterized by small scale and North Carolina vernacular buildings. (see Exhibit A, p. 1, no. 4)*

The ordinance creating the FLX district framework has intentionally been left general so that the mechanism could be used for more than one tract. Each request for a FLX zoning district would be specific to the parcel(s) involved. The findings from the site specific planning study, (in the case of the Eubanks Road tract the DAD workshops)--the report and commonalities from the concept plans—would be incorporated into the specific rezoning request application.

2. *(NTAAC: The 2011 Design Workshops were to only address a plan and ideas for the site at the corner of Eubanks Road and Old N.C. 86, not any other site in the Northern Study Area. The use of the term, “property owner”, is ambiguous and could be interpreted to include other property owners beside the owner of the site at Eubanks and Old 86. It was never the intent to use a zone for this site for other sites.)*

As currently written, the FLX district is not limited to a specific tract or geographic area, so long as the site meets the four criteria related to size, location along a major arterial, single ownership and subject to a site specific planning study.

3. *(NTAAC: The language in the above paragraph is problematic for the same reasons as stated in the previous insert.)*

See previous answers.

4. *(NTAAC: The words “single” and “control” are confusing and ambiguous.)*

To be eligible for the FLX district, the subject property whether a single tract or a number of contiguous tract would have to be under the control of one owner.

5. *NTAAC: The participants in the Design Workshops has serious concerns about the impact of additional traffic on Old 86 without reduction in the speed limits and other traffic calming devices (see Exhibit A) and a plan for creating a pedestrian, bike friendly, town like road.)*

Town staff works with NCDOT to discuss traffic impacts and potential road improvements as part of any development project. Additional language could be added to the draft FLX ordinance to require a traffic impact analysis for all projects, or it could be left as is, as a potential additional request depending on the particulars of the subject property. The final determination of potential improvements to a NCDOT road would be made by NCDOT engineers.

6. *(NTAAC: The NTAAC has serious concerns about the town doing a site specific study without clear guidelines for facilitation and inclusion of residents from the Northern Study Area, and when it appears that the wishes of the residents who participated in the 2011 Workshops*

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are not being adequately addressed in the new proposed flex zoning. How will a site specific planning study include public input & ensure integrity of established neighborhoods? (Vision 2020 2.0 & 3.1)

Additional language has been added to the draft ordinance to provide more descriptive information about the study, what is meant by the term site specific planning study and how the study is intended to inform the design of the proposed development of the FLX district. The petition for change of zoning would have to refer back to the findings of the planning study and demonstrate how the development proposal is consistent with the outcome of the study. The DAD workshops would fulfill the site specific planning study requirement for the Eubanks Road site.

7. (NTAAC: Any rezoning should abide by the current LUO and require a CUP/public hearing with adequate notice to affected property owners and other residents of the Northern Study Area. The zoning if approved should not include any plan since that should be part of the CUP for the development itself.)

All rezonings require a public hearing with mailed notice to surrounding property owners. The rezoning process framework for the FLX district, as described in the draft ordinance, would require considerable information as part of the application including a site plan. The level of detail in a rezoning exhibit (site plan and other graphics) would need to be greater if the permit requirement is a zoning permit.

8. (NTAAC: The current CUP process, as opposed to a zoning permit managed by staff, should remain as the regulatory process.

As currently written, the draft ordinance establishes a process where once rezoned to the FLX district, use of the property would be subject to a zoning permit, approved at the staff level. Compliance would be determined based on standard LUO requirements for zoning permits and any specific requirements described in the district narrative, conditions or site plan approved as part of the rezoning. While it is not anticipated that a full conditional use permit level of review would be completed as part of the rezoning request, the applicant would have to provide sufficient detail in the rezoning application and associated site plan so that: 1) the Board of Aldermen and the public would have a complete understanding of what the site would look like at buildout, and 2) staff would have enough information to determine future zoning permit and construction plan compliance (e.g. development standards, either from the existing LUO provisions or from a new set of standards prepared by the applicant, building types and site layout, land use categories, building massing and appearance).

9. NTAAC: The current CUP process, as opposed to a zoning permit managed by staff, should remain at the regulatory process. The BOA could consider the particulars of a petition or site plan but only in accordance with the LUO regulations for a public hearing/CUP.)

The process for rezoning to the FLX district requires a public hearing with additional opportunities for public input at key intervals.

10. (NTAAC: as a general comment, the NTAAC has very concerned about the general lack of specificity of the ordinance in response to the NTAAC'S concerns and recommendations, based on the 2011 design workshops, as stated in Exhibit A.)

While the draft ordinance currently under consideration—to add the FLX district as a potential district to the LUO—is general in nature, an application to consider rezoning a specific tract to the FLX district category, however, would be very detailed.

