

## **A Report by the Inter-Neighborhood Council of Durham The Anthony Amendments (aka SCAD)**

### **Summary of the Issues**

A committee of nine INC (Inter-Neighborhood Council) representatives from varied neighborhoods (including those historically of color) have met 12 times in the last four weeks to do a deep-dive into the 85+ pages of privately-initiated proposed text amendments to the UDO (Unified Development Ordinance) called “SCAD (Simplifying Codes for more Affordable Development)” by its applicant, the Raleigh-based developer James Anthony. We call it “the Anthony Amendments.”

The purported motivation of the group behind this effort is to make the development process less complicated, and less expensive, and speed up the process for small builders who want to build “affordable housing.” If approved as is, these recommendations would ultimately free developers to create housing wherever they can find a place, regardless of the zoning. The proposal, as is, would not address the things that it claims, especially not “Affordable Housing” –either as defined by Federal HUD or a euphemism for “reasonably priced housing for middle or low-income aspiring homeowners.”

The landscape, welcoming atmosphere, and sustainability safeguards of Durham’s neighborhoods will be forever altered if these amendments are adopted. This dramatically different vision of Durham’s future will be imposed on residents across all socioeconomic backgrounds of our City and County, without the rezoning processes notice that is required by law.

And we need to be very deliberate and intentional about increasing the density of Durham.

Our only agenda is the safety and opportunity for Durham residents to live equitably and in harmony with their neighbors.

In substance, the Anthony Amendments are often poorly written, ambiguous, difficult to administer, and full of unintended consequences or conflicting interactions with existing sections of the UDO. There is inconsistency in language; changes made in one section but not in a corresponding section (ex: height); a whole table about trees and how much space trees need for survival, but then uniformly eliminating the space necessary for canopy trees from every building lot, and completely ignoring the role of the government to protect residents from harm (ex: residential units in Industrial zones), just to name a few.

In other words, it isn’t ready to be folded into the code without edits even if all the provisions were acceptable. If there is a new version after the January version, it hasn’t been shared with the public.

The vast Community Engagement they boast of was primarily limited to special interest groups who specifically stand to benefit financially from this change. This is in contrast with actual residents, primarily in the Urban and Downtown tiers, who will bear the brunt of the resulting gentrification and elimination of naturally occurring lower-priced homes. Two community meetings with residents were held wherein the presenters gave little detail and often responded to questions by belittling the person asking questions or dismissing the concerns as being irrelevant and providing no substantive information. They said they would sit down with us and talk it through, but have been unresponsive to overtures to organize such a dialogue.

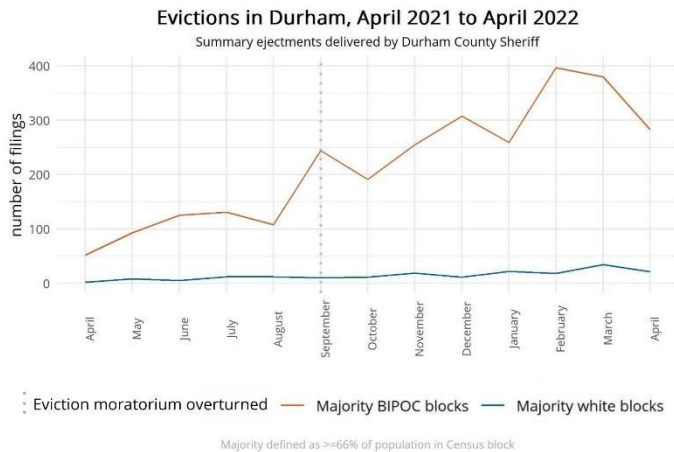
Housing prices have increased nationwide and many cities report unprecedented shortages of housing, in general, but especially in lower-income housing. The real estate industry has adopted a

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the strategy of using this concern to push for deregulation, with a promise that it will yield 'affordable housing.' The Anthony Amendments are the local manifestation of this nationwide industry strategy.

However, there are no indications or data from any other "hot real estate market" (most of the big cities on either coast and many in the midsection) that deregulation yields housing for people of varied income levels, or any housing that is 'affordable' by any measures whatsoever. New housing replaces old as gentrification spreads.

