Town of Huntersville NORTH CAROLINA

AGENDA
Ordinance Advisory Board Meeting
October 6, 2022 - 3:30 PM

TOWN HALL (**101 HUNTERSVILLE-CONCORD ROAD**)

Live Stream- *Members of the public may view or access the meeting on YouTube at* *https://www.youtube.com/channel/UCgqiipdJL0ywI-LZrcN5MpQ/featured.*

1. Call to Order/Roll Call

2. Approval of Minutes

2.A. Consider approval of the September 1, 2022 Minutes of the Meeting *(Tracy Barron)*

3. Public Comments - *Speakers are limited to 3 minutes. The Chairperson reserves the right to shorten the time limit for speakers when an unusually large number of persons have signed up to speak. Speakers may not give all or a portion of their time to other speakers*

4. Action Agenda

4.A. Discuss land use issues identified at September 6, 2022 Town Board work session *(Jack Simoneau)*

4.B. Discussion on School of Government Checklist *(Jack Simoneau)*

4.C. Discussion on making the Zoning Ordinance more user friendly *(Jack Simoneau)*

4.D. Discussion on NCAZO Conference presentation and Visible Properties vs Village of Clemmons *(Jack Simoneau)*

5. Other Business

6. Adjourn

Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met in person at 3:30 p.m. on Wednesday, September 1, 2022, at Town Hall 101 Huntersville-Concord Road.

Call to Order/Roll Call
Chairman Jones called the meeting to order at 3:30 pm.

Voting Members Present: M. Jones, T. Taylor, F. Gammon, A. Hallman, K. Jones, J. Kluttz, B. Skelly, H. Whittaker.
Voting Members Absent: T. Finlay

Non-Voting Members Present: Commissioner Kovacs, J. Simoneau, T. Barron, E. Sloop (by conference call) and J. Glass
Non-Voting Members Absent: None

Approval of Minutes
Item 2A. Consider approval of the August 4, 2022, Regular Meeting Minutes
Motion: K. Jones made a Motion to Approve the August 4, 2022, minutes. B. Skelly seconded the motion.

Vote: The motion passed unanimously (8-0).

Public Comments
No comments.

Action Agenda
Item 4A. Consider a recommendation on TA 22-06, a request by the Irvin Law Group to increase the building height limits for Hotels and Commercial Uses within pedestrian-oriented developments.
N. Farber, Planner II highlighted the 1996 building heights that were allowed to keep a small-town feel. As the town's population increased the ordinance also evolved. In 2008 a text amendment was passed to allow a maximum of 13 stories or 182' in the Transit Oriented Development- R in conjunction with the approval of the Bryton development. In 2018 a text amendment allowing hotels in Highway Commercial a maximum of 6 stories with a special use permit was passed. The proposed TA22-06 would allow hotels and commercial use in urban workplace buildings a maximum of 145' and the associated parking deck a maximum of 70' subject to a highway commercial zoning, in a pedestrian-oriented development with a special use permit.

Staff reviewed the criteria for a pedestrian oriented development which includes, it must be in Highway Commercial zoning, and have one parking space per dwelling unit in a wrapped parking deck with attached homes, apartment buildings, and mixed-use buildings. Additionally, 20% of the habitable first floor space must be commercial uses. Currently Birkdale Village is the only project zoned Highway Commercial – Pedestrian Oriented within Huntersville.

Staff displayed the distance of the proposed structures to the closest residential lot lines.

Representing the applicant, Robert Irvin, 19726 Zion Avenue shared the visuals of what the view would be from seven residential locations of the proposed structures.

H. Whittaker asked if the representation being shown is what will actually be built. The applicant, Nick Lombardo, 8712 Windholme Drive responded that there will be some concrete and metal panels that will break up the glass.

F. Gammon asked staff to clarify if the residential units within the rezoning area are considered in the setback criteria. Staff responded that they do not count because they are internal to the development. The setbacks are considered to neighboring projects.

A. Hallman asked if the applicant has considered or will be implementing bird glass. Staff responded that the only architectural requirements addressed are related to the parking deck.

H. Whittaker asked why a height limit is even required. Staff responded that the Ordinances are meant to work well in conjunction with existing development. The text amendment is proposed by the applicant and addresses the needs of the applicant, staff is in support of what is requested and would not be in support of removing a height limitation.

Motion: H. Whittaker made a Motion to Recommend Approval of TA22-06 as presented by staff. B. Skelly seconded the motion.

Vote: The motion passed (7-1) with K. Jones opposed.

Item 4B: Consider a recommendation for TA22-07, a request by the Huntersville Planning Department for a text amendment to the Zoning Ordinance to comply with Senate Bill 105 regarding the restriction of harmony requirements if the development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.

Kayleigh Mielenz, Planner I reviewed the current Senate Bill 105 harmony standards for multifamily structures and 2 or more affordable housing units are offered. The Town attorneys consulted with the UNC School of Government on the interpretation of terms units, harmony and the development. When the statutes and Land Development case law do not define the terms, the plain language meaning of the term would be used.

The Town currently has harmony standards for new development for massing and architecture. Staff then presented current Mecklenburg County median income chart.

M. Jones asked for confirmation that the state statutes and current case law do not define the term harmony. E. Sloop responded that the research they conducted did not reflect any current interpretation.

F. Gammon asked how the new statute and ordinance would impact our zoning decisions. Staff responded that a major subdivision that has multifamily units with 2 or more affordable units, then the entire subdivision does not have to adhere to harmony requirements so the form and appearance of those subdivisions will change. Multi-family could be apartments or townhomes.

M. Jones commented that it is written it is subject to multiple interpretations. A major subdivision with a multifamily aspect in it could have any 2 units, including single family homes, be the affordable units and then the entire subdivision would not be subject to the harmony standards.

F. Gammon asked if Staff is recommending using Mecklenburg Counties median income versus Huntersville's median income. E. Sloop responded that Huntersville is not in a census track so that specific data subset is not available to the best of our knowledge.

F. Gammon asked if its possible to have Huntersville median income determined, and what will neighboring communities use to determine median income. E. Sloop responded that area median income is determined by region and it is distinct from average household income so area communities that do not have a data subset will also be using Mecklenburg County data to determine median income. E. Sloop stated that she will confirm if it is a population threshold that triggers being able to have a data subset specifically for Huntersville.

A. Hallman asked who monitors this down the road that the proposed affordable housing stays affordable. Staff responded that it will be noted on the plat and permit and will ultimately be a code enforcement issue if it is not upheld. Staff continued that this will no doubt be an issue for every part of the state in 5-10 years. Staff remains in contact with Planners all across the state and it is likely that there will be discussion and eventually a resolution to how to deal with this as it begins to be utilized.

F. Gammon commented that he does not think anyone on the Board is opposed to affordable housing, these are simply concerns about potential outcomes and how developers could seek to benefit from this. Staff stated that we are very concerned as well about the potential effects of this as well given the lack of guidelines. The reality is that it is state statute and we are subject to it.

H. Whittaker asked why the rush if we are the first to adopt the standards and if there is a League of Municipalities that can try to figure this out for us. E. Sloop stated that she thinks it is better to be proactive and have some language in the Ordinance versus no parameters so that when a developer comes in there is a starting place within our Ordinance.

Motion: F. Gammon made a Motion to Recommend Approval of TA22-07 as presented by staff so the item can be considered by the Planning Board and Town Board for final decision. J. Kluttz seconded the motion.

F. Gammon requested that E. Sloop investigate if the median income for Huntersville can be used or not for consideration by the Planning Board and Town Board.

A. Hallman stated that she agrees with the motion because it is time for the decision makers to give their input and make the decision, this Board has done what they can.

H. Whittaker asked for clarification if there is a mechanism to move an item forward for discussion by Planning and Town Boards with a neutral or negative comment. M. Jones responded that the meeting minutes are provided to those Boards for their review.

Vote: The motion passed (7-1) with H. Whittaker opposed.

Item 4C: Consider a recommendation for TA22-10, a request by the Huntersville Planning Department to amend Article 8.2 of the Zoning Ordinance to exclude single-family detached homes from multi-building sites on one lot, with an exception for age restricted developments.

Nathan Farber, Planner II reviewed the proposed amendment to Article 8.2 that would not affect retirement communities or congregate care facilities. Staff shared the example of the recently approved “The Hamlet” community. He then shared that staff researched local municipalities and found that the same requirements are in place with Davidson being the only community that will allow it but with additional requirements.

F. Gammon asked what Davidson’s process is. Staff responded that it is an additional step similar to our Conditional Rezoning process.

M. Jones asked if Davidson’s process applies to for rent only communities. Staff responded that it applies to subdivisions for sale or for rent.

A. Hallman asked how this amendment would change requirements beyond parking in the example show of The Hamlet. Staff responded that lots less than 50’ wide are required to have alley access parking at the rear of the property. That would have removed the parking lots, pushed the project further in from the setbacks to include alley access, possibly reduced the on-street parking or at least the demand on the on-street parking by the residents.

F. Gammon commented that the concern expressed is if the owner of the development goes bankrupt, however, apartments go bankrupt and are one lot. Staff responded that this amendment addresses multiple issues, consistency with neighboring development, consistency with the definition of single-family homes in the Ordinance, as well as some future options should the owner of the development wish to sell any of it off that becomes an option.

Additionally this is basically the same as all neighboring municipalities and does not limit rental communities.

F. Gammon asked staff to share the Epcon communities example of evolution of development. Staff responded that the Epcon at Huntersville and Kinnamon are condominiums and the people own the air-space inside of the buildings and they are developed on one lot. The Glens at Birkdale are duplexes and they are not on their own lots, that is senior housing. Epcon at Eastfield Road chose to develop on individual lots because they were experiencing some problems on the condominium side of things so they adapted their plans. The amendment would not affect retirement community or congregate care facilities.

F. Gammon asked if rental subdivisions may have private roads. Staff stated that would not be permitted without a text amendment.

Motion: K. Jones made a Motion to Recommend Approval of TA22-10 as presented by staff. A. Hallman seconded the motion.

Vote: The motion passed (7-1) with M. Jones opposed.

Item 4D: Fee In Lieu Discussion of time allows (Harrisburg? Concord? Other good examples?)
Jack Simoneau, Planning Director stated that in Article 7 of the Ordinance it states that if you have a subdivision of property less than ¾ acre then you must have urban open space within ¼ mile of every lot measured along right-of-way. That has been adopted since 1996. For subdivisions larger than ¾ acre then it has to be ½ mile. Urban open spaces are small open areas owned and maintained by the neighborhood and used by the neighborhood only.

The Subdivision Ordinance, Section 6.200-B(5) describes the process if a long-range plan identifies a future public park within the subdivision boundaries. It sets up a timeline for the process between the developer and Parks and Recreation to acquire the land. The statute, 160D-804(d) gives the option for accepting payment of funds to be used to acquire or develop open space and/or recreation areas which serve residents more than one subdivision or development within the immediate area.

The Huntersville Parks and Recreation Master Plan uses bubbles on a map to show a general area where a park should be considered in the future so it is not specific enough. However, the greenway is specific. The greenway map shows specific areas that a greenway will be developed. Developers have the option to dedicate that for greenway use which serves as open space and leaves the cost of the greenway development to Meck County or the Town.

M. Jones stated that when the text amendment to go from quasi-judicial to administrative approval happened this was part of that and he is glad to see it in there now. The basics of it are included but when you compare to neighboring municipalities and how it can theoretically be applied, we could go further and create a bigger benefit to the Town. There are Mecklenburg County sites and Town sites that are owned but not developed. Costs associated with development just keep rising so the faster we can accelerate the development of those parks and greenways, the better off the Town will be. There may be some tools in this that enable the Town to accomplish this.

M. Jones asked staff, currently when we request developers to identify Open Space it is private. Staff confirmed that is correct unless it has been specifically identified in a greenway plan.

Staff responded that we will take the examples provided from other municipalities and talk with Parks and Recreation and brainstorm on some ideas that may assist with developing parks, greenways, or acquiring land.

M. Jones asked staff what the change has been in the cost of greenway development. Staff responded that 15 years ago it was estimated at $100,000 a mile and currently it is estimated at $1 million per mile. M. Jones followed up stating that it may have been cheaper to borrow the funds 20 years ago at municipal rates to fund the development versus waiting.

Staff highlighted how things have also changed over the years. In the 1980's and 90's many developments did not go up to the middle of the creek, creating common space corridors that are simple for Mecklenburg County to pick up and use for greenways. The floodplain that was not going to be developed was often donated since it could not be built on.

T. Taylor asked if the in lieu of fees must be used for a particular subdivision based on the current wording. Staff indicated it could be used to benefit more than one development.

Other Business
No other business.

Adjourn
Motion: A. Hallman made a Motion to Adjourn. H. Whittaker seconded the motion.
Vote: The motion passed unanimously (8-0).

Approved this ____ day of _________________ 2022.

____
Chairman or Vice Chairman

____
Board Secretary

HOAB Update on September 6, 2022 Town Board Pre-meeting

Land Use Discussion

(identify areas of concern)

ADOPTED
DECEMBER 21, 2020

VISION STATEMENT

"BY 2040, HUNTERSVILLE WILL BE
THE MOST LIVABLE
COMMUNITY IN
NORTH CAROLINA"

LU 7.2: Consider updates to the Huntersville Design Guidebook and/or Zoning Ordinance as needed to improve the commercial and multi-family design.

LU 8.2: Evaluate and strengthen incentives to encourage the achievement of higher design standards.

LU 10.3: Consider allowances for "house" scale missing middle housing.

- Design requirements could include form-based regulation for structures with 3+ units. This may increase acceptance at the community level. Requirements could include:
- Balconies, porches
- Shared outdoor greenspace/courtyard garden areas (if multiple structures)
- Separate entrances for all units
- Loading and/or access requirements

LU 11.1: Protect and enhance the unique character of Huntersville's neighborhoods by using planning tools to safeguard from potentially negative impacts of development and redevelopment.

- Promote quality design and neighborhood improvements including increasing access to parks and recreation and mobility options.

LU 12.3: Blend new development with existing neighborhoods, structures and landscapes through the use of transitions in building types and placement of open space, buffers, and other site features.

DT 1.3: In Tier 2 areas, create a transitional area from the core of Downtown to surrounding residential neighborhoods.

- This area contains mostly residential uses with some office and commercial space at lower intensities than Tier 1.
- Residential can include townhomes, duplexes, triplexes, quadplexes, and urban single-family home types including alley-loaded bungalows and other house-scale development types such as pocket neighborhoods and cottage courts.

DT 1.4: Consider revisions to ordinances, the Design Guidebook, and/or review and approval processes to achieve an elevated design in the downtown area.

Policy DT-2: Step down in intensity and density near established residential neighborhoods.

- Housing types that provide good transitions include townhomes, duplexes, triplexes, and other small-scale products.
- Design features such as setbacks, stepbacks, tree preservation, and open space placement can help provide transitions.

Policy DT-8: Preserve and celebrate the history of Downtown Huntersville.

DT 8.1: New developments should respect the scale and character of historical structures and established neighborhoods.

