



History Lives on Fayetteville Street

August 8, 2006

To: Durham Planning Commission
From: Fayetteville Street Planning Group
Subject: Rezoning Case Z06-24 (Heritage Square Redevelopment)

The Fayetteville Street Planning Group is a coalition of business owners, property owners and concerned citizens who collectively created a vision of how the Fayetteville Street Corridor and its surrounding neighborhoods would be developed in the future – known as the Historic Fayetteville Street Neighborhood Master Plan. This document was presented to you, the Durham City Council and selected department heads last year for review and comment. The comments contained herein are consistent with that plan and represent the views of community stakeholders.

The Fayetteville Street Planning Group vehemently opposes the proposed rezoning request and asks that approval of this request be denied. The primary objections are:

- No meaningful neighborhood participation with most-affected stakeholders
- Inconsistent with criteria of Unified Development Ordinance (UDO)
- Out of character with existing neighborhood
- Lacks specificity and binding elements for a project of its size
- Adverse and unknown impacts
- Inconsistent with the Fayetteville Street Plan

In reviewing past rulings by the Planning Commission on large projects such as the Streets at Southpoint, Northgate, Northpointe and South Square, we doubt that this body would accept the blank slate before you that is offered as a development plan.

We therefore urge the Planning Commission to deny this rezoning and further restrict such high density and intensity development to the downtown core where it can take advantage of DDO-2 and DDO-1 height and density features. Such restriction to DDO-1 and DDO-2 would better accommodate the intent, design and use of this proposed development.

No Meaningful Neighborhood Participation by Developer

The developer has failed to answer technical questions from the neighborhood most impacted by this rezoning request. No one is denying that the Scientific Properties has had meetings with residents and other citizens about this project. However, after attending six meetings and receiving no technical information at any meeting, the

Fayetteville Street Planning Group stopped attending these sessions. Moreover, the lack of committed elements and the nearly blank development plan call the developer's motives into question.

In addition to specific technical questions that only the developer can answer, it appears that staff's recommendation to submit an NCDOT traffic impact analysis (TIA) went unheeded. Ms. Tarsha Johnson of NCDOT reported that no TIA had been submitted at this point. This is particularly troublesome given the tragic history of Hayti involving transportation impacts and the more recent situation with a proposed roundabout on State Road 1118 (Fayetteville Street) by North Carolina Central University. The community has been left out of the loop again by the developer's failure to provide this information.

The developer specifically failed to follow through on a meeting *he requested* with the Fayetteville Street Group in late April 2006. On April 20, 2006, the Fayetteville Street Group received an e-mail from Sherry Kinlaw requesting a meeting with the group to provide a "progress update" on the proposed project. The group responded that they would provide some dates after their upcoming Monday meeting on April 24, 2006. The group responded on April 26, 2006 by offering the developer two dates for the meeting – May 1 at 5:30 pm (which is the group's regular meeting date) and May 4 at 9 am and by requesting a development plan, a traffic impact analysis and elevations (see attached e-mail). This meeting was never held, the information was never provided and there has been no further contact between the developer and the group on these or any other items related to this development since April 26, 2006.

Inconsistent with Criteria of UDO

For reasons outlined in detail in subsequent sections, the request is not consistent with the Durham Comprehensive Plan for Policies 2.2.2b, 2.3.5b, 2.3.5c, 8.1.2m and 9.4.1a, b and c. The argument for 2.2.2b, 2.3.5c, 8.1.2m and 9.4.1a, b and c is the same -- there is insufficient information at the development plan stage from which to draw any meaningful conclusions. Therefore, there can be no plan consistency without the details of the plan.

Policy 2.3.5b fails the consistency test because the DDO criteria clearly states that DDO-3 is to be considered as the transition between downtown and the neighborhoods. See quotes from planning commissioners on the last page.

Proposed Development is Out of Character with Existing Neighborhood

The developer is proposing to locate a massive downtown-like structure in a stable and historic neighborhood. The proposed development is severely out of character and proportion with the surrounding neighborhood and is not sensitive to the underlying land use of the area. The density and intensity of the proposed development are incompatible with the neighborhood's current zoning and with the site's existing uses – setting the stage for destabilizing this historic neighborhood if approved.