Instead, we believe that the deregulation of residential housing development gives up the power that the elected bodies have to negotiate for the creation of actual affordable housing from developers. Data from the past three years on "Expanding Housing Choices" (EHC) --which also promised "Affordable Housing"-- shows the documentable acceleration of gentrification, with large increases in the displacement of people of color from our City and no Affordable Housing.



Meanwhile, the Comprehensive Plan has been developing with considerable input from residents who have a stake in wanting to remain residents of Durham. This entire text amendment process flies in the face of the Comprehensive Plan nearing completion which will include a rewrite of the UDO. City Council and County Commissioners should hear the call from **residents who want development to be the type they want --where they want it.**

Residents are being marginalized in an undemocratic manner. Sweeping text amendment changes that effectively rezonings (such as this and EHC) circumvent the written notice required by law for rezonings. And residents are engaged too far into the process: not until the Planning Commission or City Council.

In contrast, these developers have had multiple sessions with JCCPC and have had surrogates allowed to make presentations in Council Work Sessions. Residents, however, are restricted to 2 to 3 minutes to make their case.

There are some recommendations we believe are worth considering: Parking, Infill standards, and a Common Plan of Development. We would like to be part of the solution to these issues.

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## Conclusion

We do not diminish the clear and present housing needs Durham has regarding “affordable housing,” whether referring to the Federal definition as it relates to Average Medium Income (AMI) or if referring to making housing affordable for low and moderate-income residents, including teachers, firefighters, police, and nurses.

We want to support changes in the development processes that make building such housing – especially of the HUD type – less expensive and faster. And we want local and small developers to take priority, speeding the availability of housing starts and finishes.

As has been proven time and time again in other “hot real estate markets,” deregulation is not the solution. People who invest not just their money but also their very lives in their neighborhoods should be respected stakeholders. Planning and development must consider the “ergonomics of community” that function healthily. We need a balanced approach to growth and change in Durham which respects and builds healthy neighborhoods while welcoming financial investment. These Amendments will manufacture situations of competition and conflict in our neighborhoods and our commercial areas, to say nothing about the loss of privacy.

We urge the City Council and County Commissioner to vote this down. We think it should be turned back into the Planning Staff and encourage them to help residents work with developers for an acceptable conclusion.

## The Details

After careful study of all 80+ pages, the INC asks that you reject this proposal for reasons including, but not limited to, the following:

1. Affordable Housing:
  - a. The Amendments “solution” specific to “affordable housing” in the P.A.T.H. section proposes and calls for rental units to be affordable (based on the HUD definition) for **only five years** – and those available for sale for **no period after the initial sale**. This provides zero affordable housing stock for the long term. Frankly, it is not material to our even short-term needs. (Pg. 31)
  - b. If there are other aspects to these amendments that would lend themselves to encouraging affordable housing to be built, it is not clear. They stand on the incorrect assumption that just building more will impact the cost. No other city in the country has had that experience, though many of them have significantly deregulated according to the national real estate strategy.
  
2. The Amendments themselves
  - a. The text is not ready for implementation. In some cases, the text is incomprehensible as to what each provision means. Our experience of reading it line-by-line was a difficult and tedious one and many times we said “What?” You need only look at the first page of the Amendments for several examples. (P.3) Other examples are on Pgs. 9, 31, 32, 35, 36, 46, 50, 54, 55, 56, 59, 65, 67, 69, and 70.