Identify Concerns

- Major residential subdivision administrative decision without ability to increase 20’ setback from adjoining incompatible development
- Large scale 1 building/1 lot apartment adjacent to smaller scale residential as “by right” administrative staff approval
- State statute prohibit building modification for “harmony” with adjoining property if 2 or more affordable units
- Large scale 1 building/1 lot apartment “by right” but smaller scale major subdivision (i.e., townhomes) limited to 30% attached
- Rental Single-Family Subdivisions
- Number of Senior Housing Units

CONCERN	OPTIONS
• Major subdivision setbacks from lower density neighbors	• Increase 20' when adjoining lower density development
• 1 large scale apartment on 1 lot	• Limit # units; limit acres; increase setback based on size
• Statute "harmony" provision not permitted w/2+ affordable unit	• Same as above
• Major subdivisions limited to 30% attached but can have 1 large apartment building	• Consider options allowing townhomes versus 1 large apartment building

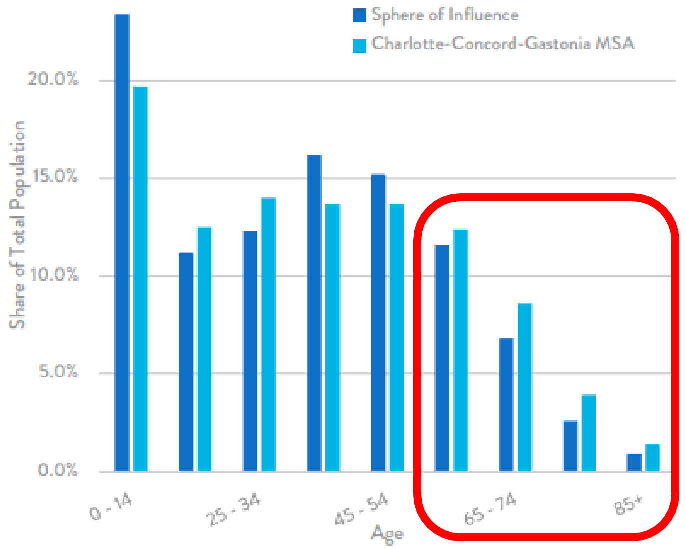
Multi-Family Use: 1 Apartment Building on 1 Lot

- 14719 N Old Statesville Apartments (built)
  - 8 units, .31 acres
- Stumptown Apartments, 14801 Stumptown Rd (under construction)
  - 18 units, 1.07 acres
- Bellamoor Senior Living, 16515 Old Statesville Rd (built)
  - 116 units, 5.03 acres
- Album Senior Living, 6930 Prosperity Church Rd (under construction)
  - 168 units, 5.77 acres
- Sam Furr Senior Living Birkdale Village
  - 62 units on 2.02 acres
- Arden Senior Living, 13409 Old Statesville Rd (approved)
  - 129 units, 6.53 acres
- Caldwell Station Senior Apartments, 11130 Will Knox Road (approved)
  - 134 units, 6.4 acres
- Mosaic Senior Living, 9102 Beatties Ford Road (approved)
  - 130 units, 9.85 acres
- Sam Furr Apartments, 10400 Sam Furr (not approved; under review)
  - 244 units proposed, 10.03 acres

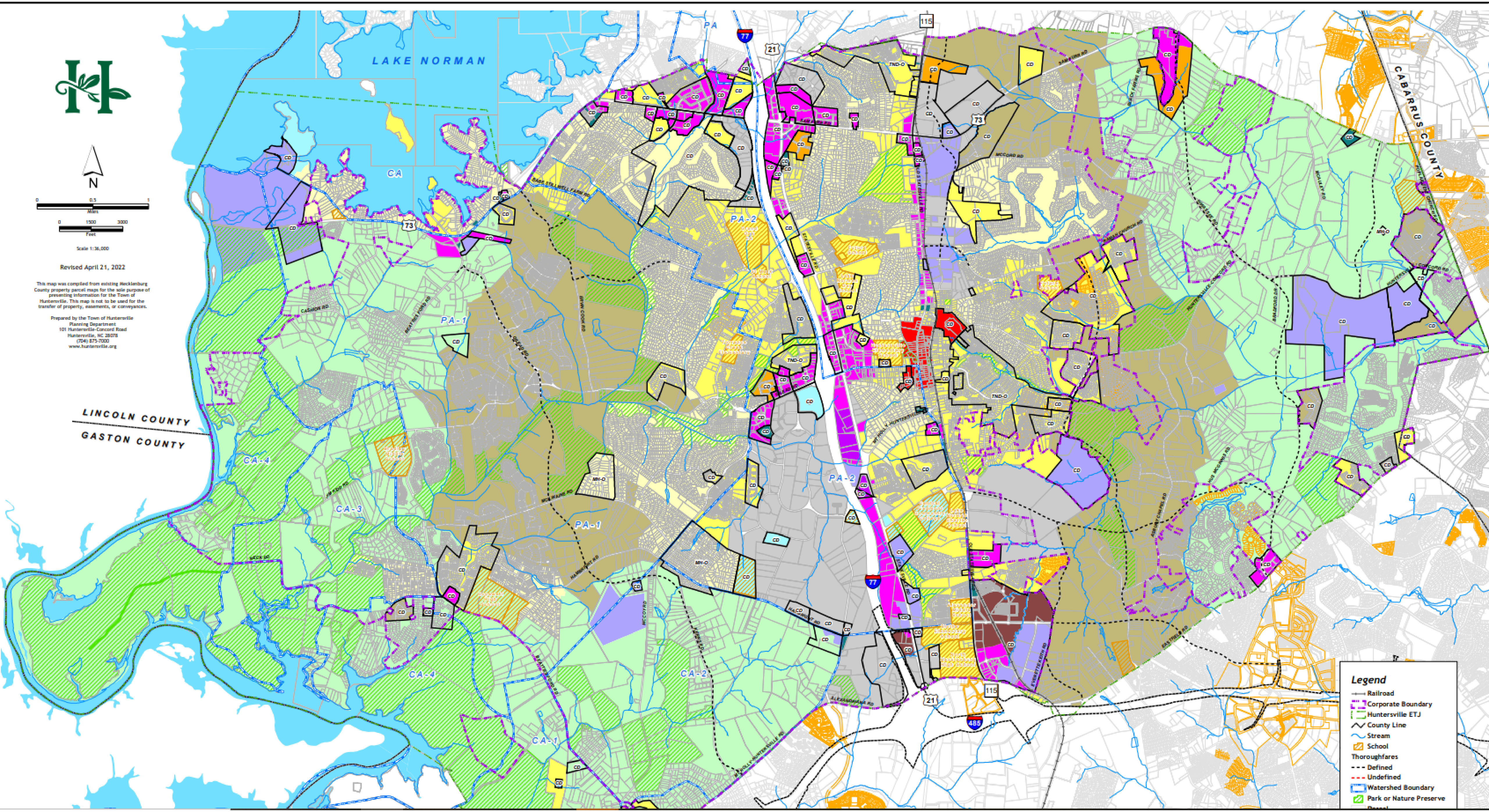
Age Restricted Independent Housing

GLENS AT BIRKDALE COMMONS		Complete	52 MF
COURTYARD AT HUNTERSVILLE	EPCON	Under Construction	52 SF
COURTYARDS @ KINNAMON PARK	EPCON	Under Construction	94 SF
GLENS AT BIRKDALE COMMONS PH4		Complete	8 MF
SAM FURR SENIOR LIVING		Planned	62 MF
EPCON EASTFIELD	EPCON	Planned	70 SF
SAM FURR INDEPENDENT LIVING	South Creek Construction, Inc.	Planned	320 MF
MOSAIC APARTMENTS	Mosaic Development Group	Planned	130 MF

788 Units (2.5% of approved units)



POPULATION SHARES BY AGE COHORT,
SOURCE: ESRI, US CENSUS, 2019



LAKE NORMAN
N
0 0.5 1
Miles
0 1500 3000
Feet
Scale 1:36,000
Revised April 21, 2022
This map was compiled from existing Mecklenburg County property parcel maps for the sole purpose of presenting information for the Town of Huntersville. This map is not to be used for the transfer of property, easements, or conveyances.
Prepared by the Town of Huntersville
Planning Department
101 Huntersville-Concord Road
Huntersville, NC 28078
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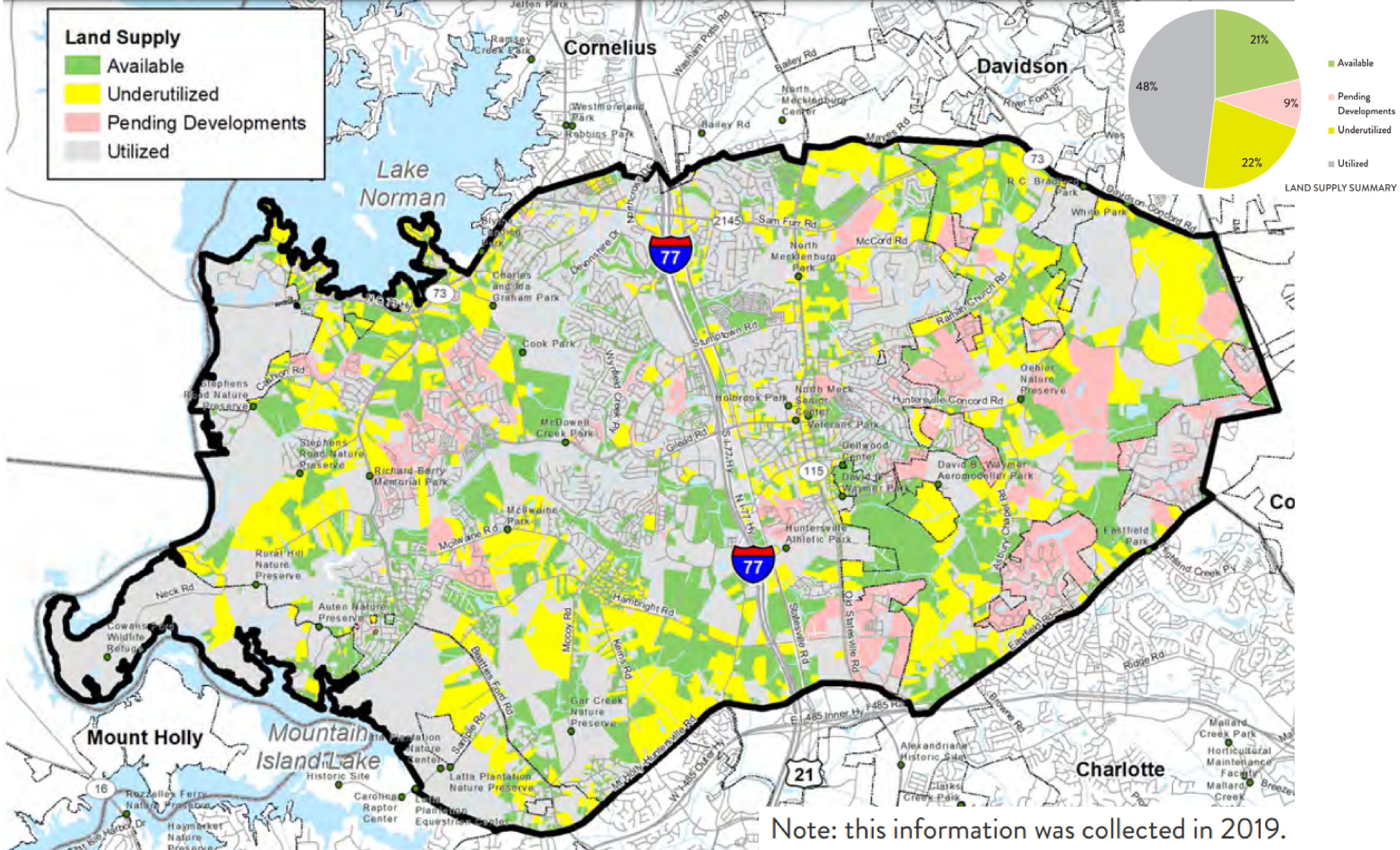
www.huntersville.org
LINCOLN COUNTY
GASTON COUNTY
CABARRUS COUNTY
CA
PA
PA-1
PA-2
CA-1
CA-2
CA-3
CA-4
CD
TND-O
MH-O
115
21
73
77
485
Legend
Railroad
Corporate Boundary
Huntersville ETJ
County Line
Stream
School
Thoroughfares
Defined
Undefined
Watershed Boundary
Park or Nature Preserve



Note: this information was collected in 2019.

UNC SCHOOL OF GOVERNMENT

PLANNING AND ZONING LAW BULLETIN NO. 31 | MARCH 2022

2021 North Carolina Legislation Related to Planning and Development Regulation

Adam Lovelady and Jim Joyce

CONTENTS

Adam Lovelady is associate professor of public law and government at the School of Government.
Jim Joyce is assistant professor of public law and government at the School of Government.
Both specialize in land use planning and development regulation.

The 2021 "long session" of the North Carolina General Assembly convened on January 13, 2021, addressing a wide range of topics, and November saw successful passage of an appropriations bill. The legislature marched on through late November, returned at the end of December, and has continued its work into 2022.

A variety of bills affecting planning and development regulation were enacted in 2021. These included several clarifications, corrections, and updates to recent planning and development measures. Others focused on everything from signs, fees, open burning, water supply watersheds, and building and code enforcement, among other issues. One bill in particular, S.L. 2021-121 (H.B. 489), "An Act to Provide Various Building Code and Development Regulatory Reforms," covered many of these topics in an omnibus fashion. To paint a clearer picture of the range of legislative changes this session, this bulletin addresses portions of S.L. 2021-121 related to stormwater, erosion and sedimentation control, building codes, and other development regulations in separate sections. In addition, several notable pieces of legislation received a significant amount of attention and progressed through at least a portion of the legislative process but ultimately were not adopted. These issues could appear again in future sessions and, as such, are described in their own section at the end of the bulletin.

Checklist for Local Government Actions

Due to the number and variety of bills reviewed and passed in the 2021 Session, local governments may want to use the following checklist to ensure local codes stay up to date.

- Ensure the local government has a reasonably maintained comprehensive or land use plan by July 1, 2022.
- Amend the local ordinance to comply with decriminalization of local ordinances, including decriminalization of local land use ordinances.
- Ensure that remote meeting procedures adhere to new rules under S.L. 2021-35.
- Amend the local ordinance to strike any requirements for masonry curtain walls or masonry skirting for manufactured homes located on land leased to homeowners.
- Amend the local ordinance, review policies, or both to eliminate harmony requirements for permit approval for developments that include affordable housing units for families or individuals with incomes below 80 percent of area median income.
- Be aware of N.C. Department of Transportation (NCDOT) rules allowing relocation of billboards.
- Adjust policies and standards to confirm and preserve water and sewer capacity when requested by schools, including charter schools.
- For street right-of-way setbacks, update sight triangle calculations to ensure they measure from the edge of pavement or within the roadway.
- Adjust timelines for approval of broadband development requests.
- Confirm that fees for small cell wireless projects conform to new statutory restrictions in S.L. 2021-180, Section 38.10.
- Consider updating any local regulations regarding voluntary agricultural districts for consistency with farm bill changes.
- Revise limitations on redevelopment in water supply watershed areas.

- Update sedimentation and erosion-control ordinances to align with new statutory limitations on fees, plan requirements, and enforcement.[1]
- Incorporate limits on reinspection fees.
- Align any building permit thresholds in ordinances to be consistent with new limits.

Comprehensive and Land Use Planning

While it was not new legislation for 2021, it is worth noting that by July 1, 2022, communities must have a reasonably maintained comprehensive plan or land use plan in order to retain authority to adopt and enforce zoning regulations. In 2019 the General Assembly passed legislation that reorganized North Carolina's planning statutes into a new chapter of the N.C. General Statutes, Chapter 160D. The legislation made a number of revisions to state planning statutes. Most were minor, technical matters, but Article 5 outlines the requirement to have a plan in order to have zoning authority—one of the notable substantive changes in Chapter 160D.

The adopted plan remains advisory: "Plans adopted under this Chapter shall be advisory in nature without independent regulatory effect."[2] Nevertheless, plans have an important role in zoning decisions. Plan consistency must be considered by the planning board and governing board for all zoning amendments.[3]

Zoning and Development Regulations

Decriminalizing Ordinance Enforcement (S.L. 2021-138)

With recent legislation, most development ordinance violations may no longer be enforced as criminal misdemeanors. Other options—notice of violation, civil penalties, and court action—are still available to enforce land development regulations. Arguably, certain development-related regulations may still be enforced as misdemeanors if the regulation is authorized under other state laws (not merely in Chapter 160D).

S.L. 2021-138 (S.B. 300) is a wide-ranging criminal justice reform law. Among other reforms, the law takes steps to decriminalize some local ordinances. Section 13 amends the local government authority for criminal enforcement of local ordinances (G.S. 153A-123 for counties and G.S. 160A-175 for municipalities).[4] Under the new statutory language, a local government must amend local ordinances to specifically identify violations that may be enforced criminally.

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1. *See* S.L. 2021-121, § 5; S.L. 2021-180, § 12.10A.
2. G.S. 160D-501(c).
3. For more discussion of the plan requirement, see Adam Lovelady, *Comprehensive Plans and Land Use Plans Required for Zoning,* Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (Aug. 19, 2021), https://canons.sog.unc.edu/2021/08/comprehensive-plans-and-land-use-plans-required-for-zoning/. For guidance on the planning process, see Adam Lovelady et al., PlanNC Guidebook: A Practitioner's Guide to Preparing Streamlined Community Plans (2021), https://www.sog.unc.edu/publications/books/plannc-guidebook-practitioners-guide-preparing-streamlined-community-plans.
4. *See* Frayda Bluestein, *Legislature Decriminalizes Local Ordinances*, Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (Oct. 7, 2021), https://canons.sog.unc.edu/2021/10/legislature-decriminalizes-local-ordinances/.

Additionally—and more importantly for planning and zoning—the new law prohibits criminal enforcement of some local ordinances, including "[a]ny ordinance adopted under Article 19 of . . . Chapter [160A], Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings." In other words, land use regulations may not be enforced with criminal penalties.

In addition to the broad prohibition of criminal enforcement of development regulations, the new statute also lists other specific types of regulations that may not be criminally enforced. For counties, these include business licensing, mobile home registration, stream-clearing programs, outdoor advertising, solar collectors, cisterns and rain barrels, and tree ordinances. For municipalities, they include stream-clearing programs, business licensing, outdoor advertising, solar collectors, cisterns and rain barrels, taxi regulations, building setback lines, curb cut regulations, and tree ordinances.

As regards land use ordinances, G.S. 160D-404 provides some enforcement options and cross-references to G.S. 153A-123 for counties and G.S. 160A-175 for municipalities. Those statutes, in turn, allow for enforcement of ordinances by fines, civil penalties, and court action, and criminal enforcement of misdemeanors. With S.L. 2021-138, that general misdemeanor enforcement of ordinances adopted under Chapter 160D is no longer available.