Although the proposed development is within the DDO-3 downtown overlay, it is not part of the area covered by the Downtown Master Plan. Although numerous references have been made to broadening the vision of what constitutes downtown, the facts are that the site in question is in a neighborhood (not downtown) and the DDO boundaries were designed to provide a transition between downtown and adjoining neighborhoods. The staff report for Case P02-62 which created the downtown overlays states on page 2 that:

“The application of the DDO allows higher density development closest to the city core while tapering the intensity of development towards the surrounding neighborhoods.”

Further, the current zoning which underlies the DDO overlay (Commercial Center) identifies uses that are consistent with neighborhood development. City policies, guidelines and the recent bond (neighborhood bond of \$1.5 million) also reference this area as a neighborhood.

Increased Density Inconsistent with Neighborhood Development

The Fayetteville Street commercial district is neighborhood scale and its surrounding neighborhoods are low to medium density with historic landmarks, a local historic district and historic neighborhoods. Members of the Fayetteville Street Group participated in the development of the DDO boundaries several years ago with the understanding and belief that this tool would aid in an orderly transition from the downtown core and preserve the historic elements of the Fayetteville Street corridor. This proposal negates those efforts by proposing a tremendous increase in density far above that envisioned by the DDO-3 designation and far above the density of the surrounding area. The UDO supports this view in Article 4.8.6C where it states:

“In some situations these densities may not be appropriate due to environmental conditions (such as site constraints) or existing development patterns (such as proximity to a historic district or established neighborhood).”

The proposed development, at almost a million square feet, is comparable to a regional shopping center – but only on a fraction of the land – and inside an existing neighborhood. It is simply too big for the community where it is being proposed. Comparisons with other developments show that similar development are situated on far more land and allow for better integration of those developments into those communities and area infrastructure.

Name of Shopping Center	Square Feet	No. Acres
Heritage Square (Proposed)	800,000	9.65
Streets at Southpoint	1,304,000	243.5
American Tobacco	956,920	17.0
Northgate Mall	885,498	32.0
South Square (New)	431,976	52.0
Renaissance Village at Southpoint	671,300	49.0

The area along Fayetteville Street, including Heritage Square and down to Piedmont Avenue was placed in DDO-3 specifically to buffer the existing residential areas from commercial encroachment. This is also consistent with the Fayetteville Street Plan's recommendations for this corridor. This proposal, in rezoning a significant portion of the site to DDO-2, is creating the very density that the DDO-3 designation was designed to prevent. The DDO boundaries were created to provide an orderly transition between the intense downtown core and the neighborhoods. Changing DDO-3 to DDO-2 for a large portion of this project violates the intent and the spirit of that DDO process – as well as the time and energy of the citizens who endorsed it. Citizens should be able to have confidence that their participation will not be marginalized by a rezoning proposal that reverses all that the citizens have worked for.

Increased density would also destabilize the surrounding neighborhoods and business districts by triggering massive transportation and land use changes akin to the urban renewal effects of a prior generation.

Increased Intensity Inconsistent with Current Development Patterns

The portion of the proposed development in DDO-2 is too tall at six stories and is three stories beyond what DDO-3 allows. This additional height is far out of scale with other structures in the neighborhood and creates a barrier between the neighborhood and downtown – in direct violation of the DDO concept. DDO-2 would create a downtown-like environment inside a neighborhood – an environment which community members have rejected in the Fayetteville Street Plan and in the removal of compact land use from the area south of NC Hwy 147.

Inconsistent and Harmful Uses

Although a DDO overlay exists, it should not affect the base zoning for the site, which is Commercial Center (CC) and reflects the neighborhood-scale and community needs of the surrounding area. Rezoning the proposed development from CC to CG is inconsistent with the underlying zoning and introduces many undesirable uses into a community trying to rebuild itself from the ravages of urban renewal. These uses include night clubs, bars, pool halls, drive-in theatres, paintball recreation areas, game arcades, indoor firing range, communication towers and facilities, water treatment plants, convenience store with gasoline sales, veterinary hospitals and kennels, self-storage facilities, car wash, manufactured home sales, car dealerships, hospitals, rail and bus terminals, airports, heliports and psychics or mediums. The developer's plan shows little sensitivity to the current conditions and future vision of the Fayetteville Street corridor per the Fayetteville Street Plan.