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- b. For example, “At least 30% of all parking spaces for nonresidential uses shall be located to the side or rear of nonresidential structures within any PDR” makes no sense. It should read “Any parking spaces for nonresidential uses shall be located to the side or rear of nonresidential structures within any PDR.” if we are to accept their proposal in its entirety. (P. 49)
  - c. Our committee met for a total of 24 hours, reading line-by-line: discussing, debating, and trying to represent Durham as a whole. This committee consisted of individuals who have a legal and working understanding of the UDO, building practices, and lived experience from the negative effects of gentrification and poor development. We believe this has been the largest citizen review of this proposal. No one should vote for approval of this document unless they have read, and understand it in its entirety. It is difficult to imagine that anyone with basic knowledge of ordinance drafting would approve it.
  - d. The title they chose is the antithesis of what they delivered: there is nothing simple about this set of text amendments.
3. Allowing Residential in non-residential zones
- a. The fundamental reason we have land divided into categories with different rules for each category is that each zoning area and category of usage are different by design. This provides a common expectation of land use as well as protecting the public from harm. These Amendments completely alter those safeguards. For example, residential development in an Industrial zone is proposed here. (P. 6) Tractor trailers with small children or a group home for the demented: what could go wrong? Residential units above the chemical facility?
  - b. Residential in a commercial zone, such as housing above retail businesses as suggested by the Amendments group in their presentation, can be reasonable with specific provisions related to the type of business for resident safety. This should be hammered out and specific (which is not less complicated).
  - c. (Refer to the “Use” Table beginning on Pg 6. Note the “L”s that have been added to columns. Those are the introduction of residential in other zoning types. It also has a reference to more information in the farthest column to the column at the far Right.)
4. Parking
- a. Completely removing all parking requirements for every type of building (Pg 60), including for residential, is a recipe for generating hostility between neighbors and is completely unrealistic in the near term. We need to negotiate for what will work in our surroundings until other forms of multi-modal transportation are widely available everywhere. The EHC reduced residential parking mandates to make more lots buildable. That is sufficient.
  - b. As it is even now, there are restaurants next to neighborhoods and residents struggle to park when street parking in the neighborhoods is used for restaurant patrons. Support was strong when the businesses first opened. Animosity has grown and that is happening with residential requiring parking.
  - c. People with disabilities need easily accessible parking at home and in retail settings to retain personal freedom. To have none will completely disenfranchise them from

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normal daily life. If anything, we need more housing built for people with movement challenges, especially because often they are the ones that qualify for HUD housing.

### 5. Setbacks as a function of Density

- a. These Amendments include many things that were in the original EHC proposal and were not adopted. All setbacks have been reduced by as much as 20 percent if using the provisions of the P.A.T.H. (P. 32)
- b. However, encroachments can increase by 20 percent.
- c. There is very complex language in the P.A.T.H. section. Some provisions contradict others or there are incomplete sentences. Even though the specified goal is for developments to have 25% Affordable Units, there is a bonus feature where the developer can build extra units at the market rate. If they get the bonus, it diminishes it to 16%. (P.32)
- d. There are a couple of positive alterations of setback: additional height can be added with a larger increment of setback at the back (P. 24) and in some zones (CI, CN, CG, OI, and SRP-c) there is only a minimum setback in the table and no maximum. (P. 45) Of course, these zones would not have residential housing (except CN) but for these Amendments.
- e. They have removed "Building Articulation" which is intended to eliminate "barracks"-type buildings where more than four can be built on the same setback.
- f. Encroachments could be 8' (now 6') into setbacks and the lesser of the required street setback or 5'. This means that a building can be 5' from the street with a deck that extends to the street. (P.53)

### 6. Trees

- a. There is a chart about how much space trees of different kinds need to survive. (P. 75-76) The bottom line is that canopy trees need at least 10 ft of space. With the reductions in yard setbacks

### 7. The height as a function of Density

- a. They propose a new way to measure the height of buildings. They wish to convert to "stories." (P. 50) And the Applicant gets to choose the starting point. This is not simpler, it is more complex.
- b. Privacy appears only once in the document (P. 68) where the provision addresses townhouses and it is struck. Privacy is something that we all want and it should be considered for all residential development types.

### 8. Removing Promised Elements re EHC

- a. The entire section 6.8.3 (P.35) regarding "Buildings" has been removed. These were infill standards that we understood would preserve the character of our neighborhoods. Building dimensions, main entrance, garage and access, and downspouts.

### 9. Community Engagement

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- a. The Anthony team has engaged in a highly organized marketing campaign directing their primary attention to those that benefit most instead of the public who will be most harmed. In conversations with some of those groups, we have found that they have not fully read nor understood many of the Amendment provisions but support it largely based on what it will specifically offer them and their businesses.
- b. Engagement with residents has been more advertising and marketing than real engagement. The documents (PowerPoint and handouts) the Proponents present/show at meetings are customized changes to appeal to different audiences. But never do they fully reveal any of the ugly, dangerous details of what is actually in the text or its inconsistencies. They have consistently belittled those who point out problems in the text and have been unresponsive to repeated requests for meetings with them to go over line-by-line details.
- c.