What about development ordinances for which there is specific authority for misdemeanor enforcement in Chapter 160D? That authority is likely eliminated except for ordinances relating to unsafe buildings. G.S. 160D-807, for example, states that transfer of unpermitted lots is a Class 1 misdemeanor. S.L. 2021-138 does not specifically amend the language of G.S. 160D-807, but the broad prohibition on criminal enforcement of development regulations (ordinances under Chapter 160D) appears to prohibit criminal prosecution for illegal subdivision.

There are other examples in Chapter 160D of specific violations identified as criminal misdemeanors. Since these violations would be pursuant to ordinances adopted under Chapter 160D, S.L. 2021-138 would decriminalize them, but there is an exception "for those ordinances related to unsafe buildings." It is not clear if the reference to "unsafe buildings" is narrowly focused on building condemnation or a broad reference to building safety in general (encompassing building codes, certificates of compliance, minimum housing, and more). Depending on that interpretation, some or all of the following topics arguably may still be enforced as misdemeanors since they are violations of "ordinances related to unsafe buildings": enforcement of violations of stop-work orders (G.S. 160D-404), building permit violations (G.S. 160D-1110), certificate of compliance violations (G.S. 160D-1116), removing notice from condemned buildings (G.S. 160D-1120), and unsafe structure compliance (G.S. 160D-1124, -1129, and -1203).

A more difficult interpretation concerns local environmental regulations authorized in Chapter 160D with cross-reference to other chapters of the General Statutes. Whether they fall under the new general decriminalization statute likely depends on the details of the particular ordinance and its adoption: Was it authorized and adopted under Chapter 160D or under the separate authority? Consider this example: G.S. 160D-922 authorizes local governments to "enact *and enforce* erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes. . . ." In turn, G.S. 113-64 specifically authorizes criminal penalties.

> Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars ($5,000).

Chapter 160D includes similar cross-references to substantive grants of power for floodplain regulations (G.S. 160D-923, with reference to G.S. 143, Article 21, Part 6), mountain ridge protection (G.S. 160D-924, with reference to G.S. 113A, Article 14), water supply watershed management regulations (G.S. 160D-926, with reference to G.S. 143-214.5), and airport zoning (G.S. 160D-904, with reference to G.S. 63, Article 4). Stormwater regulations get slightly more complex, with the statutes stating at G.S. 160D-925 that "[a] local government may adopt a stormwater management regulation pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers." That section provides (and cross-references) additional authority for local regulation of federal, state, and local government projects; additional discharge regulations; and regulations to comply with National Pollutant Discharge Elimination System permits.

For any of these examples, if an ordinance was merely adopted under Chapter 160D (or its predecessors in Chapters 160A and 153A) and enforced under the general enforcement authority for local land development regulations, then that ordinance likely is impacted by S.L. 2021-138. It may not be enforced criminally. But, for many of these examples, the reference in Chapter 160D is merely cross-referencing to the substantive grant of authority elsewhere in the General Statutes. As such, the local ordinance may have been adopted pursuant to clear authority beyond Chapter 160D. Arguably, such ordinances would not be impacted by S.L. 2021-138 and may still be enforced criminally.

S.L. 2021-138 does prohibit criminal enforcement of "[a]ny ordinance adopted under . . . Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings." Yet, a broad interpretation of S.L. 2021-138 to prohibit any and all criminal enforcement of erosion and sedimentation control, water supply watershed protections, and other matters would effectively decriminalize laws from G.S. Chapters 113A and 143. Such an interpretation would greatly broaden the scope of G.S. 2021-138, which does not seem to be the legislative intent.

Finally, Chapter 160D identifies certain actions as misdemeanors that are direct enforcement of provisions of Chapter 160D, not ordinances adopted under Chapter 160D. These include the failure of an official to perform duties (G.S. 160D-1109) and lying under oath in a quasi-judicial matter (G.S. 160D-406). These violations are not necessarily enforced through the local ordinance, so it is unclear if or how they are affected; arguably, they may still be enforced criminally.

Even for land use ordinances for which there is no longer criminal prosecution, other enforcement options remain, including notice of violation, civil penalty, withholding permits, and court action.

Land Use Clarifications (S.L. 2021-168)

H.B. 854 initially concerned landlord–tenant law. In early September, however, a committee substitute bill replaced the old content (landlord provisions) with wholly new content focused on land use clarifications relating to permit choice, vested rights, and land use litigation. The bill was enacted as S.L. 2021-168.

The statute outlining permit choice and vested rights, G.S. 160D-108, is amended. In particular, language is added to subsection (e), which provides coverage for projects requiring multiple permits. The new language states that "[t]his subsection does not limit or affect the duration of any vested right established under subsection (d) of this section." Subsection (d) sets the duration of vesting. In other words, the permit choice coverage for multiple-permit projects does not limit the vesting for those permits under standard vesting.

G.S. 160D-706 addresses conflicts between Chapter 160D regulations and other development regulations. S.L. 2021-168 amends that section to add the phrase, "Unless otherwise prohibited by G.S. 160A-174(b)." That statute provides that a local ordinance may not infringe on constitutional liberties nor contravene established state and federal law. The amended language confirms that Chapter 160D regulations may be more stringent than other regulations, but not to the point of unconstitutionality nor contravention to state or federal law.

S.L. 2021-168 makes several technical changes to challenges of quasi-judicial decisions. When a quasi-judicial matter is appealed and the governing board is a party to the matter, it has authority to settle the matter. This was already the law and, with S.L. 2021-168, it is codified at G.S. 160D-406(k). Second, failure to object to a conflict of interest at the quasi-judicial hearing does not waive the right to assert the conflict. Finally, if a court remands with instructions to issue the special use permit and the permit is issued, then appeal of the remand or issuance is moot.

Chapter 160D Technical Corrections (S.L. 2021-88)

In 2019 the General Assembly adopted a comprehensive rewrite of the enabling legislation for local planning and zoning in North Carolina, codified as Chapter 160D. As with any major legislative undertaking, it needed technical corrections and cleanup. During the 2021 legislative session, technical corrections for Chapter 160D were adopted as S.L. 2021-88 (H.B. 67). Many changes are clerical—correcting cross-reference citations, altering word choice, and the like. One clarification is noteworthy: The language concerning plan consistency, outlined at G.S. 160D-604, is clarified to refer to comprehensive plans *or* land use plans.

Remote Meetings (S.L. 2021-35)

During the early days of the COVID-19 pandemic and lockdown in spring 2020, the General Assembly adopted legislation creating procedures for remote meetings during declared emergencies. In 2021 the General Assembly enacted S.L. 2021-35 (H.B. 812), which included three important clarifications to these procedures. First, the law now clarifies that written comments must be accepted up to 24 hours in advance of the public hearing. Prior language indicated that written comments must be accepted after the hearing; that is no longer the case. Second, the amendments provide clear procedures for situations when an in-person meeting must be switched at the last minute to a remote meeting. Finally, the new legislation clarifies that adhering to the statutory procedures gives a presumption that the meeting complies with applicable open meetings laws.[5] The rules for remote meetings apply only when there is a declared state of emergency.[6]

Manufactured Housing (S.L. 2021-117)

Under G.S. 160D-910, manufactured homes have certain protections from regulation, but they may be subject to some local development regulations. The statute prohibits any outright ban on manufactured homes—they must be allowed somewhere in the jurisdiction. Manufactured homes may not be regulated based on the age of the home. But manufactured homes may be regulated with appearance and dimensional criteria, they may be limited to certain zoning districts, and local governments may adopt overlay zoning districts for them.

The regulatory reform bill, S.L. 2021-117 (H.B. 366), amends G.S. 160D-910 to add specific new limitations on local government regulation of manufactured homes. Under the new subsection (g), local governments may require manufactured homes be installed in accordance with Department of Insurance requirements, but "a local government shall not require a masonry curtain wall or masonry skirting for manufactured homes located on land leased to the homeowner."

Affordable Housing

No Harmony Standard (S.L. 2021-180)

The budget bill, S.L. 2021-180 (S.B. 105), Section 5.16.(a), amends G.S. 160D-703 to add the following:

> (b1) Limitations.—For parcels where multifamily structures are an allowable use, a local government may not impose a harmony requirement for permit approval if the development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income.

The framing and phrasing of this particular section leave some ambiguity about the precise application. Given the language, though, it seems to apply to special use permits. Special use permits are quasi-judicial development decisions based on standards that require some judgment and discretion. A very common standard for special use permits in North Carolina is that the development must be "in harmony with the area." Thus, this prohibition on a harmony requirement would seem to apply to special use permits. The statute provides that it applies where multifamily is "an allowable use." That implies by right, not through a special use permit, but one may argue that multifamily is "an allowable use" on a site with a special use permit since

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5. For more on this legislation, see Frayda Bluestein, *Clarification of Rules for Remote Meetings Under State Level State of Emergency: No More Waiting 24 Hours After Public Hearings!*, Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (June 18, 2021), https://canons.sog.unc.edu/clarification-of-rules-for-remote-meetings-under-state-level-state-of-emergency-no-more-waiting-24-hours-after-public-hearings/.

6. Frayda Bluestein provides important reminders about the rules that apply to remote meetings when there is no declared state of emergency. *See* Frayda Bluestein, *Public Meetings After the Lifting of the State-Level State of Emergency*, Coates' Canons, NC Loc. Gov't. L., UNC Sch. of Gov't Blog (July 6, 2021), https://canons.sog.unc.edu/public-meetings-after-the-lifting-of-the-state-level-state-of-emergency/.

an applicant is legally entitled to the permit if they meet applicable standards. Moreover, the commonality of the harmony standard in special use permitting would argue that this statute is intended to address those permits. As such, it is reasonable to interpret it to prohibit the harmony standard in special use permit review when the requisite affordable units are included.

Depending on the local ordinance and standards for certain approvals, this provision may apply to site plan review, conditional zoning, or both. Site plan review typically is administrative (based on clear, objective standards) but some jurisdictions have standards for the site plan review process that involve judgment and discretion (making the site plan decision a quasi-judicial decision). For those jurisdictions, this new statutory provision will prohibit a harmony requirement when the requisite affordable units are included. Additionally, the language from S.L. 2021-180 is added at G.S. 160D-703(b1), immediately following the statutory section "Conditional Districts" (G.S. 160D-703(b)). There is no standard harmony requirement in conditional zoning. That said, some local ordinances may require "harmony" as part of the review for conditional zoning decisions. In such cases, it is reasonable to interpret this statute to limit the extent to which harmony can be part of the review.

The statutory language applies to any development that includes "affordable housing units" for households below 80 percent of area median income. There is no minimum number nor percentage of units that must be affordable and there is no time frame for affordability. Arguably, a project could include two affordable units (the statute does require plural unit*s*) that will meet the requirement for one year (or less) and still access this statutory preference in the permit review.

Winston-Salem Local Legislation (S.L. 2021-44)

S.L. 2021-44 (S.B. 145) is a local act authorizing Winston-Salem to convey city-owned property for affordable housing development. The authority allows the city to convey property with or without consideration and with deed restrictions that the property reverts back to the municipality if it is not used for affordable housing for the specified time frame. The action must be authorized by resolution of the governing body.

Signs

NCDOT Rules (S.L. 2021-117)

In 2020 and 2021, the N.C. Department of Transportation reviewed and updated regulations concerning outdoor advertising (Title 19A, Chapter 02E, Section .0200 of the North Carolina Administrative Code (hereinafter NCAC)). The regulations were re-adopted by the Rules Review Commission, but objections were raised for three sections (19A NCAC 02E .0204—Local Zoning Authorities, 19A NCAC 02E .0206—Applications, and 19A NCAC 02E .0225—Repair/Maintenance/Alteration/Reconstruction of Conforming Signs and Repair Maintenance of Non-Conforming Signs). Given the objections, there was a delayed effective date for those sections. Section 11.(a) of the regulatory reform bill, S.L. 2021-117 (H.B. 366), overrides those three sections of the regulations so the regulations will not become effective.

Sign Relocation (S.L. 2021-180)

The budget bill, S.L. 2021-180 (S.B. 105), adds a new section to the statutes concerning billboards. New G.S. 136-131.5 allows relocation of billboards under certain circumstances. Under this new provision, NCDOT may not require additional permits nor revoke existing permits for relocations under this section. NCDOT may require an addendum to an existing permit within 30 days after a relocation is completed. The rights outlined in this section attach to the permit and do not run with the land.

Relocation for any billboard. Any outdoor advertising sign with a valid NCDOT permit may be relocated on the same parcel or an adjoining conforming parcel. The requirements listed below apply. There must be 10 years between relocations to another parcel.

Relocation for billboards condemned or obstructed. G.S. 136-131.5 now provides that when a billboard (outdoor advertising sign) must be removed due to condemnation or is obstructed by a sound barrier, the billboard may be relocated subject to certain requirements. These provisions apply to "any lawfully erected outdoor advertising sign anywhere in the State" removed by condemnation, regardless of whether the sign is subject to NCDOT regulations.

Requirements for relocation. The requirements are as follows:

1. The new site may be in any area within 660 feet of a highway in the same zoning jurisdiction as the original site (or within the same territorial limits if the original site was in an unzoned jurisdiction).
2. The new site must conform to NCDOT standards.
3. The new site must be along the same highway as the original site (same route number or letter).
4. Reconstruction must conform with G.S. 136-131.2. (That section provides that local governments may not regulate or prohibit the repair or reconstruction of a billboard if there is no increase in advertising surface area. It includes specific allowances for monopole construction.)
5. The new site cannot be in a designated local historic district.
6. The new site cannot be adjacent to a scenic highway. (A sign currently on a scenic highway can be moved within the same parcel.)
7. Construction on the new site must begin within one year after the date of removal.

Fees and Exactions

System Development Fees (S.L. 2021-76)

S.L. 2021-76 (H.B. 344) amends the authority for water utility system development fees (impact fees). The authority for system development fees was established a few years ago, and the General Assembly has adopted several clarifications and amendments since. S.L. 2021-76 now includes wholesale water arrangements under the definition of water and sewer *service*. The bill also adds to the supporting analysis required for a system development fee an analysis of the use of gallons per day. Finally, the bill clarifies that the utility is responsible for any income taxes from taxable contributions.

Utilities for Schools, Including Charter Schools (S.L. 2021-180)

Article 37 of Chapter 115C of the N.C. General Statutes covers school sites and property, and G.S. 115C-521 addresses the construction of school buildings. The law requires local school boards to create long-range plans for school facilities, establishes duties for providing adequate school facilities, and sets parameters for the contracting, permitting, and construction of school facilities.

Section 7.64.(a) of the budget bill (S.L. 2021-180, S.B. 105) amends G.S. 115C-521 to address water and sewer capacity for new school facilities. The new subsection (i) states that prior to any development permit application (under Chapter 160D), the local board of education must make written inquiry to the public water or sewer system, or both, serving the site or closest to the site as to whether the public system has capacity to serve the school facility. The public system must respond within 30 days. If there is capacity, the public system must reserve it for the school facility for 24 months. The only exceptions are if there is no capacity or if the public system is under a moratorium precluding expansion.

Section 7.64.(b) of the budget bill amends G.S. 115C-218.35 to make the required reservation of water and sewer capacity applicable to charter schools as well.

Infrastructure

Acceptance and Measurement of Streets (S.L. 2021-121, Sections 3 and 9)

Among the many changes to building and development regulations in S.L. 2021-121 (H.B. 489), two concern the processes by which new transportation infrastructure is evaluated and accepted.

For municipal roads, Section 3(a) adds a new sub-sub-section (3) to G.S. 160A-306(b) that clarifies how to calculate the building setback standards that should be required for road safety. This new language provides that when a city designs street right-of-way setbacks, its measurement of sight triangles and other sight distances at street intersections must begin within the roadway or edge of pavement of a proposed or existing street.

Before a subdivision road can be added to the state highway system, NCDOT must confirm that the road meets minimum standards. The proposed addition then goes to the N.C. Board of Transportation (BOT) for approval. Previously, the Board did not have a deadline to approve roads NCDOT had confirmed were up to standard. Section 9 of this act amends G.S. 136-102.6(d) to set such a deadline. Once NCDOT has reviewed a petition and determines that the streets meet the BOT's minimum standards, the BOT has 90 days to approve the addition of the street improvements to the state highway system. This provision applies to petitions for road additions submitted on or after January 1, 2022.

Broadband and Small Cell Wireless Infrastructure (Budget Bill, S.L. 2021-180)

November's budget bill (S.L. 2021-180, S.B. 105), in Sections 38.1 through 38.10, includes several changes to the Growing Rural Economies through Access to Technology (GREAT) program, other rural broadband access initiatives, and the regulation of small cell wireless infrastructure. These changes include the following:

- Several changes to the rules regarding applications for the GREAT program in G.S. 143B-1373 widen the scope of potential applications: the definitions of *distressed areas*, *unserved areas*, and *eligible projects* are all modified to widen the range of potential applicants;

several tweaks have been made to the scoring and application systems; and the GREAT program is expanded to provide for up to $1 million of GREAT funds to cover grants for broadband providers to serve individual households.