Proposed Development Lacks Specificity and Committed Elements

The development plan, while satisfying the minimal requirements of the UDO, is woefully insufficient for a project that is about the size of Northgate Mall and American Tobacco – and almost twice the size of South Square. It only offers two committed elements – one for maximum square footage and another for additional distance for setbacks. It fails to provide uses, renderings, elevations, facades, building

massing, building orientation or any other details that would give neighbors information and comfort with what is being proposed. The blank slate being presented also disrespects the history and the heritage of the Hayti community in proposing a massive and unknown development for a community that has begun to rebuild itself after urban renewal.

The lack of specificity also points to process problems with the UDO itself in allowing certain details to be presented at the site plan stage. Given the magnitude of this proposal, allowing the developer to provide this information on the site plan places the community at a severe disadvantage in understanding the impacts of the proposal and in dialoging with staff and other experts on these issues. The community, in being deprived of the details, has not had the same access to staff or to other experts in order to evaluate the impact of such developments on its residents and business people.

This proposal also stands in stark contrast to submittals for other rezoning applications for projects other regional shopping centers, such as the Streets at Southpoint, Northpointe, South Square and Northpointe. This leaves many unanswered questions that should have been answered months ago with the developer bringing technical data and rigorous analysis to the table. This did not happen and therefore these initial questions remain unanswered:

- What elements is the developer willing to commit to?
- Where is the NCDOT traffic analysis that staff recommended the developer submit with the development plan?
- How far will the scope of the traffic analysis be?
- How will parking be accommodated on the site?
- Is the developer planning on building parking decks? Surface spaces?
- What is the final density of the development in dwelling units per acre?
- What buffers will be provided when the DDO-3 abuts or is near a residentially zoned area?
- What are implications of steep grade of Lakewood Avenue and the existing water runoff problem at the intersection of S. Roxboro Street and Lakewood Avenue?
- How will the proposed increased density affect water runoff from the site?
- Will an environmental impact study be conducted since Heritage Square was built on a landfill and due to the growing sensitivity to landfills in North Carolina (the state recently enacted a moratorium on landfills until 2008)?
- What will be the composition and massing of the proposed buildings?
- What will be the scale and proportion of the buildings?
- Will there be any open space in the development?
- What are vehicle and pedestrian circulation patterns?
- Is there any façade hierarchy to avoid a massive one-dimensional appearance?
- What is the impact on air quality given that this area is not in compliance with federal air quality standards?

Adverse and Unknown Impacts

The lack of specificity combined with the absence of committed elements makes a case for many adverse and unknown impacts to the Fayetteville Street community. Taken

separately or together, these impacts would cause irreparable harm to the surrounding community.

Land Use Impacts

Rezoning this development to a higher density and intensity would create tremendous development pressure on surrounding neighborhood commercial and residential areas. The initial goal of developing the downtown overlays was to encourage orderly development from downtown's core – not leapfrogging into any area where a deal could be struck. If approved, development would alter land use toward more dense and intense uses, thereby destroying neighborhoods and displacing residents and businesses again as urban renewal did a generation ago.

Recent efforts by the Fayetteville Street Planning Group resulted in the removal of compact land use from the area south of NC Hwy 147. The goal was preservation of single family home ownership and business ownership along the Fayetteville Street corridor. While these actions are consistent with the Fayetteville Street Plan (see page 84), the proposed development ignores the goal of this plan and would ensure a domino effect by pushing downtown densities far into this corridor.

Tax Impacts

Land use impacts would cause taxes to rise on residential and commercial property to the level that residents could afford. The average citizen would no longer be able to afford to pay taxes or rent. Seniors who have paid for their homes would risk losing them to high property taxes. Right now, land uses and values are in sync with neighborhood-scale economies. A transition to more intense land use would escalate land values, increase taxes and destroy the neighborhood-based economy that is just beginning to grow in this area.

Rent Impacts

Residential and commercial rents would also rise in response to rising land values. A quote from "Ten Principles for Rebuilding Neighborhood Retail"(Urban Land Institute) describes the expected boost in rent in high density mixed-use areas:

"A mix of housing and offices supports retail by creating more customers, supporting longer business hours, and bringing in rents up to 20 percent higher than would be likely in the same place without the mix of housing and office space."