### 10. Deregulation as the solution to affordable housing

- a. This proposal will not produce housing for people of all incomes. Quite the opposite: In NC, because of the powerful development and real estate lobbies, cities have few tools to press for affordable housing except for the planning and zoning power. If City Council and County Commission give up their power by deregulating and allowing more intense development without approvals being required, they will have few or no tools, and no leverage to negotiate for better projects, and for housing for people of all incomes.

### 11. The Process itself

- a. The Planning Department was not enthusiastic about this proposal for several reasons, all explained in the cover letter for this set of Amendments. If the Planning Department is not enthused, we aren't either. It is unclear to us if anyone in the Planning Department had read the entire document and made recommendations because there are so many things that don't make sense in the language.
- b. As residents, we are quite sure that if we proposed such sweeping changes to the UDO and the Planning Department advised against them, we would be shut down immediately. Favored access to the Planning Commission, the Joint City-County Planning Commission, the County Commission, and the City Council has been provided to Jim Anthony and his agents, who commissioned these sweeping changes to the Durham UDO and paid for the private text amendment process to propose them, even though he has no substantial ties to Durham and doesn't live in our city.
- c. He has used his power to lobby other powerful people – all of whom would financially benefit from the Anthony Amendments' passage – to lobby our City and County leaders. They have been allowed to address the elected and appointed officials several times in a manner not allowed to residents. Therefore, the elected officials come into the public hearing, --scheduled very late in the process--, with a bias that does not favor the residents of Durham. We believe that this entire process has circumvented the democratic processes stipulated by law: if your property is going to be rezoned, you get a written letter from the City/County.

### 12. Enabling Gentrification

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- a. These Amendments will increase the rate of gentrification and set back what progress Durham has made toward equitable neighborhood amenities. By resulting in homes with no trees, the Amendments expand the environmental discrimination experienced by people with low incomes, which in Durham is largely people of color.
- b. Mr. Anthony gave the INC a presentation to our delegates at our request. He stated that gentrification is necessary to erase the “blight”. We do not think this reflects the concern that should be paid to those who get forced out because development has priced them out.

### 13. Sustainability

- a. How can we leave our children a living world if it is all paved or built upon? The Amendments promulgate the antithesis of sustainable building and climate resilience.
- b. The yard setbacks cannot support trees of any size. The Amendments’ small lot provisions dismantle one of the few positives of EHC by removing the requirement for ribbon driveways – in favor of water-saving shower heads, or downspouts! Requiring only one of the listed items is hard “sustainability”.
- c. The yard setbacks are not just reduced for “affordable” homes: it is significantly reduced for market-rate homes as well. And all of them at a tremendous price of purchase and cost to the environment.

### 14. A climate for disagreements

- a. There are no protections for neighboring lots because of vast reductions in yard setbacks, parking, and encroachments, creating a climate for disagreements among neighbors. This is specifically a broken promise from the negotiations for EHC in 2019, during which it was agreed promise that the UDO’s infill standards would “protect” neighborhoods. The Anthony Amendments gut the infill standards.

### 15. The EHC Impact

- a. Indeed, our city has not yet fully assessed the impacts of EHC. However, a pattern of bad consequences has become clear. These include
  - i. stormwater runoff from clear-cut lots where the soil is more like clay and cannot absorb the water; stormwater runoff leading to soil erosion and topsoil loss; flooding of yards and homes that pre-existed the small lot homes;
  - ii. clear cutting all vegetation on the building lot up to the lot line, cutting off root systems of neighbor’s trees, leaving the neighbor no recourse than to file suit to recover the cost of removing the trees damaged by the developer

All of these issues are likely to become worse with continued climate disruption and increasingly severe weather.

### 16. Undermining the Comprehensive Plan process

- a. The Comprehensive Plan process, about three years long now, has listened to hear the people of Durham throughout. If the Anthony Amendments are adopted, they will undercut the process, substance, and overall value of the Comprehensive Plan, a large-scale taxpayer investment. And there was a lot of taxpayer money invested in developing it that will essentially be wasted.

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### **Review**

These amendments:

- short-circuit democratic processes;
- short-circuit coherent planning for climate change and increased storm events;
- disrupt existing neighborhoods;
- inject chaos into the City's planning process;
- effectuate zoning changes without formal process and at the election of developers instead of the City/County;
- create flooding issues for existing homes are;
- are likely to increase the demolitions of existing naturally-occurring affordable homes that Durham has experienced under the small lot option;
- will increase the staffing costs of the Planning Department by [?]