- The Department of Information Technology (DIT) must develop a cybersecurity plan and submit it to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division by February 1, 2022.
- Additional grants will be available to DIT from the State Fiscal Recovery Fund for Stopgap Solutions–Federal Broadband Funds to provide grants to Internet service providers, local government entities, and nonprofits for the provision and installation of broadband infrastructure for unserved and underserved households in the state.
- In complement or contrast to the GREAT program, the session law creates a new Completing Access to Broadband grant program (by way of new G.S. 143B-1373.1), in which every county can participate.
- DIT and the state chief information officer must prepare and maintain statewide broadband maps.
- Counties can now issue grants to broadband service providers. The act includes a Broadband Pole Replacement Program (state funds will reimburse up to 50 percent of costs for service providers to replace a pole where required), which sunsets at the end of 2024.

Of particular note for development regulation is Section 38.9, which adds G.S. 160A-296.1. This new statute limits the time cities have to approve or deny permit or encroachment applications from broadband providers to work in the city's right-of-way. The statute requires the municipality to issue a written decision approving or denying one of these applications within 30 days of the application's submission. If the application is not approved or denied in writing within that period, it is deemed approved. If it is denied, the city must provide the applicant with its reasons for the denial. The applicant then can address the deficiencies in the application and resubmit. The city may not charge another application fee for this resubmittal and must make its decision on the revised application within 10 days of resubmission.

Regulations of broadband permits can include reasonable guidelines to prevent interference with or endangering of public use of the street, can require an applicant to repair any damage it causes (or that its agents cause), and can require an affidavit or insurance to demonstrate financial responsibility. These are the only standards that can be imposed on applications to use the city right-of-way for broadband deployment, and the city cannot require an entity that has (1) a certificate of public convenience from the Utilities Commission or (2) a franchise to provide video programming from the Secretary of State to enter into a master encroachment or similar agreement as a condition of approval. This new limitation became effective upon enactment of the budget bill on November 18, 2021.

In addition to the provisions addressing broadband development, portions of Section 38.10 of the budget bill also focus on small cell wireless infrastructure. Section 38.10(m) alters the fee authority for collocation of small wireless facilities. It prohibits the assessment of any fees or recurring charges for a wireless provider to collocate a small wireless facility or to install, modify, or replace a utility pole, *except* for the city's allowed per-pole collocation charges, pole attachment fees, and rates for attaching to city utility poles. These charges are described in G.S. 160D-937 and include (1) collocation charges of no more than $50 a year per pole, (2) a pole attachment rate or fee for the city's public enterprise, or (3) rates for use of or attachment to city utility poles that the city owns or controls. This fee authority limitation sunsets at the end of 2024.

Finally, a portion of Section 38.10 limits the range of entities excluded from the Chapter 160D rules for development of wireless telecommunication facilities. Whereas the previous version of the statute excluded a set of entities that included cities with their own power generation, transmission, or distribution systems, as well as electric membership corporations (EMCs), the amended statute only references EMCs. Thus, the practical effect of this section appears to make municipalities subject to the various requirements of G.S. 160D-937, which could simply be a clarification that cities are not to charge collocation fees to themselves or other cities.

Agricultural Uses—The Farm Bill (S.L. 2021-78)

The 2021 farm bill (S.L. 2021-78, S.B. 605) makes a variety of changes to agriculture and forestry laws. Of most significance to the development community may be Section 1, which alters some of the rules for voluntary agricultural districts, and Section 3, which modifies the exceptions to open-burning laws.

Section 1 includes changes related to the purpose of voluntary agricultural districts (VADs), the range of allowable uses, the process of establishing a VAD, and the authority of voluntary agricultural boards. First, the law tweaks G.S. 106-738 to provide that the purpose of VADs includes "decreas[ing] the likelihood of legal disputes, such as nuisance actions between farm owners and their neighbors," where the prior text simply referred to "increas[ing] protection from nuisance suits."

Second, the farm bill modifies VAD regulations by expanding the definition of *qualifying farmland* that can be included in a VAD. This definition, in G.S. 106-737(1), formerly referenced the definition of *agriculture* in G.S. 106-581.1 and now refers to a broader set of "bona fide farm purposes" described in G.S. 106-743.4(a) and G.S. 160D-903. Thus, property subject to a conservation agreement (that can receive up to 25 percent of its gross sales from the sale of nonfarm products), uses incident to the farm (such as residences), and agritourism uses will now be eligible to be part of a VAD. Property in a VAD can be subject to utility waivers, additional notice related to condemnation actions, and other benefits as may be defined by ordinance.

Third, the law now requires the establishment of a VAD on different bases than before. Previously, G.S. 106-738 required that a VAD ordinance provide for the formation of districts consisting initially of the number of acres or farms deemed appropriate by the governing board, upon the execution of an agreement by the owners of the farm acreage and the approval of the agricultural advisory board. Now, local ordinances must provide for the establishment of a VAD upon execution of a conservation agreement and must provide a minimum size for VADs.

Finally, the farm bill expands the potential authority of agricultural advisory boards. The form of any conservation agreement within the district must be approved by the agricultural advisory board. In addition, local governments can now, by ordinance, allow an agricultural advisory board to make decisions regarding the establishment and modification of agricultural districts.

Aside from the changes to VADs and VAD boards, the farm bill also makes minor revisions to the language in G.S. 106-737(4) and 106-737.1 to explicitly recognize a municipality's authority to enter into conservation agreements with property owners.

Section 3 is the other pertinent part of this bill. It adds an exemption from open-burning laws in new G.S. 106-950(a2) stating that, in general, the law does not apply to fires started "for cooking, warming, or ceremonial events." This new exemption does come with limitations common to other exemptions. These include (1) an exception to the exemption (in other words, the open burning law would apply) where all open burning has been prohibited because of hazardous forest fire conditions or during air pollution episodes and (2) a requirement that the fire must be confined "within an enclosure from which burning material may not escape" or within a protected area where a watch is maintained and adequate fire protection equipment is available.

Protection of Water Supply Watersheds and Coastal Areas

Redevelopment in Water Supply Watershed (S.L. 2021-164)

S.L. 2021-164 (H.B. 218) allows redevelopment of certain property in a water supply watershed in excess of the normally allowed density. Previously, any new development in water supply watershed areas (including redevelopment of existing lots) had to comply with often strict density limitations. The new language comes in subsection (d3) to G.S. 143-214.5. This provision allows an applicant to exceed allowable density under water supply watershed rules if the following apply:

1. The property was developed prior to the effective date of the local water supply watershed program.
2. The property has not been combined with additional lots after January 1, 2021.
3. The property has not been a participant in a density averaging transaction under subsection (d2) of this section.
4. The current use of the property is nonresidential.
5. In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all the existing and new built-upon area on the property is treated in accordance with all applicable local government, state, and federal laws and regulations.
6. The remaining vegetated buffers on the property are preserved in accordance with the local water supply watershed protection program requirements.

This new law applies to applications received on or after November 1, 2021.

Coastal Area Management (S.L. 2021-158)

In addition to the stormwater management changes discussed above, S.B. 389 (S.L. 2021-158) makes a few minor changes to the Coastal Area Management Act (CAMA).

Section 1 modifies some of the conditions for funds made available through the Public Beach and Coastal Waterfront Access Program. Specifically, any land acquired with program grants must be dedicated "in perpetuity for public access and for the benefit of the general public," and the dedication must be recorded with the register of deeds. If program grants are used to acquire a lease or easement, the lease or easement must have a term of at least 25 years. If the local government uses the land for another purpose or disposes of the property, it must reimburse the State the greater of the amount of grant funds provided for the purchase or an amount of the property's fair market value proportionate to the fraction of the price paid with program funds.

The previous rule stated that if the local government used property acquired with program funds for a purpose other than beach or coastal waters access, it was required to transfer title to that property to the State.

Section 2 modifies CAMA's notification requirements in two ways:

1. It removes the requirement (in G.S. 113A-119(b)) that the Secretary of the Department of Environmental Quality (DEQ) (through the Division of Coastal Management (DCM)) mail copies of an application for a new major CAMA permit or substantial modification of an existing major permit to interested citizens and agencies. Notice of a major permit application still must be posted at the location of the proposed development and published in a newspaper of general circulation in the area, but the mailing requirement is eliminated.
2. It deletes G.S. 113A-119(a)(3), which required DCM to maintain a list of persons who wished to be notified of proposed rules and developments, and which required the Department to mail out notice of proposed developments to those on the list.

These notification requirements apply to permit applications received on or after July 1, 2021.

Section 3 extends the deadline from 15 to 30 days for the Coastal Resources Commission (CRC) to determine whether it is appropriate to proceed with a contested case hearing to review a decision to grant or deny a development permit. The new deadline applies to requests for determination of appropriateness received by the CRC on or after October 1, 2021.

Erosion and Sedimentation Control

Plan Requirements and Single-Family Development Rules (S.L. 2021-121)

S.L. 2021-121 (H.B. 489), among a number of other changes to building-related statutes, establishes a ceiling on sedimentation control fees. For single-family lots of less than one acre that are in residential developments or under a common plan of development, the fee cannot exceed $100 per lot. For other developments, fees must be calculated on the number of acres disturbed. This limitation was added to G.S. 113A-60(a) by Section 5(c) of the new law.

S.L. 2021-121 also makes several changes related to erosion and sedimentation control plans for single-family residential developments. Section 5(a) adds new subsection (f) to G.S. 113A-54.1. This new provision states that, where a single-family residential lot involves land disturbance of less than one acre, financial responsibility for the land-disturbing activity transfers from the builder or developer to the new owner once a deed transferring the property is recorded and the local erosion control program is notified.

Section 5(c) of this law prohibits a local government from requiring separate erosion-control plans for development of lots of less than one acre of disturbance if there is already an approved erosion-control plan for the entire development, but only if the builder and developer are the same financially responsible entity. When the developer and builder are different entities, the local government can require only certain information (including the existing platted survey and a sketch plan that does not need to be sealed, among other data) for review of an erosion-control plan for a single-family lot in a common plan of development.

Other limitations apply as well: Local erosion control programs cannot require periodic self-inspections or rain gauge installation on individual residential lots where less than one acre on each lot is being disturbed. For land-disturbing activity on more than one residential lot, the entity responsible for the activity can submit a single erosion control plan for all of the disturbed lots or may submit erosion control measures for each lot. This subsection of the act also prohibits requiring a silt fence or other erosion control measure, or requiring a silt fence to be wire-backed, where it would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract. Section 5(c) applies to erosion control plans submitted for review and approval on or after October 1, 2021.

Section 5(d) states that no civil penalties may be assessed under G.S. 113A, Article 4 (Sedimentation Pollution Control Act of 1973), for damage or destruction of a silt fence during land disturbance or construction if the fence is repaired or replaced in the time period indicated in an inspection report or notice of violation.

Except for Section 5(c), S.L. 2021-121 became effective August 30, 2021.

Erosion and Sedimentation Fee Changes (S.L. 2021-180)

Section 12.10A of the budget bill (S.L. 2021-180, S.B. 105) makes a couple of changes to the allowable fees for sedimentation and erosion control review. The application fee for review of an erosion and sedimentation control plan, authorized by G.S. 113A-54.2(a), is increased from $65 to $100 per acre. The statute also defines the fee as an "application and compliance fee" rather than just an application fee, and states that the fee is to cover "related compliance activities" in addition to review of the proposed plan. This subsection does not define what is meant by "related compliance activities," but presumably this fee should cover costs of inspection and other means of confirming plan compliance.

The allowable fee for limited erosion and sedimentation control plans (G.S. 113A-60(d)) was also increased, in this case from $100 to $150 per acre. This law became effective upon enactment, so the new fee limits now apply.

Local Stormwater

Stormwater Infrastructure Fund (S.L. 2021-180)

Section 12.14(a) of the budget bill (S.L. 2021-180, S.B. 105) establishes a Local Assistance for Stormwater Infrastructure Investments Fund at the Department of Environmental Quality (DEQ), and Section 12.14(b) identifies 11 municipalities and public works commissions that will receive some of the initial grants. The section also describes the procedure for allocating these grants: DEQ must use 70 percent of the remaining funds for construction grants (that is, for implementing, retrofitting, or rehabilitating stormwater control measures or installing "innovative technologies or nature-based solutions") and the remaining 30 percent for planning grants (that is, for research, alternatives analysis, development of concept plans or designs, or other similar activities). Construction grants must be limited to $15 million and planning grants to $500,000. Up to 3 percent of allocated funds may be used for administrative expenses.

Regardless of whether they are among the 11 required recipients, any city or county that documents a stormwater quality or quantity issue and demonstrates it would experience a significant hardship raising the revenue needed to finance stormwater management is eligible to apply for the grants. Councils of government and nonprofits that partner with cities or counties are also eligible. If funds are granted for a purpose that would violate federal law, they must be returned.

DEQ must submit an annual report to the chairs of the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division on the projects and activities funded and may comment on recommended legislative funding or other changes.

Stormwater Regulation (S.L. 2021-158)

S.B. 389 (S.L. 2021-158) makes various changes to environmental and cultural resources laws, including several that relate to stormwater and water quality management.

Section 4 adds subsection (b4) to G.S. 143-214.7 mandating that new or reissued stormwater permits must require the permittee to submit an annual certification of the project's conformance with permit conditions. The Department must provide an electronic means of submittal for the certification, but adding the annual certification is not to be considered a new or increased stormwater control.

The law also provides additional details and clarifications to the conditions of G.S. 143-214.7(c5)(1) under which a permit can be transferred without the permit holder's or successor-owner's consent. DEQ now can choose whether to require submittal of an application for permit transfer, and the law makes some clarifying changes to the categories of permit holders and successor-owners from whom a permit can be transferred without their consent. It also sets deadlines for these transfers.

Section 4(a) of the law provides for an after-the-fact modification to certain low-density stormwater permits to allow the project to maintain a built-upon area that exceeds the permitted amount. Applicable only to permits issued prior to January 1, 2017, this modification (authorized by new subsection c6 of G.S. 143-214.7) allows the permittee to submit a permit modification application to change the built-upon area limit to the current level of built-upon area. However, if the actual built-upon area is more than 110 percent of the maximum allowable built-upon area for low-density permits at the time of permit issuance, the permittee must mitigate the impacts of its excess built-upon area through additional stormwater control measures.

Subsection 4(b) of the law revokes all low-density stormwater certifications and approvals issued prior to September 1, 1995. For these projects, the built-upon area is to be considered existing development for purposes of G.S. 143-214.7(a1), and future development must comply with the requirements of G.S. 143-214.7 and any recorded deed restrictions.

Section 5 of the law moves up the deadline for requests for remission of civil penalties imposed under G.S. 113A-64. These requests are now due within 30, rather than 60, days of receipt of the notice of assessment.

Section 8 modifies the G.S. 143.215.8B requirements for basin-wide water quality management plans for each of the state's 17 major river basins. First, the plans are renamed from water "quality" management plans to water "resources" management plans. The list of activities to consider no longer includes septic tank systems, golf courses, farms that use fertilizers and pesticides for crops, and commercial lawns and gardens, and now includes waste disposal sites. Although this list follows the phrase "such as" and is therefore at least nominally a list of examples, the change to specific sources suggests that the General Assembly may have wanted to preclude certain sources from (and add one source to) the plan's consideration. For nutrient-sensitive waters, the plan is no longer required to establish a goal to reduce the average annual mass load of nutrients delivered to surface water and instead must simply "report on the status of those waters." Similarly, the plan shall report on, not require, incremental progress toward achieving reduction of nutrient pollution. One new requirement is that each plan "[p]rovide surface and ground water resources to the extent known by the Department, other withdrawals, permitted minimum instream flow requirements and evident needs, and pertinent information contained in local water supply plans and water shortage response plans."

Further, the 10-year review required by G.S. 143.215.8B must also address changes in water quantity and advances in water conservation and reuse and may include critical basin issues that arise from the annual report. The annual report is now required only in every even-numbered year. The report does not have to include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the state; rather, the report must address water quality and quantity conditions more generally.

Section 10 removes from G.S. 113A-61.1(c) the requirement that notices of violation be delivered in person to repeat offenders of sedimentation and erosion control program rules, effective October 1, 2021.

Section 11 deletes language from G.S. 113A-65.1 (1) providing that issuance of a stop-work order is a final agency action subject to judicial review and (2) requiring the attorney general to file for a restraining order to abate the violation. The session law does not provide any additional information regarding review of stop-work orders, so the course for challenges to these orders is not patently obvious. However, since a stop-work order is not necessarily a final agency action, developers and others who wish to appeal stop-work orders may have to look to the local board of adjustment or the Office of Administrative Hearings before seeking judicial review in superior court. This change was effective October 1, 2021.

Building and Housing Code Enforcement

Building Code Changes, Part 1 (S.L. 2021-121)

Several provisions of S.L. 2021-121 (H.B. 489) also modify the State Building Code and the way in which it is updated.

Section 2 requires the N.C. Building Code Council to conduct its own independent cost-benefit analysis when revising the State Building Code, in addition to whatever analysis was provided by the proponent of the proposed amendment.

