



November 25, 2009

TECHNICAL STAFF REPORT

*Petition Accepted on October 26, 2009
Planning Board Meeting of December 10, 2009
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-124 – Forest Venture II, LLC

Request: Zoning Regulation Amendment to Section 103, Definitions, to establish a definition for the term “Route 40 Manual” as a new Section 103.A.142.1.

Department of Planning and Zoning Recommendation:

DENIAL

I. DESCRIPTION OF PROPOSAL

- # **The Petitioner proposes one amendment to the Zoning Regulations. In the regulations for the TNC (Traditional Neighborhood Center) Overlay District, a mixed-use district anticipated to be used for developments within the US 40 corridor area, all TNC developments are required to comply with the standards of the Route 40 Manual, as stated in Section 127.6.G.**

This requirement has existed since the TNC Overlay District regulations became effective July 28, 2006 after the 2005 Continuation to the Comprehensive Zoning Plan (“Comp Lite”), but to date there is no finalized Route 40 Manual.

- # **Although this ZRA124 petition was submitted in August, it is directly related to a new Zoning Map Amendment case, ZB 1088M, submitted by the same Petitioner on November 16, 2009 for a site on the south side of US 40, in an area east of Centennial Lane.**
- # **The Petitioner proposes to add a definition for the term “Route 40 Manual” that would allow this term to refer to the actual design standards manual adopted by the County Council, or to refer to any design standards and/or criteria that might be approved by the Zoning Board in a Zoning Map Amendment case for the TNC Overlay District with site plan documentation.**

The Petitioner states that the proposed amendment will “...permit properties to proceed with development...” By this, it may be the Petitioner believes that the Zoning Board might not consider a TNC Overlay District proposal if the Route 40 Manual did not exist. A TNC development definitely would be subject to the Route 40 Manual if it existed, but there is no regulation preventing the Zoning Board from considering a Zoning Map Amendment for a TNC District if the manual did not exist.

I. DESCRIPTION OF PROPOSAL

The subsection proposed to be added and the amendment text is as follows (CAPITALS indicates text to be added):

1. § 103.A.142.1

**ROUTE 40 MANUAL: A MANUAL OF DESIGN STANDARDS
ADOPTED BY THE COUNTY COUNCIL, OR, IN LIEU THEREOF,
STANDARDS AND CRITERIA APPROVED BY THE ZONING BOARD
IN A SITE PLAN ZONING PETITION UNDER SECTION 100.G.2.**

II. EXISTING REGULATIONS

As noted above, the TNC Overlay District regulations, including the several references to the Route 40 Manual, were proposed and established as part of the Comp Lite process. The Department of Planning and Zoning never proposed to include a definition for the Route 40 Manual because it believed there would be no need for such a definition.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendment

If approved, the amendment would apply only to existing properties with the TNC Overlay, and to properties which may become rezoned in the future to add the TNC Overlay.

It is estimated that there are approximately 22 properties on which the TNC Overlay is currently placed. These are predominantly along US 40 in the general vicinity of the intersection with North Chatham Road, with some slightly to the south and a few at the intersection of Frederick Road and St. Johns Lane.

B. Agency Comments

The following agencies had no objections to the proposal:

1. Department of Inspections, Licenses and Permits
2. Development Engineering Division

IV. EVALUATIONS AND CONCLUSIONS

A. Relation to the General Plan

From the perspective that the proposed amendment is related to the TNC Overlay District for an intended, potential new overlay area as proposed in ZB 1088M, it might appear to be in general harmony with Community Conservation and Enhancement Policy No. 5.3 to “Promote new mixed use focal areas that are in scale and character with their context.”

IV. EVALUATIONS AND CONCLUSIONS

However, the Department of Planning and Zoning finds that this amendment could be contrary to this policy. The purpose of the Route 40 Manual is to adopt common design standards, applicable to all TNC developments, that have been formally evaluated and accepted by the community. With the amendment as proposed, it might allow a potential “piecemeal” approach to development design which could be different in different TNC developments.

- # **The TNC Overlay District is intended to create an incentive for mixed-use development, but only with the developer accepting to follow the common design standards to be established in the Route 40 Manual.**

By allowing some type(s) of mixed-use development to proceed under a set of design standards that might be quite different than those adopted in the Route 40 Manual, the amendment could undermine the TNC Overlay District concept.

B. Relation to the Zoning Regulations

- # **While it may be thought to have been premature to establish the TNC Overlay District regulations prior to creating the Route 40 Manual, the TNC Overlay District was principally intended to be a mapped overlay established as determined by the County through the comprehensive zoning process, and not as an overlay established through the piecemeal zoning process.**


It was therefore necessary to set all the Zoning Regulation requirement in place at the time of the mapping of the planned overlay areas. As development could still occur based upon the underlying zoning districts, TNC development could be deferred until such time the manual was created.

- # **At this time, a TNC development like the one proposed in ZB 1088M would likely not be delayed at all, because the Route 40 Manual will most likely be approved prior to it progressing to the final stage.**

The current target for the Route 40 Manual is to have a final staff draft submitted to the County Council in June, 2010. With consideration of the current backlog of Zoning Board cases already in the pipeline, it is quite realistic that ZB 1088 won't be heard by the Zoning Board until after the Route 40 Manual is finalized. On this basis, changing the regulations as proposed is not advised.

V. RECOMMENDATION *DENIAL*

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-124 as noted above, be DENIED.



11/25/09

Marsha S. McLaughlin, Director

Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.