While good for the developer, escalating rents threaten the stability of a community that is economically challenged.

Resident and Business Displacement

Eventually, as land becomes more valuable than the structures it holds and taxes rise above the ability of the neighborhood to pay them, displacement of residents and businesses would occur and neighborhoods would cease to exist as we know them. The historic displacement of African Americans in Durham should give pause to any development that threatens to destabilize or undermine stable residential and commercial neighborhoods in Durham. Our history is poor on this issue and it has been one of the most disastrous events in the entire history of this city. It need not be repeated here.

Eminent Domain

Approving a massive development without the appropriate infrastructure to support it would necessitate using eminent domain to remove those residents and businesses who would try to remain in the area. The lack of infrastructure serve as justification for a massive reconfiguration of the area and eminent domain would be the removal tool to create the “right environment”.

Traffic and Road Impacts

The projected increase in traffic is huge (an increase of 14,309 trips) and beyond the capacity of the area’s infrastructure per staff’s report. ***In fact, the projected increase in trips exceeds that for the rezoning of Liggett & Myers for Blue Devil Ventures (10,852 trips) in the Central Business District (Case P04-10), arguably one of the most dense and intense developments in the downtown tier.*** Access to the site is limited by the presence of NC Hwy 147 and by NCDOT constraints on using Fayetteville Street for access. This leaves Lakewood Avenue as the primary access road. Staff projections show that Lakewood Avenue would be overwhelmed by vehicular traffic, possibly triggering massive street reconfigurations (widening and removal) that killed Hayti once before.

Anticipated traffic congestion from the proposed development would stress the street grid in the surrounding area along S. Roxboro Street and Fayetteville Street, ultimately causing drivers to avoid the area. The diverting of traffic away from neighborhood streets would harm neighborhood businesses.

Parking Impacts

The proposed development plan indicates 1,463 parking spaces are proposed but fails to show where or how they are integrated on the site. It is impossible to determine, given no specific uses, the real traffic demands and impacts on the surrounding community. Massive structures are undesirable in a neighborhood environment, unattractive and prone to crime. Given the challenge experienced by the Fayetteville Street Group in instituting community policing and other crime-reduction strategies, the placement of parking decks in the community is unwanted and unwarranted.

The following quote by Mary S. Smith in Crime Prevention Through Environmental Design in Parking Facilities, April 1996, states:

“Because parking facilities are more likely settings for crime--both violent and property--than all other real estate except residential, security is one of the most critical issues facing the owners and operators of parking facilities today. Local government officials are also concerned about the security of these facilities--some of which are city owned or operated--because parking affects the economic viability of a community.”

Additionally, the impact of spillover parking has the potential to harm competing commercial developments and nearby residential areas with clogged streets, safety hazards and undesirable appearance. An example of this effect is the parking spillover from the Durham Bulls Ballpark, which encroaches into neighborhoods and the right-of-way -- even with parking decks.

Economic Impacts

The impact of placing a regional mall with 800,000 square feet at this site would not only threaten nearby businesses but would also compete with Northgate, Ninth Street, Brightleaf, Phoenix Square, Phoenix Crossing, Forest Hills, the downtown core and any other center within a five mile radius. The impact would be similar to the “WalMart effect” where small business people are displaced through their inability to compete with the volume business and economic draw that would occur on the site.

Also, it's not in the city government's interest to approve this rezoning because tax payers have already made a significant investment in the downtown core and this development would delay downtown's fulfilling its promise for decades. The downtown master plan calls for office and residential housing – with very little retail. The Fayetteville Street Plan calls for neighborhood retail and service. These plans are now complimentary and somewhat mutually exclusive to allow for the healthy development of all sectors. This development would compete with Fayetteville Street, Ninth Street, Brightleaf Square, Forest Hills, Northgate and any other development within a five mile radius. This is the same dynamic that drew businesses from the downtown core when South Square was first built. And it only took a few years to decimate downtown. The city should not want to create another fiasco like that one – or another urban renewal scenario for the Fayetteville Street neighborhood.

