State of Alabama)
City of Tuscaloosa)

EXECUTIVE ORDER OF THE MAYOR

To: Director of Planning and Development Services
City Engineer

Number: **2012-004**
File No. A12-0174

Date: February 28, 2012

Regarding: Land development permit

Authority

By the authority vested in me by the applicable provisions of the laws of the State of Alabama, including but not limited to Ala. Code §11-44B-7 (1975), pursuant to which the Mayor of the City as the Chief Executive Officer has the general supervision and control of all other officers and the affairs of the City, and pursuant to the emergency powers vested in me as Mayor by Alabama State Law and the ordinances and resolutions of the City of Tuscaloosa, and including without limitation ALA. CODE §11-45-1, ALA. CODE §31-9-10, §9-3 of the Code of Tuscaloosa, the Proclamation of Existence of a Local Disaster And Emergency issued by me on April 27, 2011, and the resolution of the Tuscaloosa City Council adopted on April 27, 2011, and as otherwise provided by law, I, Walter Maddox, as Mayor do hereby find, order, and direct as follows:

Findings

As a result of the tornado of April 27, 2011, the City has taken extensive measures to allow and encourage redevelopment in the community to occur in an orderly, fair, and efficient manner. That process began on the day of the disaster with the Mayoral "Proclamation of Existence of a Local Disaster And Emergency" and the City Council's adoption of a resolution invoking the emergency powers of the Emergency Management Act, general state law, and the Code of Tuscaloosa. This Executive Order is based on the combination of those emergency powers and my general authority to interpret, administer, and execute the codes and regulations of the City of Tuscaloosa.

On May 10, 2011, the City Council adopted Ordinance No. 7673, imposing temporary building standards in the disaster-impacted areas. As these temporary standards were set to expire, the City Council extended and expanded them in Ordinances No. 7703 and No. 7713. Parallel and complementary to these temporary standards, the Mayor's Tuscaloosa Forward Task Force, in collaboration with staff and retained experts, developed the Tuscaloosa Forward Plan, which was formally endorsed by the Citizens Advisory Committee, Planning Commission, and City Council.

One component of implementing the Tuscaloosa Forward Plan was the adoption of new zoning codes. On December 20, 2011, a zoning ordinance was introduced that applied to certain commercial areas affected by the tornado, and on January 17, 2012, following a public hearing, Zoning Ordinance Amendment 1216 was adopted. This Zoning Ordinance represented fundamental and conceptual changes to the City's zoning code, emphasizing a development's form and relationship to other properties as well as the urbanized landscape that had evolved over time. The City has taken great care during all these transitional periods to assist property owners in understanding the regulatory rules and rule-changes that were contemplated or adopted, and to work with special cases that present exceptional challenges so that the speed with which redevelopment occurred would be balanced with the need for deliberation.

As required by law, developments that received land development permits prior to the effective date of the new Zoning Ordinance were grandfathered under the prior zoning regulations. One such land development permit was for the Hokkaido restaurant on 15th Street. The representatives of Hokkaido have requested an amendment to the land development permit in a manner that a strict application of the zoning rules may not allow. There are certain unique factors and circumstances applicable to the Hokkaido development that indicate an executive order is needed to address these unique issues and allow the requested amendment to facilitate Hokkaido's return to the business community. These factors include, but are not limited to, the fact that this land development permit is applicable only to this particular property; the land development permit was issued prior to the effective date of Zoning Amendment 1216; the Hokkaido land development permit is unique and not similarly situated to other developments; this is a transitional period for the zoning codes that impact Hokkaido in atypical ways; construction has not been completed; the relationship of the Hokkaido structure to the adjacent property is unique; and there is a pending lawsuit filed against the Hokkaido owner and development directly related the activities authorized by the land development permit. This executive order addresses these and related issues to allow the amendment to the land development permit to be approved.

Finally, it is notable that as Mayor, I would not entertain this executive order or any similar executive order (1) if any of the circumstances recited herein were not present; (2) regarding any structure for which construction was completed or a certificate of occupancy was issued prior to the effective date of Zoning Amendment 1216; and/or (3) after the City Council rescinds the emergency powers resolution adopted on April 27, 2011.

Order and Directive

In regard to zoning rules and regulations, I direct and order that Hokkaido's land development permit shall be amended upon the permittee's request to allow substantially the same building footprint to be placed at a greater setback distance from the 15th Street right-of-way and/or from side property boundaries. It is anticipated that any approved amendment would be for substantially the same building footprint and orientation except for the setback distances. Any such amendment independently must comply with engineering standards and other non-zoning requirements.

Implementation

All Departments of the City and their respective employees to whom this Executive Order applies shall forthwith implement the same in accordance with its terms and requirements. Nothing contained in this Order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations. This Order is not intended to conflict with, supersede, or contradict any lawful ordinance or resolution duly enacted by the City Council. This Order does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the City, its departments, agencies, entities, officers, employees, or agents, or any other person.

So Ordered from City Hall on the date indicated above.

Walter Maddox
Mayor, City of Tuscaloosa

CC: City Council of Tuscaloosa