



Memo

To: Mayor Currin and Town Board of Commissioners
From: Michael Elabarger, Senior Planner
Date: September 5, 2023
Re: TA-23-05 – Applicant-Initiated Text Amendment
Townhome Lot Frontage/Private Access Easements
LDO Sections 3.4.E.2.a., 3.4.1, 3.4.2, 3.4.3., 5.1.2.B.5., 6.4.4.A.9, 9.2.1.A.1.,
9.2.1.B.5.e., 9.2.3.D., and 11 (Definitions)

Background

Development regulations are designed to foster the creation of vibrant neighborhoods and a strong business community, while preserving the community's character. Amendments are necessary to continue the effective administration of the LDO. Such amendments are brought forward for a Legislative Hearing and Town Board consideration for a variety of reasons; some amendments will result in updates to development regulations while others address technical details or procedures. The Planning Board and Town Board of Commissioners can expect to consider technical amendments to the LDO on a regular cycle by Town Staff, or via applicant-initiated amendments.

The applicant, Ellis Developments NC, LLC, seeks to make several amendments to the Land Development Ordinance specifically to allow the 'Dwelling, Single Family, Attached' zoning use (commonly referred to as 'Townhomes/Townhouses'), when at the Subdivision stage of development, to have the Lots be able to take lot frontage from private access easements as opposed to the currently required (and only option) of public right-of-ways (ie, public streets, roads). The Zoning use of (Townhomes) is permitted by-right in the following zoning districts: Residential High Density (RH) and the three varieties of Mixed-Use District: Town Center (TC), Activity Center (AC), and Neighborhood Center (NC). Through the review process by Town Staff, a number of necessary amendments to other Sections of the LDO were identified, and this Text Amendment is now a combined effort of the Applicant and Town Staff to make all the appropriate references throughout the LDO consistent to permit this alternative option for subdivision lot frontage (just for the 'Townhome' use).

Proposed Land Development Ordinance Amendments

LDO Section 9 is the ‘Subdivision Regulations’ that govern how all subdivisions of land shall be designed and constructed. Section 9.2. are the ‘Design Standards’ for the various elements of public (and private) infrastructure. Presently, Section 9.2.1.A.1. states “All subdivision lots shall abut at least twenty (20) feet on a **public** street” (emphasis on word **public**). This requirement thereby means any proposed Lot must be touching/fronting/contiguous to either an existing, or newly proposed, public street (right-of-way). This provision ensures that “land-locked” lots (those that do not have direct access to a public right-of-way) cannot and do not get created. Properties that are created outside of a municipality’s subdivision regulations (or those created under General Statute 160D-802(c), aka ‘exempt’) are often found to eskew the public right-of-way lot frontage model and via civil agreements between property owners, devise private access easements as the alternative means to provide physical access to a property (usually across other properties, to and from the nearest available public right-of-way).

The Applicant seeks to create a means to utilize the benefits of private access easements versus public right-of-ways for “Townhomes” created through and in compliance with all the other Subdivision regulations for that Zoning use. This could result in the creation of a uniquely designed community that provides local benefits to the residents, while also lessening the amount of public infrastructure that the Town must accept and then perpetually maintain.

Attachment 2 contains the red-line/strike-through version of the ten (10) specific and unique Amendments throughout the LDO that the Applicant and Staff have found reflects the intentions of the core amendment, which is the allowance of private access easements in lieu of public right-of-ways for lot frontage purposes. A truncated summary of the LDO sections and changes:

- 5.1.2.B – Use Standards for ‘Townhomes’, specifically related to if private access easements are utilized.
- 9.1.2.A.1. – adds the key language permitting ‘Townhomes’ the option of using private access easements to meet Lot frontage requirements rather than public right-of-ways.
- 3.4., 6.4.4., 9.2.1.B.5., 9.2.3.D. – multiple locations where ‘private access easement’ is added to clarify it as an option.
- Section 11 – creation of definitions for ‘Private Access Easement’ and ‘Public Access Easement’ to clarify the difference; the LDO presently only defines ‘Easement’.

Analysis

LDO Appendix A / 2.4.F. – Review Standards for Text Amendments.

Below each statement is the Staff analysis or response.

1. **Whether the proposed amendment is consistent with the comprehensive plan and other applicable adopted town plans;**

The proposed amendments are consistent as they provide a subdivision design option that can be more space-efficient for the ‘Townhome’ use.

2. **Whether the proposed amendment is in conflict with any standards of the LDO, Comprehensive Plan, and/or the Town Code;**

The proposed amendments are in harmony/not in conflict, with adopted Plans & Codes.

3. **Whether there are changed conditions that require a text amendment;**

The proposed amendments create a subdivision design option that is available in other nearby municipalities, and that exists in built form in the Town today within developments

governed by the previous Unified Development Ordinance, but which the LDO failed to provide.