Placement of a massive development like this belongs in the downtown core or in an area with existing infrastructure to support it. The best way to achieve the density and intensity for downtown is to go vertical in DDO-1 and DDO-2 and leave DDO-3 to fulfill its role as a neighborhood transition zoning. Developments such as a 20 –acre shopping mall in downtown Norfolk, Virginia point to the potential success of a mega development in the downtown core. A quote from “Norfolk Turns Work Friendly” in the February 28,2005 News & Observer states that:

“Then the city put together a blockbuster deal: It persuaded The Taubman Co. to build a downtown shopping mall, by providing 20 acres and \$ 100 million in loans and direct spending, about a third of the project's cost. Nordstrom and Dillard's agreed to anchor the mall. It was a controversial move...Today, many credit the mall, along with a

community college campus that opened on Granby Street in 1997, with sparking the revival.”

Durham would be wise to emulate the success of concentrating massive commercial developments in the downtown core – and not our neighborhoods.

Water & Sewer Impacts

Although the staff report indicates that storm water impacts will be evaluated at the time of site plan approval, again we stress that this compromises the ability of the community to accurately assess the impacts. The lack of specificity in the development plan does not allow even a remote estimate of any impact. Therefore, staff’s statements do not constitute an accurate evaluation. The impacts remain unknown.

Environmental Impacts

Environmental impacts include quality of life and air quality. The Triangle region, including Durham, is under a mandate to comply with federal air quality standards. The impact of the concentration of vehicles potentially drawn to this area is unknown and should be furnished to neighborhood stakeholders.

The proposed changes to NC Hwy 147 for a new access road should be evaluated based on the environmental justice standards of the Federal Highway Agency (FHWA). Any proposal that adversely impacts a specific population, isolates or limits access to transportation initiatives bear further scrutiny under the auspices of Executive Order 12898, the Intermodal Surface Transportation Efficiency Act (ISTEA) and the Transportation Equity Act for the 21st Century (TEA21). Just as low-income and minority communities must not bear a disproportionate share of the harm from transportation initiatives, they must also be able to equally enjoy the benefits. Issues involving access to opportunities, unfair siting and community isolation need to be evaluated in the format required by federal and state agencies.

Inconsistent with Fayetteville Street Plan

The Fayetteville Street Master Plan was created by stakeholders of the Fayetteville Street corridor to provide a vision of a better tomorrow for this community. Its preface states that:

“The prevailing theme throughout this study is one of preservation -- of our historic neighborhoods, historic structures, traffic patterns and most of all, our human capital through the social connections that have sustained this community for the past century. Development initiatives, while desirable, must be tempered by this community’s desire for stability, controlled growth and neighborhood preservation – with preferences and incentives going first to serve neighborhood interests and benefit neighborhood residents.”

The proposed rezoning changes on this request are inconsistent with the Fayetteville Street Plan in the aforementioned sections citing land use, density, intensity, traffic impacts, road impacts, water/sewer impacts, parking and environmental impacts – and inconsistent in almost every conceivable way. And the request shows no respect for the history and dynamics of our neighborhood.

Because Durham’s Comprehensive Plan and its recently approved UDO also recognize neighborhood preservation as a guiding principle, other neighborhoods have been able to benefit by citing neighborhood preservation and fit as legitimate concerns. Comments reflecting staff and the commission’s view on neighborhood issues include:

- Frank Duke, Planning Director, stated that “we’re supposed to be paying greater attention to how this fits in with the surrounding area” in describing the impact of a massive housing development on Durham’s largely rural east side (“Zoning south for 423-acre site”, Herald-Sun, August 26, 2005).
- Wendy Jacobs stated that “I think that DDO-3 will help create a better transition between existing residential of Trinity Park to commercial of Main Street“ in considering the affect of the proposed tier change and rezoning for McPherson Hospital (Case Z05-15) on Trinity Park residents (July 12, 2005 Planning Commission Meeting)
- Caleb Southern also stated that “I believe that DDO-3 is more appropriate than just straight GC for this parcel. The DDO provides for a transition between the Downtown Tier and surrounding neighborhoods.” (July 12, 2005 Planning Commission Meeting)

We hope that this commission will respect the vision of neighborhood stakeholders in denying this request tonight.