Section 6 requires the N.C. Building Code Council to modify Section D107 of the 2018 N.C. Fire Code, as well as other provisions relating to fire access roads for one- and two-family dwelling residential developments, to eliminate any requirement for an automatic sprinkler system in one- or two-family dwellings where there are fewer than 100 dwelling units on a single public or private fire-apparatus access road with access from one direction. The Council is given special rulemaking authority outside certain Administrative Procedure Act requirements to streamline the rules-adoption process. This limitation on requiring sprinklers applies from the time it is effective until the Building Code Council updates the Fire Code to match the law's language.

Section 7 requires the Council to adopt a rule allowing the American Water Works Association C900 standard to be an acceptable standard for PVC pipe under the 2018 N.C. Residential Code and the 2018 N.C. Plumbing Code. Again, the law makes this change effective, and it applies until the Building Code Council updates the Residential Code and the Plumbing Code.

Building Code Changes, Part 2 (S.L. 2021-183)

One of the later revisions to North Carolina building code law, S.L. 2021-183 (S.B. 308), makes a few changes to building, electrical, and fire code compliance. Section 1 modifies the reinspection limitations in S.L. 2021-121 and is discussed below.

Section 2 removes a reference to the National Electric Code from G.S. 143-143.2, such that electric wiring of houses or buildings now must conform to the requirements of the State Building Code and other applicable state and local laws, but presumably only where the National Electric Code is referenced in the State Building Code.

Section 3 requires the Building Code Council to modify Sections D107.1 and D107.2 of the 2018 N.C. Fire Code such that, for one- or two-family dwelling residential developments where two fire access roads are required, the code limits how close the Council and relevant code officials may require those access roads to be. This limit is one-half of the length of the maximum overall diagonal dimension of the property or area served, measured in a straight line between accesses. If the property owner or developer believes that it is "technically infeasible" to place the access roads that close together, the relevant official either must not require two access roads or must allow the roads to be built "to the maximum [separation] technically feasible." The Council must adopt a rule consistent with this legislation, and the legislation effects this change as of November 23, 2021 (when the legislation became law), until the Council makes the conforming changes to its rules.

Reinspection Fees (S.L. 2021-121)

S.L. 2021-121 (H.B. 489), entitled "An Act to Provide Various Building Code and Development Regulatory Reforms," makes a number of changes to statutes governing code enforcement and land development. Provisions of the law related to erosion and sedimentation control are discussed above, under the heading "Modify Erosion and Sedimentation Control (S.L. 2021-121)."

Regarding code enforcement, Section 4 limits a local government's authority to charge for reinspection of newly discovered building code violations. It modifies G.S. 160D-1104(d) to state that, when an inspection is conducted to verify completion or correction of instances of noncompliance and this inspection discovers violations that were previously approved, the inspections department may not charge for reinspection of those new violations. For example, say a building is inspected in January and violations are found relating to wiring, but the plumbing is approved. In February, the inspector goes to confirm the wiring problems are corrected but finds there in fact *are* plumbing violations. The inspections department may charge for the January and February inspections, but it may *not* charge for the reinspection for correction of the *new* plumbing violations in March. This provision applies to inspections conducted on or after August 30, 2021, the date the bill became law. In addition to the prohibition on charging for reinspection of newly discovered violations, these violations also may not delay issuance of a temporary certificate of occupancy. This last provision is the result of a further revision in S.L. 2021-183 (S.B. 308), Section 1(a), and applies to inspections associated with permits applied for on or after January 1, 2022.

Building Plan and Permit Modifications (S.L. 2021-192)

The last bill to be signed into law in 2021, S.L. 2021-192 (S.B. 329), raises the thresholds for requiring building permits and modifies the scope of requirements under which certain plans must be submitted under seal.

Section 1 modifies G.S. 83A-13(c)(3), which exempts the plans and specifications of institutional or commercial buildings from the requirement that they be prepared by a licensed architect. The new law increases the threshold total value that requires architect preparation from $200,000 to $300,000. In addition, the threshold requirement for a professional architectural seal for a commercial building project (in G.S. 83A-13(c1)) is increased from $200,000 to $300,000. This session law also adds exemptions from architectural seal requirements to G.S. 83A-13(c1) for any alteration, remodeling, renovation, or repair of a commercial building if the total value of the project is less than $300,000 or the total building area is 3,000 square feet (gross) or less. This exception expires on December 31, 2024. An additional exemption at new G.S. 160D-1104(d1) prevents local governments from adopting or enforcing a policy or ordinance requiring plans or specifications for alteration, remodeling, renovation, or repair of commercial buildings where the cost of the project is less than $300,000 or the total building area is 3,000 square feet or less. The latter two exceptions become effective December 15, 2021, and apply to projects beginning on or after that date. They expire on December 31, 2024.

This session law also adds provisions for exclusions from the general building permit requirement. The language in new G.S. 143-138(b21) excludes from any building permit requirement "any construction, installation, repair, replacement, or alteration" made in accordance with the State Building Code that costs $20,000 or less in any commercial building or structure, unless the work falls under the exclusion for certain minor activities in residential and farm structures (G.S. 143-138(b5)). In calculating the $20,000 limit, the cost considered must include "all building addition, demolition, alteration, and repair work, occurring on the property within 12 consecutive months."

Similarly, new G.S. 143-138(b22) prohibits the State Building Code from requiring architectural or engineer seals on plans and specifications for any alteration, remodeling, renovation, or repair of a commercial building or structure where the (1) cost of the work is less than $300,000 or (2) total building area does not exceed 3,000 square feet of gross floor area. There are exceptions to this exception, however. To qualify, the alteration, remodeling, renovation, or repair must (1) not include addition, repair, or replacement of load-bearing structures; (2) not be a public works project (subject to G.S. 133-1(a)); and (3) be performed in accordance with the most recent version of the North Carolina Fire Prevention Code.

Section 4 raises the threshold in G.S. 160D-1110(c) for building permits (those issued under Article 9 or 9C of Chapter 143) from $15,000 to $20,000 and expands the exception to include commercial buildings. This exception has several caveats, and Section 4 tweaks them slightly. First, where the statute referenced use of materials not permitted by the Residential Code, it now references the State Building Code. Second, it adds a sixth condition related to "[a]ny changes to which the North Carolina Fire Prevention Code applies." Third, it revises G.S. 143-138(b5) to likewise raise the threshold from $15,000 to $20,000 and expands the exception to include commercial buildings there as well. In addition to referencing the State Building Code and Fire Prevention Code, as in Section 4(a), it rewords the condition related to "[other things,] . . . appliances or equipment" to ". . . appliances, or equipment, other than a like-kind replacement of electrical devices and lighting fixtures."

Section 5 includes a clarification to Section 3 of S.L. 2021-163, stating that Section 1(c) of that act "does not apply to timeshare transfer services or to transfer service providers prior to July 1, 2022." This alteration was effective as of October 6, 2021.

Sections 1–4 of the act became effective December 15, 2021, and apply to projects beginning on or after that date.

Other Notable Legislative Proposals

This section outlines legislation that was not enacted but garnered notable attention or discussion during the session. These or similar proposals could be considered in future legislative sessions.

Missing Middle Housing (H.B. 401/S.B. 349)

Across the country states and cities have considered and implemented provisions to allow for a greater mix of housing types. "The missing middle," as these are commonly called, include the range of middle-density housing in between one-family residential and high-density multifamily residential: duplex, triplex, quadplex, townhomes, and more. Additionally, many states and cities have considered and implemented greater allowances for accessory dwelling units.

H.B. 401 and its companion, S.B. 349, would have added North Carolina to the list of state-level rules requiring local governments to allow missing middle housing and accessory dwelling units. The bill also included notable changes to vested rights, downzoning, and land use disputes.

Limits on Exactions (H.B. 821)

Language in H.B. 821 proposed to clarify and limit local government authority for certain exactions related to land use development. The proposed language would have added a new section, G.S. 160D-112:

> Unless otherwise provided by local act, local governments have no authority under this Chapter to do any of the following:
>
> (1) Impose impact fees for development.
> (2) Condition a development approval on the existence of a community benefits agreement. The term "community benefits agreement" means a development-specific arrangement between a developer and persons affected by the development that details the development's contributions to the persons affected or ensures support for the development by the persons affected.
> (3) Require a developer to provide funds for affordable housing or construct, set aside, or designate one or more dwellings or developments as affordable housing.
> (4) Require a completed traffic impact analysis prior to a development approval.
> (5) Require a developer to construct a greenway.

Short-Term Rentals (H.B. 829)

H.B. 829 would have made a simple deletion from the text of G.S. 160D-1207—a small text change with potentially significant impacts to the authority to regulate residential property. As currently written, G.S. 160D-1207(c) provides that a local government may not, among other things, require the owner of residential rental property to obtain permits under the State

Building Code or local housing code to lease or rent residential real property. H.B. 829 would strike the reference to those codes so that a local government could not require *any permit* to lease or rent residential real property. This would prevent zoning permits for conversion of residential properties to bed and breakfasts, short-term rentals, or other types of vacation rentals.

Conditions on Affordable Housing (H.B. 712)

H.B. 712 proposed to limit what conditions may be imposed on a conditional rezoning when the project contains affordable housing. If a development contains affordable housing units for families or individuals with incomes below 80 percent of area median income, then the conditional zoning could stipulate only conditions related to (1) height, number of stories, and size of buildings and other structures; (2) the percentage of lots that may be occupied; (3) the size of yards, courts, and other open spaces; (4) the density of population; and (5) the location and use of buildings, structures, and land.

Tree Protection (H.B. 496)

H.B. 496 proposed to prohibit local tree ordinances unless explicitly authorized by local legislation. Comparable language was also included in earlier versions of the budget bill but was not included in the final budget legislation.

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2022 North Carolina Legislation Related to Planning and Development Regulation

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After a very long "long session" that spilled over from 2021 into 2022, the North Carolina General Assembly convened in May 2022 for the "short session." While the main purpose of a short session is to adjust the state budget passed in the prior year, the legislature also takes up other matters in the session. This year, the short session included a variety of planning and development regulation–related topics. State leaders extended the deadline for small towns to adopt a land use plan; adopted notable, if technical, changes to a mix of zoning, building code, and environmental standards; and updated the rules and regulations for social districts, among other things. This bulletin summarizes the legislation related to planning and development regulation.

I. Checklist for Local Government Actions

Due to the number and variety of bills reviewed and passed in the 2022 legislative session, local governments may want to use the following checklist to ensure that local codes, policies, and practices are up to date:

- Adopt a land use or comprehensive plan. Each small town (population at or under 1,500) in the state has until July 1, 2023, to adopt a land use plan or comprehensive plan if the town wants to enforce zoning. For other jurisdictions, the deadline was July 1, 2022.
- Amend development regulations to ensure that maximum sizes for parking spaces adhere to Chapter 160D, Section 702 of the North Carolina Statutes (hereinafter G.S.).
- Note the slightly revised procedures for designating local historic landmarks.
- Consider farm use exceptions. Building inspectors should take note of the changes to the building code exclusion for farm uses, and zoning officials should note the expanded scope of the bona fide farm use zoning exception.
- Note that the state building code will not require more than one fire access road for developments of one- or two-family dwellings where there are fewer than 100 dwelling units.
- Amend development regulations to align appeals of subdivision plat decisions with the clarified statutory rules.
- Ensure that the local government has designated an official to oversee the local government's statutory duties related to building code inspections (listed at G.S. 160D-1104).
- Prepare and publish an annual financial report on how permitting fees are used to support administration of building code enforcement as required by G.S. 160D-402(d). Reporting is due by October 1 of 2023, 2024, and 2025.
- Fill out and turn in funding request paperwork and budget information for receipt of monies from certain state funds. If you have received direct allocations from the State Fiscal Recovery Fund or the Local Assistance for Stormwater Infrastructure Investments Fund, submit a completed Request for Funding form and a project budget no later than June 30, 2023.
- Update local notice requirements for Coastal Area Management Act (CAMA) land use plan amendments. Note that local health departments now have a ten-day permitting shot clock for certain onsite wastewater permits.
- Check statutory updates related to social districts. Any jurisdiction that has or is considering a "social district" should review the updated statutes.

II. Comprehensive and Land Use Planning

A. Extension for Small Town Land Use Plans

S.L. 2022-75 (H.B. 911) extends the deadline for small towns (population at or under 1,500) to adopt a land use plan. The deadline is now July 1, 2023, for qualifying municipalities.

In 2019, the General Assembly passed legislation that reorganized North Carolina's planning statutes into a new chapter of the N.C. General Statutes, Chapter 160D. The legislation made a number of revisions to state planning statutes. Most were minor, technical matters, but Article 5 includes one of the notable substantive changes in Chapter 160D: the requirement that communities must have a reasonably maintained comprehensive plan or land use plan in order to retain authority to adopt and enforce zoning regulations.

The plan requirement was adopted in 2019, but the General Assembly gave local governments until July 1, 2022, to adopt a plan (if they did not already have one) or to update their current plan (if that plan had not been reasonably maintained). Section 10 of S.L. 2022-75 extends the deadline for small towns to July 1, 2023: "Any local government that has adopted zoning regulations but that has not adopted a comprehensive plan shall adopt such plan no later than July 1, 2022, in order to retain the authority to adopt and apply zoning regulations, except that municipalities with a population of 1,500 or less according to the most recent federal decennial census shall adopt such plan no later than July 1, 2023."

III. Zoning and Development Regulations

A. Maximum Parking Space Size

S.L. 2022-11 (S.B. 372) amends G.S. 160D-702 to set a maximum size for parking spaces in local development regulations. Under the new language in Section 10.(a) of S.L. 2022-11, a local development regulation shall not "[s]et a maximum parking space size larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking."

The provision is effective October 1, 2022. Any development regulation inconsistent with this limitation will be void and unenforceable after that date.

B. Historic Landmark Designation

S.L. 2022-64 (H.B. 1018) amends G.S. 160D-946 to clean up the language and clarify the process for local landmark designation. The amended language does not create major substantive changes.

As was already the case, each local preservation commission is charged to create an inventory of the properties in the jurisdiction of historical, architectural, prehistorical, and cultural significance. Under S.L. 2022-64, Section 7, the inventory may be undertaken "at the earliest possible time and consistent with the resources available to [the commission]." The inventory, and any updates to it, must be submitted to the Office of Archives and History of the Department of Natural and Cultural Resources (DNCR).

As a reminder, prior to designating a local landmark or acquiring any property, a local government must take the steps outlined below. These rules are essentially the same as before, with one minor procedural change noted.

- The preservation commission must prepare and adopt rules of procedure and principles and standards for landmarks.

- The preservation commission must investigate the proposed landmark designation or acquisition and then prepare and forward to the DNCR a report on the designation or acquisition proposed.
- Under S.L. 2022-64, Section 7, the DNCR has thirty days to provide written comments about the proposed landmark designation or acquisition. Newly added language provides that if the DNCR fails to provide comments within this thirty-day period, the local government may move forward without having to consider any comments from the DNCR.
- The preservation commission and governing board must hold legislative hearings, separately or jointly, on any proposed landmark designation or acquisition. Notice of any hearing is to be provided in accordance with G.S. 160D-601.
- The local government must provide written notice of the landmark designation or acquisition to the owners and occupants of the designated or acquired landmark within a reasonable time.
- A copy of the designation or acquisition must be filed with the register of deeds, the municipal clerk (if applicable), and the building inspector. Additionally, landmark designations shall be clearly indicated on local government–maintained tax maps.
- The preservation commission must provide notice to the county tax supervisor of any designation or acquisition or amendment to a designation or acquisition.

C. Charter School Land Use Approvals

When a charter school is first chartered, there may be deadlines to begin operations or to commence the term of its charter. Section 2 of S.L. 2022-75 (H.B. 911) amends G.S. 115C-218.5 to allow the charter school to extend such deadlines if the school is seeking land use or development approvals or challenging the denial of land use or development approvals.

D. Chapter 160D Technical Corrections

In 2019, the General Assembly adopted a comprehensive rewrite of the enabling legislation for local planning and zoning in North Carolina, codified as G.S. Chapter 160D. As with any major legislative undertaking, this rewrite needed technical corrections and cleanup. During the 2022 legislative session, technical corrections for Chapter 160D were adopted as S.L. 2022-62 (S.B. 768). The changes are clerical in nature—correcting cross-reference citations and updating phrasing and word choice.

E. Zoning Consistency

G.S. 160D-706 addresses conflicts between Chapter 160D regulations and other development regulations. This section, which has long been included in the zoning statutes, provides that when a zoning regulation and any other state or local regulation both address yard size, height of structures, or maximum lot coverage, the stricter of the two regulations applies.

In 2021, S.L. 2021-168 amended G.S. 160D-706 to add the phrase, "Unless otherwise prohibited by G.S. 160A-174(b) with respect to cities." That statute, G.S. 160A-174(b), provides that a local ordinance may not infringe on constitutional liberties or contravene established state and federal law. The amended language confirms that Chapter 160D regulations may be more stringent than other regulations, but not to the point of unconstitutionality or contravention of state or federal law.