4. Whether the proposed amendment addresses a demonstrated need within the community:

The proposed amendments create a subdivision design option unavailable in the LDO that already exists in built form in the Town, and which has not proven to produce negative results or impacts.

5. Whether the proposed amendment is consistent with the purpose and intent of the zoning districts of the LDO, would improve compatibility among uses, ensure efficient development within the Town, and addresses a standard that is inadequate for development in the LDO; and

The proposed amendments create a subdivision design option for the 'Townhome' use alone that does not currently exist, and which can produce more efficient use of land and infrastructure.

6. Whether the proposed amendment would negatively affect health, safety, and welfare of the town.

The proposed amendments are not expected to generate any negative impacts and would be an option applicable only for 'Townhouse' developments approved via the Conditional Zoning process. The specifics of the utilization of the option would be demonstrated during the Major Preliminary Subdivision Plat review process (an Administrative approval process).

Summary of Review

This group of amendments provides for a subdivision design option only for 'Townhouses' that can produce multiple benefits for the developer, the Town, and the future residents. By requiring the use of this option only for properties achieving a Conditional Zoning (CZ) approval, the Town Board of Commissioners will be able to review and approve each request to utilize this subdivision design option, via the Rezoning (map amendment) legislative process. The concept of private access easements for Lot frontage purposes are utilized by other municipalities locally and nationally, and there are existing and developing Townhouse subdivisions within the Town that utilize private access easements for subdivision lot frontage purposes (all approved under the UDO).

Staff Recommendation

Staff recommends approval of TA-23-05 – Applicant-Initiated Text Amendment to LDO Sections 3.4.E.2.a., 3.4.1, 3.4.2, 3.4.3., 5.1.2.B.5., 6.4.4.A.9, 9.2.1.A.1., 9.2.1.B.5.e., 9.2.3.D., and 11 (Definitions)

Proposed Motion

Motion to (approve or deny) TA-23-05 – Applicant-Initiated Text Amendment to LDO Sections 3.4.E.2.a., 3.4.1, 3.4.2, 3.4.3., 5.1.2.B.5., 6.4.4.A.9, 9.2.1.A.1., 9.2.1.B.5.e., 9.2.3.D., and 11 (Definitions).

Attachments

1	Application
2	Proposed Text Amendment Language



Text Amendment Application

Contact Information

Name Jason Pfister on behalf of Ellis Developments NC, LLC

Address 6801 Falls of Neuse Road, Suite 108 City/State/Zip Raleigh, NC 27615

Phone 919-824-6088 Email jason@ellisdevgroup.com

Amendment Information

This petition is to amend the Unified Development Ordinance Section(s) LDO 9.2.1.A.1 and LDO 5.1.2.B.5.b

to allow townhomes/single family attached dwellings to provide lot frontage on private access easements

as a *permitted use* *conditional use* *special use*

in the _____ *zoning district.*

Applicant Signature

I hereby certify that the information contained herein is true and completed. I understand that if any item is found to be otherwise after evidentiary hearing before the Town Board of Commissioners, that the action of the Board may be invalidated.

Signature _____ Date _____

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, a Notary Public, do hereby certify that Jason Pfister

personally appeared before me this day and acknowledged the due execution of the foregoing instrument. This

the _____ *day of* _____ *20* _____ *.*

My commission expires _____ *.*

Signature _____ Seal



Case No. _____

Date _____

Text Amendment Application

Description of Proposed Use

See attached Exhibit A

Justification

see attached Exhibit A

ATTACHMENT 2

TA-23-05 Proposed Text Amendment – Townhome Lot Frontage

1. 5.1.2. RESIDENTIAL PRINCIPAL USES

B. Dwelling, Single Family, Attached (re: Townhouses)

5. Use Standards.

- a. ~~Townhouses/Attached Dwellings~~. Townhouses are limited to eight (8) units per structure.
- b. Dwelling, Single Family, Attached (Townhouse) lots are required to provide lot frontage of at least twenty (20) feet on either a public right-of-way (street, road) or a private access easement.
- c. Use of Private Access Easements shall comply with the following:
 - (1) Private Access Easements may be utilized for subdivision Lot frontage requirements only where the associated development plan has been approved by the Town Board of Commissioners via a Conditional Zoning (CZ) District process.
 - (2) Any subdivision design utilizing Private Access Easements shall provide all the required physical attributes of a public right-of-way as outlined in this Ordinance, such as streetyard buffers / street trees, sidewalks or other pedestrian access, travel lanes or other vehicular and emergency access, lighting, etc. These features are not required to be provided in each easement but rather throughout the development. The intent of these easements is to provide flexibility in design, not to avoid compliance with a development standard requirement.
 - (a) Adequate emergency services access to all Lots (ie dwelling units) is required/must be provided.
 - (b) Addressing for all Lots shall be attained during the Preliminary Subdivision Plat review/ approval process.
 - (c) All proposed Lots shall be provided with access to a minimum of a 5' sidewalk or other pedestrian facility (eg. greenway, multi-use path) providing connectivity to adjacent Lots, guest parking areas, and the larger sidewalk network within the Subdivision. Sidewalks shall be compliant with the material and accessibility standards of LDO Section 9.2.1.C.
 - (d) The placement of large or small canopy trees should be designed and installed at the same rate as required in Section 6.2.2.2.D.2. or 6.2.4.4., depending on the design/use of the Private Access Easement.
 - (3) Where Private Access Easements are designed as alleys or vehicle use/parking areas, the following minimum requirements shall be demonstrated:

- (a) Pavement for alley (two-way traffic): minimum 20'
 - (b) Pavement for alley (for one-way traffic): minimum 12'
 - (c) Parking areas: must meet the design regulations of Section 6.4
- (4) Private Access Easements must be designed to no less than the minimum width needed to install and maintain the infrastructure required to be within the easement (in lieu of a public right-of-way)..

2. 9.2.1 STREETS AND SIDEWALKS

- A. *Generally.* All streets and related infrastructure in the town's jurisdiction shall be built and maintained in accordance with the principles, goals and/or objectives of the adopted comprehensive plan, community transportation plan, other officially adopted plans and policies of the town, and any applicable North Carolina Department of Transportation (NCDOT) requirements. All streets and rights-of-way shall be constructed in accordance to the standards below, unless a more restrictive standard is required by NCDOT, in which the street shall meet the more restrictive standard.
1. All subdivision lots shall abut at least twenty (20) feet on a public street, **except that Lots for 'Dwelling, Single Family, Attached' uses may provide the required minimum twenty (20) feet of frontage on a Private Access Easement per Section 5.1.2.B. Use Standards.**

3. Section 3.4.E. Mixed Use Districts. Special Standards in Mixed-Use Districts

1. Building Placement.
 - a. Building placement measurements shall be measured from the edge of the public right-of-way or existing public sidewalk if not located within the right-of-way. **Where Private Access Easements are utilized to achieve Dwelling, Single Family, Attached lot frontage, building placement shall be from the edge of cartway pavement or edge of sidewalk depending on the form or use of the easement (drive aisle, vehicular parking, alley).**

4. Section 3.4.1. Town Center (TC), Table 3.4.1. TC Development Standards

Architectural Standards:	Blank Walls Not Permitted Facing Any Public Street Frontage, Private Access Easement designed for vehicular access , or Non-Mixed Use Zoning District.
Street Walls Required:	Parking Areas (Excluding On-Street Parking), Fronting Public Streets or Private Access Easements designed for vehicular access.

5. Section 3.4.2. Activity Center (AC), Table 3.4.2. AC Development Standards

Architectural Standards: Blank Walls Not Permitted Facing Any Public Street Frontage, **Private Access Easement designed for vehicular access**, or Non-Mixed Use Zoning District.

Street Walls Required: Parking Areas (Excluding On-Street Parking), Fronting Public Streets **or Private Access Easements designed for vehicular access.**

6. Section 3.4.3. Neighborhood Center (NC), Table 3.4.3. TC Development Standards

Architectural Standards: Blank Walls Not Permitted Facing Any Public Street Frontage, **Private Access Easement designed for vehicular access**, or Non-Mixed Use Zoning District.

Street Walls Required: Parking Areas (Excluding On-Street Parking), Fronting Public Streets **or Private Access Easements designed for vehicular access.**

7. Section 6.4.4.A.9 Parking Design Standards.

Parking areas shall be arranged for convenient access, maneuvering and safety of pedestrians and vehicles. Parking areas shall be arranged so that no vehicle shall be required to back up from such facilities directly onto designated arterial or collector streets. Parking areas shall be designed, maintained, and regulated so that no parking or maneuvering incidental to parking shall be on any public street, sidewalk, **private access easement**, or alley.

8. Section 9.2.1.B.5 Intersection Design.

- e. Where two public **right-of-ways (streets)** cross or where a private street **or Private Access Easement** meets a public **right-of-way roadway** and signalization is not warranted, a stop bar and stop sign shall be used on the minor **right-of-way street** approaches.

9. Section 9.2.3.D Access.

Every lot shall provide access to and abut a public street or right-of-way. Easements that cross more than one (1) lot of record are not permitted. **Dwelling, Single Family, Attached use Lots may utilize Private Access Easements that cross more than one lot of record.**

10. LDO Section 11. Definitions.

Add: Private Access Easement. *An undedicated, privately owned and operated, right-of-way which affords access to and across abutting properties, designed as a parking lot, pedestrian path or sidewalk, trail, bikeway, roadway, alley or other common travel lane intended for use by vehicles, pedestrians, or cyclists.*

Add: Public Access Easement. *A right-of-way dedicated or given to a public or quasi-public entity affording pedestrian or vehicular access to or across a property.*