



MEMORANDUM

To: Village Council
From: Natalie Hawkins and Darryn Burich
Date: January 7, 2021
Subject: Proposed Moratorium for the Village Place/Rattlesnake Trail Corridor and the NC Highway 5 Commercial Area

During the Village Council's annual strategic planning retreat in December 2020, the Council indicated it would like to consider a moratorium on development in two of the Focus Areas identified in the 2019 Comprehensive Plan while Small Area Plans are being prepared. These areas include the NC Highway 5 Commercial Area (Focus Area 2) and the Village Place/Rattlesnake Trail Corridor (Focus Area 4) as defined in the exhibit maps attached to the draft Ordinance. Design Collective, the firm completing the Small Area Plans, is scheduled to have the plans and form based codes (development standards) completed later this calendar year.

N.C. General Statutes (NCGS) 160D-107(a) authorize municipalities to adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. Village staff have consulted with the Village Attorney on the Village's authority to implement a time-bound moratorium and have drafted the attached draft moratorium ordinance to meet the requirements of NCGS 160D-107. Although this statute is effective January 1, 2021, municipalities have had the statutory authority to implement moratoria long before then.

Because existing zoning in Focus Areas 2 and 4 is inconsistent with the stated goals, standards, and guidelines of these areas in the 2019 Comprehensive Plan, this moratorium could prevent future development or re-development from occurring that is incompatible or inconsistent with the vision for each of these areas. One alternative to a moratorium would be proactive zoning changes. Village staff considered this alternative and believe significant and duplicative effort would be required under this scenario and the risk of incompatible development would continue to remain until the Small Area Plans are completed.

Attached to this agenda item is a draft moratorium ordinance for the Village Council to consider. The proposed duration of the moratorium coincides with the completion of the Small Area Plans and related form based codes for both of the Focus Areas. The definition of development included in the ordinance represents the NCGS definition of development contained in Section 160D-102(12). Finally, NCGS 160D-107(b) requires the Council to hold a legislative public hearing with the standard notice period of publication, which is once a week for two successive calendar weeks in a newspaper having general circulation in the area and published the first time

not less than 10 days nor more than 25 days before the date scheduled for the hearing. Should Council wish to proceed with a public hearing on a proposed moratorium, this hearing could be scheduled for February 9, 2021.

Exclusions/Exceptions

It is important to note that this moratorium would not prohibit ALL development within the defined boundaries shown on the exhibit maps attached to the Ordinance. NCGS 160D-107(c) specifically prohibits the Village from applying the moratorium to:

1. Any project for which a valid building permit issued is outstanding,
2. Any project for which a special use permit application has been accepted as complete,
3. Development set forth in a site-specific or phased vesting plan
4. Development for which substantial expenditures have already been made in good-faith reliance on a prior valid development approval, or
5. Preliminary or final subdivision plats that have been accepted for review by the local government prior to the call for a hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the local government prior to the call for a hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Village staff recommend the Council also consider adding existing single-family residential uses to the list of exclusions, as shown in the attached draft moratorium ordinance, to allow homeowners to proceed with additions or alterations to existing homes during the duration of the moratorium.

NCGS 160D-108(b) states: If an application made in accordance with local regulation is submitted for a development approval required pursuant to this Chapter and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit.

Village staff recognize that a moratorium may not be welcomed by the development community. Given the rate of development in our community, a short-term pause in development may be worth the longer-term gain from having development that is consistent with the community's vision for these areas.

We look forward to discussing the attached draft moratorium ordinance with you at your meeting on January 12, 2021.