This year, S.L. 2022-11 (S.B. 372) sought to amend G.S. 160D-706 to make clear that the statute's limitations apply equally to counties. S.L. 2022-11 purported to resolve this matter but altered the statutory language incorrectly. S.L. 2022-62 (S.B. 768) further amended G.S. 160D-706 to accurately make the intended amendment.

F. High Point Delegated Rezoning Power

Following the trend of other Triad communities, the City of High Point now has authority to delegate rezoning decisions to its Planning and Zoning Commission. Section 1 of S.L. 2022-37 (H.B. 263) amends the city charter to allow the city council to delegate "the authority to change the zoning classification of property to the Planning and Zoning Commission with certain rights of appeal and review before the City Council."

IV. Agricultural Uses

The 2022 farm bill, S.L. 2022-55 (S.B. 762), entitled "An Act to Make Various Changes to the Agricultural Laws of This State," makes a number of subtle changes to agricultural land use protections.[1]

A. Building Code Exclusions

Among the other exemptions and exclusions that apply to farming uses and structures, G.S. 143-138(b4) excludes certain "farm buildings" from building code regulations. Section 1 of the 2022 farm bill adds to (or clarifies the inclusion in, depending on one's read of the prior version of the statute) the set of exempt farm buildings any building "used primarily for the storage of agricultural commodities or products or [for the] storage and use of materials for agricultural purposes." Under Section 1, this extended exemption applies whether or not the building is located on the same property where the agricultural commodities or products were produced, as long as "the building is surrounded and adjoined by public ways and yards, as those terms are defined in the 2018 North Carolina Building Code, of not less than 60 feet in width." The owner of any qualifying building must post on that building a placard that is at least 24 inches by 24 inches in size, that has a red background and white reflective stripes and border, and that reads "Ag. Exempt" in white reflective letters not less than 12 inches tall.

Because this language is only added to G.S. 143-138(b4), it presumably applies only to the building code exemption and not to the zoning exemption set out in G.S. 160D-903, the sales tax exemption in G.S. 105-164.13E, or the present use valuation program of G.S. Chapter 105, Article 12.

B. Bona Fide Farm Exemption

On the topic of the bona fide farm zoning exemption in G.S. 160D-903, Section 2 of the 2022 farm bill adds to that exemption any "building or structure that is used solely for storage of cotton, peanuts, or sweet[] potatoes, or any byproduct of those commodities." Buildings used

1. Those readers interested in agricultural uses more broadly may be interested in other provisions of the farm bill or in S.L. 2022-45 (S.B. 388), which exempts qualifying farmers from certain sales tax liability for operating a zoo and for wildlife management activities.

for storing these commodities or their byproducts are now shielded from the effect of zoning regulations, even if they do not have the documentation that G.S. 160D-903(a)(1) through (4) considers "sufficient evidence that the property is being used for bona fide farm purposes."

Section 2 also clarifies that the four documents that can serve as sufficient evidence of bona fide farm use (sales tax exemption certificate, property tax listing showing present use valuation, federal Schedule F, or forest management plan) are not the only evidence that can be considered in determining whether property is in bona fide farm use.

V. Land Subdivision

A. Fire Apparatus Access

In 2021, the General Assembly modified the State Building Code to relax the requirements relating to fire access and sprinkler requirements for low-density residential developments (S.L. 2021-121 (H.B. 489), Section 6). This year, S.L. 2022-11 (S.B. 372) further amends that language. Under Section 13.(a) of S.L. 2022-11, the language now reads: "The [North Carolina Building Code] Council shall not require two or more separate and approved fire apparatus access roads in developments of one- or two-family dwellings where there are fewer than 100 dwelling units."

B. Appeals of Subdivision Decisions

The proper procedure for an appeal of a subdivision plat decision has long been unclear. This stemmed from a lack of specificity in the statutes and a variety of approaches at the local level. Depending on the local standards and procedures, a subdivision plat decision could be any of the following: an administrative decision by a staff person or committee, an administrative decision by an appointed or elected board, or a quasi-judicial decision by an appointed or elected board. Appeals of those different decisions arguably should be treated differently, but the statutes were not clear.

S.L. 2022-62 (S.B. 768) amends applicable sections of G.S. Chapter 160D to clarify the proper appeal procedures for subdivision plat decisions. G.S. 160D-1403 now governs such appeals as follows: If the subdivision plat decision is administrative in nature and made by a staff person or staff committee, then the appeal goes to the board of adjustment, the same as appeals of other staff decisions for development approvals. If the subdivision plat decision is administrative in nature and made by an elected or appointed board, the decision goes to superior court for declaratory or equitable relief. Finally, if the subdivision plat decision is quasi-judicial in nature, then the appeal goes to superior court in the nature of certiorari, the same as appeals of other quasi-judicial decisions.

VI. Fees and Exactions

Section 9.(a) of S.L. 2022-11 (S.B. 372) sets new expectations for the local administration of building inspections and the reporting of fees. G.S. 160D-1102 is amended to require that "[e]very local government shall designate a person responsible for the daily oversight of the local government's duties and responsibilities under G.S. 160D-1104."

Additionally, this same section of the new law sets out a new reporting requirement related to permitting fees:

> No later than October 1 of 2023, 2024, and 2025, every local government shall publish an annual financial report on how it used fees from the prior fiscal year for the support, administration, and implementation of its building code enforcement program as required by G.S. 160D-402(d). This report is in addition to any other financial report required by law.

VII. Local Environmental Regulation

S.L. 2022-43 (H.B. 219, or "the environmental bill") made a number of tweaks to environmental legislation, some of which will be relevant to land development and local ordinances.

A. Stormwater Fund Reversions

Section 1 of S.L. 2022-43 relates specifically to the allocations in last year's budget bill (S.L. 2021-180) for projects receiving direct allocations from the State Fiscal Recovery Fund or the Local Assistance for Stormwater Infrastructure Investments Fund. Any recipient of such allocations must submit a completed Request for Funding form and a project budget "describing a project that is eligible for funding under applicable federal and State law" no later than June 30, 2023. If the grant recipient fails to provide the form or submits a project that is not eligible for funding under state and federal law, the recipient's allocation will revert back to the relevant fund in full. If a recipient submits a project budget that is less than its allocation, the remainder likewise goes back to the fund.

B. Flood Resiliency Blueprint Technical Corrections

Section 2 of S.L. 2022-43 expands the uses that the Department of Environmental Quality (DEQ) can make of funds transferred to it from the State Capital and Infrastructure Fund (SCIF). In addition to removal and disposal of waterway debris from targeted river basins, DEQ can use the funds for other flood mitigation strategies identified in the Flood Resiliency Blueprint. However, stream debris removal and other Resiliency Blueprint projects are no longer exempt from water-quality protection regulation, as Section 2 also repeals the permitting exemption for this work that had been included in last year's budget bill (S.L. 2021-180, Section 40.7(b)). That provision had exempted stream debris removal projects from the requirements of G.S. Chapter 13, Articles 1, 4, and 7; from stormwater or water quality permit requirements under G.S. Chapter 143 Article 21; and from any right of certification related to Section 401 water-quality certifications.

Section 3 of S.L. 2022-43 makes a technical correction to Section 5.9(c) of the budget bill to point to the correct cross-reference for the funding source of the Flood Resiliency Blueprint. The budget bill initially referred to $20M from the State Matching Fund for disaster recovery; it is now corrected to point to the $20M allocated for the Blueprint.

C. CAMA Notice Requirements

The environmental bill also amends G.S. 113A-110(e) to adjust the notice period for hearings regarding the adoption or amendment of Coastal Area Management Act (CAMA) local land use plans. Under the previous language of G.S. 113A-110(e), when a local government was considering adoption or amendment of its CAMA land use plan, notice had to be given to the public at least thirty days before the date of the hearing on the adoption or amendment. Section 5 of the environmental bill converts that requirement into a mandate that notice be published between ten and twenty-five days in advance of the hearing. While this change has the effect of reducing the notice period, the aim of the law is to align the notice period for hearings on CAMA land use plans with the notice periods for other land use hearings (such as rezonings and variances) in G.S. Chapter 160D.

D. Fast-Track Permitting Study

Those communities for which DEQ handles stormwater permitting may be interested to know that the General Assembly has directed DEQ to study approaches to expediting permits under its express permit and certification review program and under its fast-track program for stormwater management permitting. A report is due to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources by December 31, 2022.

E. Permitting Shot Clock for Onsite Wastewater

Separate from the changes effected by S.L. 2022-43, discussed above, other provisions made changes to local environmental regulations. For example, Section 5 of S.L. 2022-11 (S.B. 372) establishes a permitting shot clock for local health department review of onsite wastewater permitting. For improvement permits and construction authorizations from qualifying soil specialists, the local health department must act within ten days of receiving the application for review and either (1) issue the permit, (2) deny the permit and cite the applicable rules, or (3) identify any additional information needed for an incomplete application. If the health department does not act within this ten-day period, the department must issue the permit or construction authorization. Section 5 also specifies the notice that a contractor must provide to the local health department before starting construction of a wastewater system and upon completing such construction. It also limits liability for the local health department related to these systems.

Additionally, Section 4 of S.L. 2022-11 extends until January 1, 2023, the period during which licensed soil scientists may evaluate, inspect, and approve on-site wastewater systems.

F. Study Construction Stormwater Regulations

Section 7 of S.L. 2022-11 (S.B. 372) calls upon DEQ to study the overlap and redundancy between state and federal requirements for stormwater discharges from construction activities. DEQ must report its findings no later than September 1, 2022.

VIII. Building and Housing Code Enforcement

In addition to making other changes to building code administration and onsite wastewater permitting, discussed above, S.L. 2022-11 (S.B. 372) requires the N.C. Building Code Council to promulgate new rules for the approval of alternative designs; modifies the classification of electrical contracting licenses; delays implementation of certain wastewater treatment and dispersal rules; updates standards for well grouting certification; amends home inspector licensure; and addresses inspections by Department of Insurance inspectors.

IX. Relevant ABC Legislation

A. Social Districts and Common Area Permits

Over the last few years, the General Assembly has expanded the range of outdoor spaces where one can carry an open alcoholic beverage. In particular, legislation from 2019 and 2021 added two relatively new options for obtaining outdoor-drinking authorization: common area entertainment permits and designated social districts. S.L. 2022-49 (H.B. 211) recodifies, clarifies, and tweaks the rules for both options.[2]

The older of these options is the common-area entertainment permit. These permits, created by S.L. 2019-182, Section 19, allow the property owner (or owners' association) of a multi-tenant commercial or mixed-use development to establish areas on its private property where alcoholic beverages can be carried and consumed in designated common areas of the development.

The new legislation replaces the old rules for common area entertainment permits (found in G.S. 18B-1000(4a) and -1001(21)) with a new G.S. 18B-1001.5. While the concept remains the same, S.L. 2022-49 makes several modifications and clarifications. This legislation

- adds a "policy" subsection to the statute to clarify that the purpose of the permit is to allow open containers to be carried from licensed premises to another area but to otherwise maintain other limitations on the consumption or possession of alcoholic beverages;
- includes wine shop permittees;
- expands the range of businesses that may choose to allow customers to bring alcoholic beverages into their establishments; the previous rule allowed only ABC permittees to choose to accept patrons with open alcoholic beverages, but new G.S. 18B-1001.5(d) allows any business to opt to permit customers to enter its property with open containers;
- requires that open containers include a logo or mark unique to the consumption area (in addition to an identification of the permittee that sold the alcoholic beverage), be made of a material other than glass, and include the statement "Drink Responsibly – Be 21"; and
- defines obligations for customers and for non-permittees who allow customers to bring alcoholic beverages onto their premises.

Social districts were authorized by Section 20 of S.L. 2021-150. This legislation permitted a local government to designate an area of its town or county where open containers of alcoholic beverages may be carried outside of ABC-permitted premises. In many ways, social districts work in parallel to common area entertainment permit areas, and S.L. 2022-49 makes several adjustments to these areas as well.

2. These changes apply only to common-area entertainment permits and social districts; they do not affect a permittee's ability to apply for an extension of its licensed premises under G.S. 18B-904(h).

The new legislation removes the social district rules set out in G.S. 18B-904.1 and replaces them with largely similar provisions in a new G.S. 18B-300.1. However, there are a few key changes of note. Specifically, the new law

- clarifies that a local government can create one or more social districts in its jurisdiction;
- adds a "policy" subsection to the social district statute clarifying that the law's intent is to allow open containers to be carried from licensed premises to another area but that it otherwise maintains other limitations on the consumption or possession of alcoholic beverages;
- adds definitions for the terms "customer" and "non-permittee business" that are later used to clarify who has what obligations in a social district;
- includes wine shop permittees;
- removes the requirement that a social district be entirely outdoors;
- allows a designee of the city or county (including a private entity) to establish management and maintenance plans for the social district, though the plans must ultimately be approved by the local governing body;
- provides for submission to the ABC Commission of an amended map if a social district's boundaries change;
- allows non-permittee businesses to opt to allow customers to enter their property with open containers (the local government is to develop or approve uniform signs for those businesses that choose to "participate" in the social district); and
- defines obligations for customers and for non-permittees who allow customers to bring alcoholic beverages onto their premises.

This legislation also answered a couple of sticky questions that had arisen in the process of creating common area entertainment permit areas and social districts. One of the questions was what might happen to someone carrying a closed container through a designated outdoor consumption area. For example, what if I live in an apartment in a mixed-use development, I buy a nice Belgian tripel ale from the bottle shop on the other side of a designated common area, and now I have to walk through the designated area to bring it home? The old rules arguably could have created a situation where bringing such a closed container into a designated outdoor drinking area could be seen as a violation. The new law makes clear that it limits only the carrying of open containers, so that one can carry a closed container in the designated area of a common area entertainment space and in a social district.

Another tricky question was what happens if a social district and a common area entertainment space overlap? A couple of provisions in S.L. 2022-49 address this situation. Section 4 adds a new G.S. 18B-300.2 that allows a local government with a social district and a property owner or owners' association with a common area entertainment permit to enter into a memorandum of understanding that allows open containers to be possessed and consumed across the boundaries of the social district and of the common area entertainment permit area. A new G.S. 18B-300.1(i) also clarifies that businesses located within a social district can participate in the social district even if they are also in a multi-tenant use area that has a common area entertainment permit.

B. Increased Scope of Alcohol Sales

In addition to the changes to alcoholic beverage laws made by S.L. 2022-49, discussed above, S.L. 2022-44 (H.B. 768) makes a number of other changes to these laws that may be of interest to land use law observers. The most pertinent provision is Section 6, which lifts the requirement that bars operate as "private bars" and serve alcohol only to their members. Until the passage of this law, in order to operate as a bar only, an establishment had to be private and open only to its members. In practice, this meant that many bars and nightclubs offered "memberships" at the door or collected a nominal cover charge to any patrons who entered. As of July 7, 2022, this formality is no longer required.

One other provision may be of note to a few communities: Section 8 of S.L. 2022-44 allows a distillery to obtain a mixed beverages permit in an area where the sale of mixed beverages has not been approved by a local election. In other words, even if the community does not otherwise allow the sale of mixed beverages, the distillery can nonetheless obtain a license and sell mixed beverages containing its own product.

X. Annexation

A. Relief from Annexation Agreements

Tucked into Section 5, the penultimate section of S.L. 2022-49 (H.B. 211), after the revisions to the rules for common area entertainment permits and social districts, there is "relief for property owners subject to annexation agreements between local governments." This provision offers a new alternative for water and sewer service to property owners in areas subject to annexation agreements.

Section 5 adds new subsections to G.S. 160A-317 and 153A-284. These new subsections state that, if property is subject to an annexation agreement or other interlocal agreement and the city or county denies the property owner's request to connect to water or sewer facilities, the owner can seek water and/or sewer service from "any other unit of local government." In addition, if a court order would prevent the property owner from seeking annexation by a city capable of providing it with water or sewer service, the property owner can petition the court for relief from the effects of that order.

B. Local Legislation Regarding Jurisdiction

In addition to the general bills passed by the General Assembly this session, there were a handful of local bills modifying local government authority in one jurisdiction or another. There were changes to the jurisdictions of Jacksonville and Southern Pines (S.L. 2022-27 (H.B. 1012)); North Wilkesboro (S.L. 2022-28 (H.B. 1026)); Surf City (S.L. 2022-29 (H.B. 1096)); Greensboro (S.L. 2022-33 (H.B. 995)); Beech Mountain and Morganton (S.L. 2022-39 (H.B. 1044)); and Clyde, Locust, Midland, Landis, Kannapolis, and Andrews (S.L. 2022-41 (H.B. 1065)).

Certain changes are particularly notable. For example, Leland's power to annex satellite areas was significantly curtailed. Normally, satellite areas to be annexed must be within three miles of a municipality's main corporate limit. Also, as a rule, most satellite areas must not comprise more than 10 percent of the area within the primary city boundary (though a number of municipalities have been exempted from this 10 percent requirement).