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11. (NTAAC: Add the following definition: The site at Eubanks and old 86 is referred to as “the agreed upon site”.)

Other sites may be eligible for the FLX districts. Please see answers to questions 1 and 2.

12. NTAAC: see previous comments and report. the standards should be codified in the LUO first subject to a public hearing, so that property owners as well as adjoining neighbors and residents understand the zoning and possible development. The Town should set the standards through a public hearing process, which it has initiated through the 2011 design workshops, not the market place.)

The standards for an individual application to rezone property to the FLX zoning category would involve a public hearing, as well as additional opportunities for public input, particularly as part of the site specific planning study.

13. NTAAC: The participants in the Design Workshops had serious concerns about the impact of additional traffic on Old 86 without reduction in the speed limits and other traffic calming devices (see Exhibit A) and a plan for creating a pedestrian, bike friendly, town like road. The NTAAC has serious concerns about the town doing a site specific study without clear guidelines for facilitation and inclusion of residents from the Northern Study Area, and when it appears that the wishes of the residents who participated in the 2011 Workshops are not being adequately addressed in the new proposed flex zoning.)

In the case of the Eubanks Road site, the DAD design workshops would be considered the site specific planning study. As currently written in the draft ordinance, the materials included as part of a petition to rezone the Eubanks Road site to the FLX zoning district would need to demonstrate how the findings from the design workshops were incorporated into the design of the project.

14. (NTAAC: The NTAAC disagrees with allowing this flexibility as to both uses and density as not in keeping with the 2011 Design Workshops. The agreed-upon site should be subject to the current regulations in the LUO except as necessary to achieve the points from the 2011 Design Workshops as outlined in Exhibit A with the current regulations allowing for public hearings/CUP.)

Language in the draft ordinance for the FLX district speaks to compliance with the LUO unless superseded by new requirements defined as part of the rezoning process—which would be described during the public hearing.

15. (NTAAC: The dimension restrictions for agreed-upon site should be subject to the current regulations in the LUO. The general consensus at the Design Workshops was a two story maximum height for both residential and commercial as befitting the Northern Study Area. (see Exhibit A, p. 2, no. 5, P. 4, NO. 2))

Please see answer for question 14.

16. (NTAAC: Same as LUO except as necessary to achieve the points from the 2011 Design Workshops as outlined in Exhibit A with the current regulations allowing for public hearings/CUP.)

Please see answer for question 14.

17. (NTAAC: The LUO’s vernacular standards should apply to all portion of the agreed upon site.)

The draft ordinance speaks to an architectural theme but it does not dictate a specific design or style. Discussion of the appropriate design for a specific site would be part of the specific rezoning application.

18. (NTAAC: Same as LUO except as necessary to achieve the points from the 2011 Design Workshops as outlined in Exhibit A with the current regulations allowing for public hearings/CUP.)

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Information relating to phasing would have to be included in the rezoning petition for a specific site.

19. *The location of entrances to the tract zoned FLX & How the tract zone roads will connect to adjacent neighborhood & (NTAAC: The entrance should be created on Old NC 86 to protect the view shed (see exhibit a, p. 3, no. 2; p. 4, no. 5)*

Information relating to external entrances, internal circulation would be included in the rezoning petition for a specific site, and should be guided by the findings of the site specific planning study.

20. *NTAAC: Same as LUO except as necessary to achieve the points from the 2011 Design Workshops as outlined in Exhibit A with the current regulations allowing for public hearings/CUP.)*

The specific petition for rezoning to the FLX district would have to demonstrate compliance with existing LUO provisions unless superseded by new requirements defined as part of the rezoning process—which would be described during the public hearing.

21. *(NTAAC: same as no. 8 above.)*

Please see answers to questions 14 and 20.

22. *(NTAAC: same as no. 8 above.)*

Please see answers to questions 14, 20 and 21.

23. *(NTAAC: same as no. 8 above.)*

Please see previous answers.

24. *(NTAAC: The agreed upon site should be subject to the current LUO except as necessary to achieve the points from the 2011 Design Workshops as outlined in Exhibit A with the current regulations allowing for public hearings/CUP.)*

Please see previous answers.

25. *(NTAAC: The NTAAC disagrees with any language allowing a flex zone except for the agreed upon site at Eubanks and Old 86. The language in (1) above implies that the Board could “approve” the request. The concern is that the process for approval and for public input is being changed from what currently is required.)*

The language cited speaks to the provision in the draft ordinance where the applicant requests that the Board consider that a draft ordinance be prepared. Approval of the draft ordinance would occur only after the formal public hearing process, which for the FLX district would involve additional steps for public input.

