



Requested Interpretation		Case Number
<p>We respectfully request an interpretation of UDO § 1.5.6(c)(3) such that a stormwater facility designated as “common area” relieves a site from meeting the build-to requirements in UDO § 3.2.4 and § 1.5.6(C)(1) for the length of the common area designation. (see attached for full statement).</p>		UI-9-16
<p>Site Address/PIN: 3410 Tryon Road/ PIN 0792.16.3571</p>		
<p>Date Submitted: December 5, 2016</p>	<p>Date Issued: December 20, 2016</p>	<p>Code Sections Affected: Sec. 1.5.6.C; 3.2.4</p>

STAFF ANALYSIS

The UDO requires build-to ranges in certain circumstances: when a frontage is a part of the zoning district, or when a property owner constructs a townhouse or apartment building type. The regulations in the UDO are framed around the idea of building types. For the purpose of this question, the applicant has submitted an application for site review and is proposing an apartment building type. The property in question has frontage on two public streets: Tryon Street to the south and Tropical Sky Lane to the west. The apartment building type has a required build-to between 10 and 55 feet. A building must be constructed within this range. Further, the UDO requires that the building occupy a certain percentage of the lot width at the primary and secondary street frontages. Based on the site review submittal, at least 70% of the lot width adjacent to Tryon Road must contain a building, located between 10 and 55 feet from the street right-of-way. Additionally, at least 30% of the lot width adjacent to Tropical Sky Lane must contain a building located between 10 and 55 feet from the street right-of-way.

When developing a corner lot, the build-to is required for the first thirty feet, measured from the corner of the intersecting right-of-way. This is stated in section 1.5.6.C.1. The intent of this regulation is to require that the building is located in close proximity to the street to establish urban form. The applicant has asked if a detention facility can be placed within this build-to area; the placement of which would result in the location of the building outside of the build-to range. Section 1.5.6.C.3 of the UDO states “...common area is not required to meet the build to requirements”. This statement is the basis of the applicant’s argument.

Section 1.5.6.C.4 contains a list of exemptions from the build-to calculation. Stormwater facilities are not listed as an exemption from the build-to requirements. This section of the UDO was recently altered with TC-4-15. The adopted text change added language related to the build-to regulations. Subsection C.4 was specifically added during this process to identify appropriate exceptions to the build-to calculations. The following items are removed from the calculation of build-to: riparian areas, floodways, areas of steep slope, recorded tree conservation areas, areas encumbered with electric power lines, second driveways, and City of Raleigh utility easements. During adoption, there was discussion of exempting a stormwater facility from the calculation of build-to; this idea was rejected, as an exemption could incentivize stormwater facilities at the street edge, which would be completely contrary to the intent statements in section 1.5.3.B.

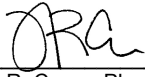
The applicant has referenced section 1.5.6.C.3 which states that a common area is not required to meet the build-to. The UDO does not define common area, although there are references throughout the document to common elements or common open space. Stating that a common area is not required to meet build-to does is not the same as stating the common area can replace the building location in the build-to. The language in section 1.5.6.C cannot absolve the developer of the requirement to place a building within the build-to range, as is required in section 3.2.4. Applicant further states that a stormwater pond at the street edge is the only solution to meet drainage regulations. Staff does not agree with this statement. There are many methods to accommodate a stormwater facility, some of which can be subsurface.



STAFF INTERPRETATION

Section 1.5.6.C.3 of the UDO states that a common area is not required to meet the build-to area. This section does not replace the requirement for a building to meet the build-to, as required in section 3.2.3 or 3.2.4. Even if these two sections were viewed as equal in weight, section 1.1.7.B of the UDO states that any conflict of regulations in the UDO is resolved in favor of the more stringent standard. Requiring a building within the build-to would be more stringent than not. The detention pond cannot be placed in a location that will prevent the developer from meeting other code obligations.

SIGNATORY



Travis R. Crane, Planning and Zoning Administrator