Following the passage of S.L. 2022-26, Leland now may only annex areas within 1.5 miles of the town limits, and Leland has been removed from the list of cities that may have satellite areas that make up more than 10 percent of the primary city area.

In addition, any petition for satellite annexation in Leland must contain a statement from the owners of real property located within the proposed satellite area that the petition is not based on the town's assertion that it will withhold public enterprise service unless annexed.

XI. City of Lexington and Davidson County

Three local bills altered the balance of authority between the City of Lexington and Davidson County. In particular, the bills removed the Davidson County Airport from the City of Lexington municipal boundaries, exempted the county jail property from the Lexington Unified Development Ordinance, and altered the procedures for municipal annexation in Davidson County.

Airport. S.L. 2022-36 (S.B. 908) removed the Davidson County Airport from the municipal corporate limits of the City of Lexington. Additionally, the bill required the county airport authority to purchase a fire station building and equipment from the city for $2 million.

Jail Exempt from Zoning. S.L. 2022-25 (S.B. 909) exempts a certain property from the City of Lexington's Unified Development Ordinance. That property, located in uptown Lexington, is the site where Davidson County intends to build a county jail. The local act also authorizes one city council member and one city staff-person to serve on the county jail committee specifically for matters related to the jail's façade, exterior, sidewalks, streetscapes, and plantings. They may not participate or vote on building programming.

Annexation. Finally, annexation in Davidson County may have just gotten a bit more complicated. S.L. 2022-24 (S.B. 907) gives the county additional authority over annexations and the rezoning of annexed property by municipalities within its borders.

As a result of this new law, any municipality in Davidson County that intends to adopt an annexation ordinance (unless the annexation is for property to be put to single-family or multi-family residential use) must notify the county board of commissioners of this intent at least ten days in advance of adopting the ordinance. The board, in turn, must hold its own public hearing and can approve or disapprove the annexation.[3]

If the county board of commissioners disapproves of the annexation, the municipality may not move forward with annexing the subject area for thirty-six months. While counties in North Carolina generally have veto authority over extensions of extraterritorial development jurisdiction in areas where they exercise zoning and subdivision authority,[4] this application to the annexation context is unique.

If the board does approve the annexation, any rezoning that includes the annexed area must also be approved by the board. Presumably, this is intended to apply only to the initial zoning of the property, but the language of the bill is not time-specific.

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3. Similar legislation barring any city located primarily within Davidson County from adopting an annexation ordinance unless the board of commissioners approves the annexation in advance was passed in 2012. That legislation remains in effect and is unchanged by this bill.

4. *See* G.S. 160D-202(c).

2022 Legal and Legislative Update

Adam Lovelady
NCAZO Summer Conference
August 2022

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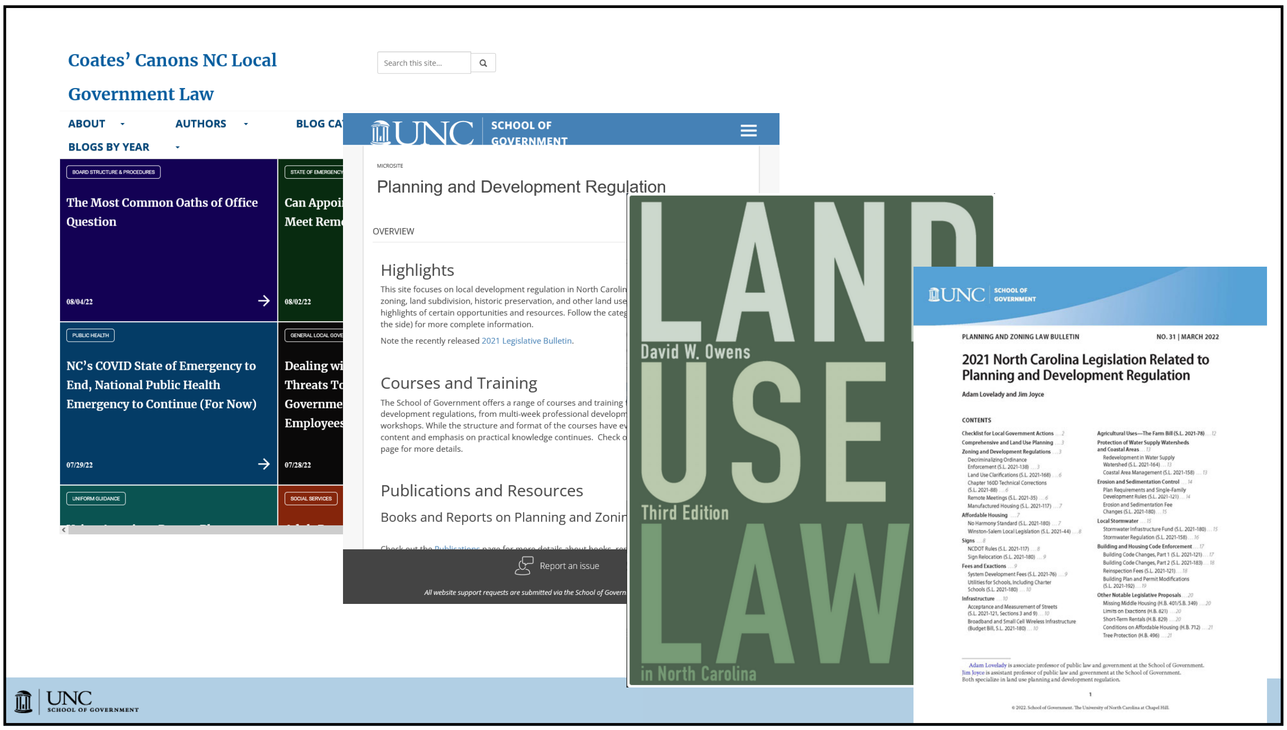

2

Training Opportunities

- Board Workshops (remote, coming soon)
- PlanNC Workshop (October)
- P&Z 101 (January)

- Planning and Development Regulation
  - Three weeks (Sept, Oct, Nov)
  - Certification Exam
  - Already waitlisted

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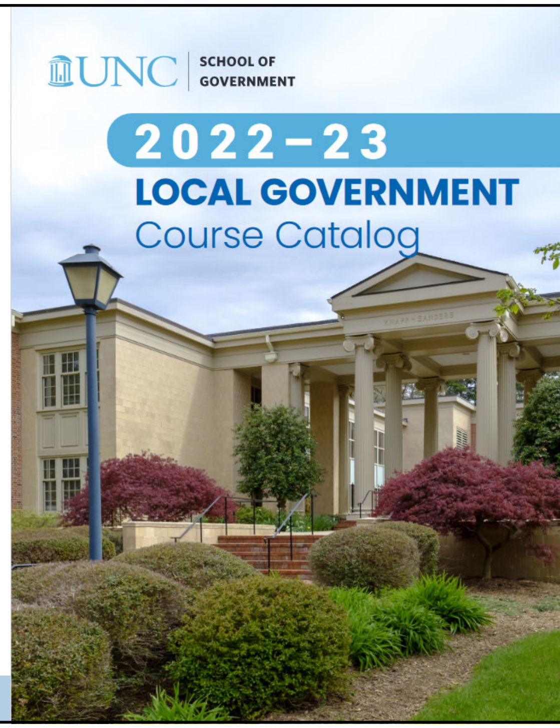
Training Opportunities



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- https://www.sog.unc.edu/resources/microsites/planning-and-development-regulation

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6

Legislative Top 10

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10. Septic System Shot-Clock

- Applies to improvement permits and construction authorizations from qualifying soil specialists
- Local health department must act within 10 days of receiving the application and either
  - issue the permit,
  - deny the permit and cite the applicable rules, or
  - identify any additional information needed for an incomplete application
- Section 5 S.L. 2022-11 (S.B. 372)

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9. Designate an Officer to Oversee Building Code Duties

- 160D-1102 is amended to require that "[e]very local government shall designate a person responsible for the daily oversight of the local government's duties and responsibilities under G.S. 160D-1104."

- Section 9 of S.L. 2022-11 (S.B. 372)

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9. Designate an Officer to Oversee Building Code Duties

- Duties and responsibilities under G.S. 160D-1104
  - receipt of applications for permits
  - issuance or denial of permits,
  - necessary inspections in a timely manner,
  - issuance or denial of certificates of compliance,
  - issuance of orders to correct violations,
  - bringing of judicial actions against actual or threatened violations,
  - keeping of adequate records, and any other actions that may be required

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8. Prepare Financial Report on Permit Fees

"No later than October 1 of 2023, 2024, and 2025, every local government shall publish an annual financial report on how it used fees from the prior fiscal year for the support, administration, and implementation of its building code enforcement program as required by G.S. 160D-402(d). This report is in addition to any other financial report required by law."

Section 9 of S.L. 2022-11 (S.B. 372)

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7. Tweaks to Rules for Farm Buildings

- Excluded from building code regulation:

farm buildings "used primarily for the storage of agricultural commodities or products or storage and use of materials for agricultural purposes."

  - Regardless of whether it is located on same property as where ag products were produced
  - Requires public ways and yards at least 60 feet
  - Owner must post placard to state "Ag. Exempt"
  - Appears limited to building code (not zoning, sales tax exemtpion, or present use value program)

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7. Tweaks to Rules for Farm Buildings

- Bona fide farm exemption clarified to include any "building or structure that is used solely for storage of cotton, peanuts, or sweet[]potatoes, or any byproduct of those commodities."

- Clarification that documentation at G.S. 160D-903 are sufficient, not necessary
  - (sales tax exemption certificate, property tax listing showing present use valuation, federal Schedule F, or forest management plan) are not the only evidence that can be considered in determining whether property is in bona fide farm use

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6. Clarify Subdivision Appeals

• Admin decision by staff	to board of adjustment
• Admin decision by board	to superior court for declaratory relief
• Quasi-Judicial by board	to superior court in nature of cert.

- S.L. 2022-62 (SB 768)

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5. Reduce Fire Access for Small Subdivision

- Amended in 2021, further amended in 2022
- “The [North Carolina Building Code] Council shall not require two or more separate and approved fire apparatus access roads in developments of one- or two-family dwellings where there are fewer than 100 dwelling units.”
- S.L. 2022-11 (S.B. 372),

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4. Maximum Size for Parking Spaces

- G.S. 160D-702 amended to state local regs shall not
- “[s]et a maximum parking space size larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking."
- S.L. 2022-11 (S.B. 372)

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3. CAMA Plan Notice Alignment

- G.S. 113A-110(e) amended to align CAMA notice with zoning notice
- Published notice now required 10-25 days before hearing (had been 30 days)

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2. Extension for Small Town Plans

- July 1, 2022 General Deadline (already passed!!!)
- July 1, 2023 New deadline to for municipalities under 1,500
- S.L. 2022-75 (H.B. 911)

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1. State of Emergency Ends

- Permit Extension for “development approvals”
- If permit should have expired between March 10, 2020, and April 1, 2020
  - Was extended 120 days (August-September 2020)
- Should have expired between September 2, 2020 and January 12, 2023
  - Now expires January 12, 2023

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1. State of Emergency Ends

- “development approvals”
  - erosion and sedimentation control plan
  - building permit
  - Subdivision approvals
  - Zoning permits
  - Development agreements
  - Building permits
  - Certificates of appropriateness
- Section 2.21 of Session Law 2021-3

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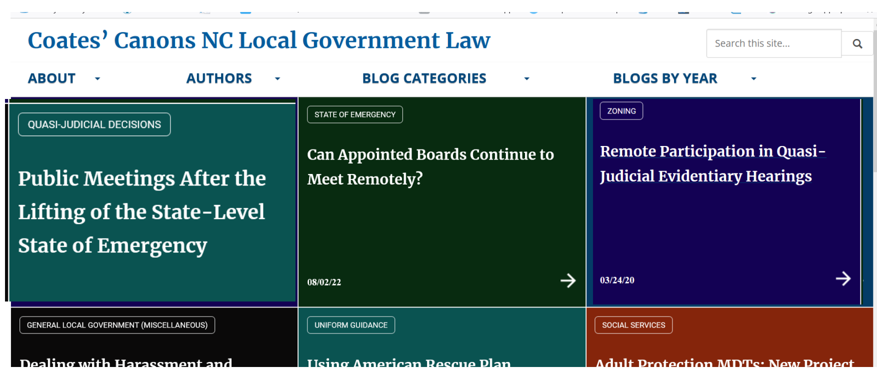
1. State of Emergency Ends

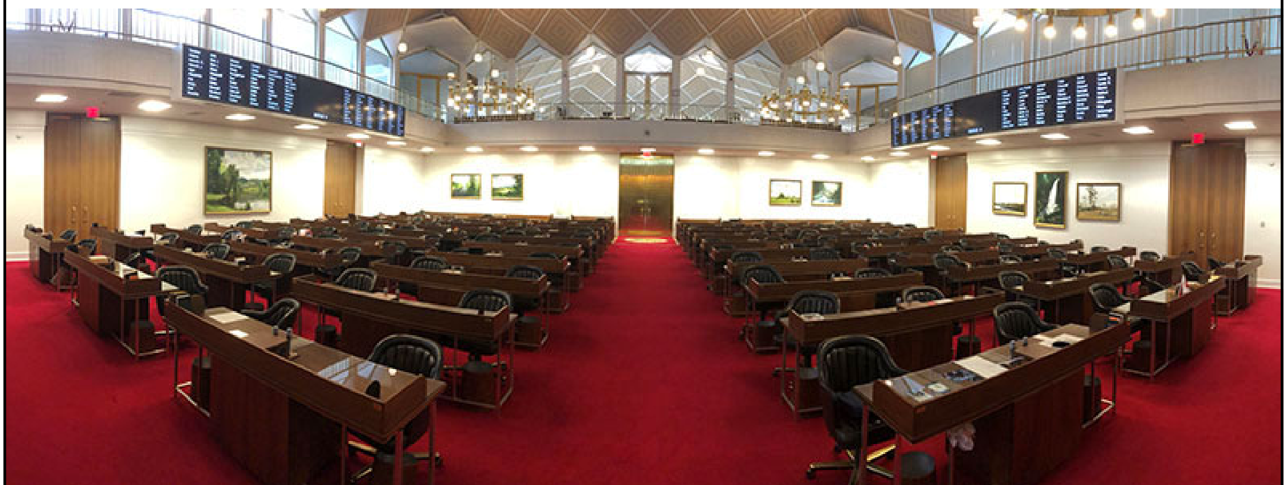
- Elected board
  - statutory quorum requirements may reasonably be interpreted to require in-person participation by board members
- Appointed board
  - Flexibility for appointed boards to meet remotely as long as that complies with applicable local rules
- Quasi-judicial hearings
  - Flexibility to hold meetings remotely, but heightened *due process* considerations

1. State of Emergency Ends



- https://canons.sog.unc.edu/2021/07/public-meetings-after-the-lifting-of-the-state-level-state-of-emergency/
- https://canons.sog.unc.edu/2022/08/can-appointed-boards-continue-to-meet-remotely/
- https://canons.sog.unc.edu/2020/03/remote-participation-in-quasi-judicial-evidentiary-hearings/

Legislative Top 10



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Caselaw Update

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Short-Term Rentals

Schroeder

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Wilmington STR Ordinance

- 400-foot separation between short-term rentals
- cap on the total number of short-term rentals
- registration of short-term rentals
  (held a lottery for the initial registration)
- one-year amortization period for existing operators to cease operations
- operational and safety requirements (zoning districts, parking standards, posted safety info, no cooking in bedrooms)

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Inspections, Permits, and Registration Programs

- prohibit periodic inspections of residential rental properties
- limit fees, permits, and registration requirements for residential rental properties
- limits on IPR programs *do apply* to properties subject to the Vacation Rental Act (short-term rentals)

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160D-1207 Clarification

- local governments may not "require any owner or manager of rental property to obtain any permit or permission under Article 11 [building codes] or Article 12 [housing codes]. . . to lease or rent residential real property or to register rental property with the local government."

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STR after *Schroeder*

- No registration programs for STRs
- No provisions dependent upon a registration program

- Other Development Regulations Remain
  - Define short-term rental as a land use
  - Apply development standards and operational limits
  - Require development approvals (but not regular registrations)
  - Separation and density caps?

https://canons.sog.unc.edu/2022/04/short-term-rental-regulations-after-schroeder/

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Sign Ordinances

Austin

Clemmons

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Reed Decision

Temporary Directional Sign for Religious or Charity Event

Political/ Campaign Sign

Ideological Sign

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Austin Ordinance

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Austin v. Reagan National Advertising

"The message on the sign matters only to the extent that it informs the sign's relative location. The on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions."

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Take-Aways

- Can a sign code distinguish based on the content of the sign's message? Generally, no.
- So, if the enforcement officer must read the sign to apply the code, is the code automatically content-based? No.
- Can the sign code distinguish between on-premises and off-premises signs? Generally, yes.
- Can the sign code distinguish commercial messages from noncommercial messages? Generally, yes.

Visible Properties, LLC v. Village of Clemmons

"Determining which zoning provisions apply requires so much cross-referencing it is almost dizzying."