26. Once an ordinance has been drafted as provided in subdivision (f)(1), such ordinance shall be processed in accordance with the provisions of Article XX of this chapter applicable to ordinance amendments initiated by the town administration, except that (i) the Board may establish such additional processes as deemed necessary to ensure that the public has an adequate opportunity for input into the proposed FLX district (*including but not limited to the Immediate referral to Citizen Advisory Committees*), and (ii) no property may be rezoned FLX without the consent of the property owner (which consent may be withdrawn at any time before the adoption of the ordinance establishing the FLX district. The text and the map amendment may be processed simultaneously.

Please see answer to comment 27 below.

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27. (NTAAC: This section (2) appears to recommend bypassing the protections for public hearings (LUO 15-54), and burden of presenting evidence and burden of persuasion (LUO 15-55, among other regulations protecting the public, as stated in Article 4 of the LUO. The NTAAC disagrees with this recommendation. These protections include the right to contend that the development under 15-54 will danger the public health or safety, or will injure the value of adjoining property, or will not be in harmony with the area it is being built, or is not in conformity with the Carrboro LU Plan, with the Thoroughfare Plan or any other officially adopted plan.

The key phrase in the language cited above is “including but not limited to,” which allows the Board to require additional opportunities for public input (in addition to the standard process for rezonings and in addition to the extra opportunities for public input built into the FLX district process). The decision to approve a FLX rezoning would be a legislative decision, the standards described above for a conditional use or special use permit would not apply. However, the Board has more discretion in a legislative decision, it can discuss the rezoning outside of the public hearing and can consider citizen input without regard to expert testimony during the public hearing.

28. (NTAAC: The NTAAC believes any amendments to an approved development for the agreed upon site should be in accordance with Article IV, not Article XX. Under Article IV, 15-59, any modifications of an approved development that are significant in that they will have a discernible impact on neighboring properties or the general public or on those who are occupying the property would be subject to the same language as in 15-45: whether or not the amendment will danger the public health or safety, or injure the value of adjoining property, or not be in harmony with the area it is being built, or not be in conformity with the Carrboro LU Plan, with the Thoroughfare Plan or any other officially adopted plan.)

All of the specifics of the FLX district would be linked to the rezoning petition, including conditions. Changes to the approved district would require a new public hearing.

29. (NTAAC: The NTAAC does not understand the need for this provision as it may be an exception to how properties can be currently developed.)

The provision clarifies the process for subdividing parcels within a FLX district after the rezoning--after the overall design of the project was approved as part of the public hearing process.

30. *Subject of recent provide date site specific planning study by the Town*

The checklist is designed to provide an applicant with a better understanding of the amount of material needed with the FLX district rezoning application. A reference to the specific date of the site specific planning study can easily be added to the form.

31. *F. Specifically indicate how the ‘Mixed Use’ will be implemented.*

The mix of uses would be linked to the recommendations from the site specific planning study and apply to the specific tract under consideration for the FLX zone.

32. *Provide Recent (within 3 yrs.) traffic studies & demonstrate how will mitigate additional traffic. Demonstrate how roads connect to adjacent neighborhoods*

Staff can clarify the traffic studies request and inquiry with NCDOT as to data collection standards for determining road improvements. Road connection information is included as part of the required information for the FLX district.

Response to NTAAC Comments**STATEMENT: By way of summary, the NTAAC makes the following key points:**

1. The zone should only apply to the property at the corner of Eubanks Road and Old NC 86 (referred to as “the agreed upon site”) as agreed upon by the Board when it established the Design Workshops for that site (see 2014 DAD Report, page 1, no. 3) and not to any other properties.
2. The LUO and all of its requirements should apply to the agreed upon site, unless specifically changed by the new zone, including its Vernacular Standards (Exhibit A-2, item F-(d)).
3. The zone should require a CUP in accordance with the current LUO to allow for citizen participation in a public hearing format that protects their legal rights for redress and input. The specific draft ordinance does not protect the rights of citizens to participate in a public hearing/CUP for all matters relating to the BOA’s discussion and vote on such zone.
4. The zoning with regard to zoning should not allow any change in density without following the current requirements of the LUO, including CUP (see Exhibit A-3, *G(c-i, iii & viii)*).
5. The uses applicable to the agreed upon site should be as proposed by the participants in the design workshop of 2011 (see Exhibit **A-1**, *E(b & d), F, F(c)*; **A-3**, *G(c-i, ii, v & vi)*).
6. Any applicant would be required to submit the same information now required by the town for a CUP in addition to any other checklist proposed, including but not limited to traffic studies of current traffic totals as well as studies showing the potential traffic impact of the development (see Exhibit **A-2**, *E(a & c), F(a, b, e & f)*; **A-3**, *G(a & b)*, **A- 4**, *G(c-vii)*).
7. Any checklist for the staff’s use in evaluating a site plan for the agreed upon site should include, in addition to the one proposed by staff, any all checklists and other documents and information required under the LUO.