Visible Properties, LLC v. Village of Clemmons

• General zoning district	permitted the sign
• Overlap district	prohibited the sign
• Sign ordinance	permitted the sign

• Sign ordinance	if there is a conflict, sign ordinance wins
• General ordinance	if there is a conflict, most restrictive wins

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Ordinance terminology

- “moving and flashing signs”
- “electronic message boards”

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Court's Interpretive Principles

- strive to harmonize provisions and avoid conflicts whenever possible
- construe ambiguous provisions in favor of the free use of land

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Take-Away: Clean Up Your Ordinance

"[Z]oning regulations are not intended to be a system of murky, ambiguous rules where the permitted uses of property ultimately depend on the interpretive discretion of government bureaucracy."

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Permit Choice and Vested Rights

Ashe County

Union County

UNC School of Government

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Ashe County v. Ashe County Planning Board

- When is an application submitted?

- June 2015 application and fee (no air permit)
- June 2015 letter from planner; good to go, just need air permit
- Oct 2015 moratorium to change rules
- Feb 2016 air permit submitted
- April 2016 permit denial

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Ashe County v. Ashe County Planning Board

- When is an application submitted?

~~• June 2015 application and fee (no air permit)~~

• June 2015	letter from planner; good to go, just need air permit
• Oct 2015	moratorium to change rules
• Feb 2016	air permit submitted
• April 2016	permit denial

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Thompson v. Union County

- Residence built in 2004 and detached garage built in 2009
- Property sale in 2018 highlighted setback encroachment and easement encroachment
- NOV and civil penalties
- Board of adjustment and superior court upheld

- Court of appeals ruled for property owner
  - County failed to prove violation (No ordinances, no permits in the record)
  - Vested rights established under 160D-108

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Exactions

Mooresville

Wake Forest

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TAC Stafford, LLC v. Town of Mooresville

- Developer sought subdivision plat approval for 467 lots on 209 acres
- Town required TIA and any required on-site and off-site improvements
- Required improvements included road improvements 2.3 miles off-site
- Developer could not get right-of-way, town refused to condemn right-of-way, and town denied COs for half of the subdivision

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TAC Stafford, LLC v. Town of Mooresville

- No authority to require off-site transportation improvements
- Town refunds to developer $100k paid directly to town
- Town pays for developer attorneys fees for exceeding unambiguous authority

- Funds paid to third-party landowners for off-site rights-of-way were not exactions paid to the government

- Remand to determine if funds paid to engineering firm is exaction to be repaid by town

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Schooldev East, LLC v. Town of Wake Forest

- QJ major site plan for K-12 charter school
  - plan consistency,
  - adequate infrastructure, a
  - not detrimental to the use or development of adjacent properties

- Denied for failure to meet town policy for pedestrian and bike connectivity

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Schooldev East, LLC v. Town of Wake Forest

160A-307.1: "A city may only require street improvements related to schools that are required for safe ingress and egress to the municipal street system and that are physically connected to a driveway on the school site."

- Court used ordinary meanings of "street," "improvements," and "for ingress and egress"
- while sidewalks might be a part of a "street," they were not related to the safe entry and leaving of the city street system, so when read as a whole this statutory limit was not intended to include sidewalks

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Schooldev East, LLC v. Town of Wake Forest

- record included competent, material, and substantial evidence that the application was not consistent with adopted town plans and policies

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Caselaw Update

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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-529

No. COA21-398

Filed 2 August 2022

Forsyth County, No. 20 CVS 805

VISIBLE PROPERTIES, LLC, Petitioner,

v.

THE VILLAGE OF CLEMMONS, Respondent.

Appeal by petitioner from order entered 23 December 2020 by Judge Eric Morgan in Forsyth County Superior Court. Heard in the Court of Appeals 23 February 2022.

Van Winkle, Buck, Wall, Starnes and Davis, P.A., by Craig D. Justus, Jonathan H. Dunlap, and Brian D. Gulden, for petitioner-appellant.

Blanco Tackabery & Matamoros, P.A., by Elliot A. Fus and Chad A. Archer, for respondent-appellee.

DIETZ, Judge.

¶ 1 Visible Properties, LLC wants to erect a digital billboard on property bordering a highway in Clemmons. The zoning board of adjustment denied Visible's request on the ground that the zoning ordinances did not permit digital billboards. The trial court, on certiorari review, affirmed.

¶ 2 Our task on appeal is to determine if the zoning board and the trial court properly interpreted the language of the ordinances.

¶ 3 This is not as easy as it sounds. Determining which zoning provisions apply requires so much cross-referencing it is almost dizzying. There is a general provision that permits off-premises signs such as billboards on the property at issue; a separate overlay district regulation that, by omission, does not permit off-premises signs on the property; and a sign-specific ordinance that permits off-premises signs on the property and states that it supersedes other regulations concerning signs. Then, there is a separate provision stating that, in the event of a conflict among different provisions, the most restrictive provision prevails.

¶ 4 Similarly, the zoning ordinances prohibit "moving and flashing signs" and "electronic message boards." But, in light of the examples of "moving and flashing signs" in the ordinance, and the descriptions of billboards in other portions of the ordinance as either "signs" or "billboards" (not "message boards"), there are reasonable interpretations of these provisions that both cover the type of digital billboard proposed by Visible, and that do not.

¶ 5 In the end, we are guided by two overarching principles governing construction of zoning ordinances—first, that we should strive to harmonize provisions and avoid conflicts whenever possible; and second, that we should construe ambiguous provisions in favor of the free use of property. Applying those principles here, we hold that the sign-specific regulation controls the permissible locations of signs and permits Visible's proposed billboard on the property. We further hold that the prohibitions on "moving and flashing signs" and "electronic message boards" are open to multiple reasonable interpretations, are therefore ambiguous, and must be construed in favor of Visible's proposed use of the property. We therefore reverse the trial court's order and remand for entry of an order reversing the Board of Adjustment's decision.

Facts and Procedural History

¶ 6 Visible Properties, LLC is a North Carolina company that owns and operates outdoor advertising signs and billboards throughout the state.

¶ 7 In June 2019, Visible applied to the Village of Clemmons for a zoning permit to construct a billboard with digital technology at 2558 Lewisville-Clemmons Road. The permit requested construction of a "10' x 30' Outdoor Advertising Structure with Digital changeable copy" that would be categorized as a "Ground (off premises freestanding)" sign. The proposed digital billboard would not contain any moving or scrolling text or images, nor any flashing lights or images, but would change the static image displayed on the billboard every six to eight seconds using digital technology.

¶ 8 Officials with the Village of Clemmons denied the permit on the grounds that "the structure is a 'Sign, Ground (Off-Premises),' which is not listed as a permitted use in the South Overlay District in which the Property is located" and that the structure is prohibited by the sign regulations regarding "moving and flashing signs" and "electronic message boards."

¶ 9 Visible appealed to the Clemmons Zoning Board of Adjustment. The Board met in December 2019 and conducted an evidentiary hearing where it considered the application materials, testimony, and evidence presented. In January 2020, the Board entered a written decision affirming the staff decision to reject Visible's permit application. Visible petitioned for a writ of certiorari, which the trial court granted. In December 2020, the trial court affirmed the Board of Adjustment's decision. Visible timely appealed.

Analysis

¶ 10 Visible challenges the trial court's legal determination that the proposed digital billboard was prohibited by various provisions of the zoning ordinances. In this type of administrative review, challenging the interpretation of zoning ordinances, the trial court sits as an appellate court and reviews this legal question *de novo*. *Fort v. Cty. of Cumberland*, 235 N.C. App. 541, 548, 761 S.E.2d 744, 749 (2014). On appeal, this Court also applies a *de novo* standard of review and examines whether the trial court committed an "error of law in interpreting and applying the municipal ordinance." *Four Seasons Mgmt. Servs., Inc. v. Town of Wrightsville Beach*, 205 N.C. App. 65, 76, 695 S.E.2d 456, 463 (2010).

¶ 11 Zoning ordinances are interpreted "to ascertain and effectuate the intent of the legislative body." *Capricorn Equity Corp. v. Town of Chapel Hill*, 334 N.C. 132, 138, 431 S.E.2d 183, 187 (1993). "The rules applicable to the construction of statutes are equally applicable to the construction of municipal ordinances." *Four Seasons Mgmt. Servs.*, 205 N.C. App. at 76, 695 S.E.2d at 463. But, as discussed in more detail below, when there is ambiguity in a zoning regulation, there is a special rule of construction requiring the ambiguous language to be "construed in favor of the free use of real property." *Morris Commc'ns Corp. v. City of Bessemer*, 365 N.C. 152, 157, 712 S.E.2d 868, 871 (2011).

I. Permitted uses at the property location

¶ 12 Visible first challenges the trial court's determination that the zoning ordinances prohibited the use of off-premises signs on the property at issue in this case. Specifically, the trial court determined that a provision creating the "Lewisville Clemmons Road (South Overlay District)"—an overlay district in which this property is located—did not permit off-premises signs. Moreover, the trial court determined that, to the extent other provisions in the ordinances permitted off-premises signs on the property, the "Conflicting Provisions" section of the ordinances required the court to apply "the more restrictive limitation or requirements," which in this case is the overlay district provision.

¶ 13 To address this argument, we must examine the series of use restrictions, corresponding tables, and numerous cross-references that address the use of off-premises signs on property within the Village of Clemmons.

¶ 14 We begin with the general provision of the ordinances governing permissible uses of property. This general provision is found in Section B.2-4 and is titled "Permitted Uses." The first section of this general provision is entitled "Table B.2.6" and explains that the corresponding table "displays the principal uses allowed in each zoning district and references use conditions." Village of Clemmons, N.C., Unified Development Ordinances, § B.2-4.1 (UDO).

¶ 15 Table B.2.6 is included in the ordinances following this section. In a grid format, the table lists particular uses of property and then indicates whether that use is permitted in each zoning district.

¶ 16 Under the heading "Business and Personal Services" in Table B.2.6, there is an entry for "Signs, Off-Premises." UDO, Table B.2.6. This entry indicates that off-premises signs generally are permissible in the zoning district in which this property is located. This entry in the table also references a separate use condition located in Section B.2-5.67. That subsection, titled "Signs, Off-Premises," then cross-references another section, discussed below, stating that "All signs must comply with the provisions of Section B.3-2." UDO, § B.2-5.67.

¶ 17 A later subsection of the ordinances states that these general provisions in Table B.2.6 may be subject to additional restrictions in other subsections, including two that are relevant to our analysis—a section governing overlay districts and the section, referenced above, governing signs:

> **2-4.5 OTHER DEVELOPMENT REQUIREMENTS OF THE ZONING ORDINANCE**
>
> (A) Additional Development Requirements. In addition to the regulation of uses pursuant to Section B.2-4 and the use conditions of Section B.2-5, the following additional development requirements of this Ordinance may apply to specific properties and situations.
>
> . . .
>
> (2) Section B.2-1.6 Regulations for Overlay and Special Purpose Districts
>
> . . .
>
> (6) Section B.3-2 Sign Regulations

Id. § B.2-4.5.

¶ 18 We begin with the first of these two additional development requirements, concerning overlay and special purpose districts. This provision creates a special district referred to as "Lewisville Clemmons Road (South Overlay District)." *Id.* § B.2-1.6(E). This overlay district includes the property at issue in this case.

¶ 19 In an introductory section titled "Vision," this overlay district provision explains that it is intended "to promote the redevelopment of the area into a mixed use commercial/office/residential." *Id.* § B.2-1.6(E)(A). This provision further explains that it is "intended to foster development that improves traffic/safety, intensifies land use and economic value, to promote a mix of uses, to enhance the livability of the area, to enhance pedestrian connections, parking conditions, and to foster high-quality buildings and public spaces that help create and sustain long-term economic vitality." *Id.*

¶ 20 Another provision in the Lewisville Clemmons Road (South Overlay District) section states that its "standards apply to sites (including principal and accessory buildings) that are within the Lewisville-Clemmons Road Corridor Overlay district unless otherwise specified herein, and apply to all permitted uses allowed within the district." *Id.* § B.2-1.6(E)(C).

¶ 21 Finally, for purposes of this appeal, the operative provision of the Lewisville Clemmons Road (South Overlay District) section lists the permissible uses of property in the overlay district. *Id.* § B.2-1.6(E)(D). In a section titled "Permitted Uses," the ordinance states that the "overlay district provisions apply to any base zoning district set forth in this chapter that exists within the defined overlay area." *Id.*

¶ 22 The provision then includes a list of use categories corresponding to some (but not all) of the use categories listed in Table B.2.6, discussed above. Within those use categories, this provision again lists some, but not all, of the particular uses listed under those categories in Table B.2.6. Relevant to this case, the "Permitted Uses" provision includes the "Business and Personal Services" category. This is the use category from Table B.2.6 (the general use provision) that addressed the use of off-premises signs. In this more specific overlay provision, the Business and Personal Services category lists *some* uses contained in Table B.2.6 under that category heading, but does not list "Signs, Off-Premises" as a permitted use:

> The overlay district provisions apply to any base zoning district set forth in this chapter that exists within the defined overlay area. The following permitted uses are allowed for this proposed geographic area by use category:
> . . .
>
> 3. **Business and Personal Services**. Banking and Financial Services, Bed and Breakfast, Building Contractors General, Car Wash, Funeral Home, Health Services Misc., Hotel/Motel, Kennel, Medical Lab, Medical Offices, Motor Vehicle, Leasing/Rental, Repair/Maintenance, Body/Paint Shop, Office Misc., Professional Office, Service Personal, Services, Business A/B, Veterinary Services

Id. § B.2-1.6(E)(D)(3).

¶ 23 Finally, we address the last, and most specific, of the relevant provisions—the additional development requirements contained in Section B.3-2 that govern signs. This provision contains lengthy rules specific to various forms of signs and lists their permitted uses and locations:

> **3-2 SIGN REGULATIONS**
>
> **(B) Permitted Signs**
> . . .
>
> **(2) Application of Table of Permitted Districts for Signs.** *The following signs shall be permitted in the zoning districts as indicated in Table B.3.6*, and shall comply with all regulations of the applicable district *unless otherwise regulated by specific regulations of this section.*
> . . .
>
> **(C) Off-Premises Ground Signs**
>
> **(1) Zoning Districts.** *Ground signs (off-premises) are permitted only in the districts as shown in Table B.3.6 and*

> *only along designated roads which are not identified as view corridors listed in Section B.3-2.1(C)(2).*
>
> **(2) View Corridors.** *No off-premises sign shall be permitted in any view corridor as described below* [Table B.3.7 titled "View Corridors"] and shown on the View Corridor Map located in the office of the Planning Board.

Id. § B.3-2.1(B)(2), (C) (emphasis added).

¶ 24 Importantly, this sign provision operates differently from other portions of the ordinances governing uses of property. Specifically, as the emphasized language above indicates, this sign provision contains its own, more specific restrictions for where signs may be located and states that these more specific restrictions, where applicable, supersede other portions of the ordinances.

¶ 25 These more specific restrictions take two forms relevant to this case. First, Table B.3.6, which accompanies and is referenced by this "Sign Regulations" ordinance, includes a category for "Off-Premises Signs" and indicates that off-premises signs are permitted only in specific zoning districts. The property at issue in this case is located in a zoning district where off-premises signs are permitted under this table.

¶ 26 Second, Table B.3.7, which also accompanies and is referenced by this "Sign Regulations" ordinance, contains a list of the "view corridors" mentioned in this subsection of the ordinance. These view corridors are specific areas of various streets and highways where off-premises signs are prohibited despite otherwise being permitted in the more general table, Table B.3.6. Importantly, there are portions of Lewisville-Clemmons Road, on which this property is located, that are in these view corridors. But this particular property is not in a view corridor and thus off-premises signs are permitted on the property under both Table B.3.6 and Table B.3.7.

¶ 27 After walking through this dizzying sequence of provisions, tables, and internal cross-refences, we are left with this: A general provision that permits off-premises signs on this property; a more specific overlay provision that supersedes the general (or "base zoning district") regulations and, by omission, does not permit off-premises signs on this property; and an even more specific sign provision that permits off-premises signs on this property and further states that, where something is "regulated by specific regulations of this section" those specific regulations supersede other regulations of the applicable district.

¶ 28 In defending the Board of Adjustment's ruling, the Village of Clemmons contends that the overlay district provision should control because, at best, these three provisions are conflicting. The Village points to a separate section of the zoning ordinances establishing a rule of construction for conflicting provisions. It provides that where "a conflict exists between any limitations or requirements in this Ordinance, the more restrictive limitation or requirements shall prevail." *Id.* § B.1-7.1. Thus, the Village argues, the conflict between these provisions must be resolved by applying the most restrictive zoning requirements within the conflicting provisions, which is the overlay district provision that prohibits off-premises signs on the property.

¶ 29 We agree that our State's case law approves of this sort of rule-of-construction language and that, if we determined there is a conflict among different provisions of the ordinance, we must apply this rule of construction in favor of the most restrictive provision. *See Westminster Homes Inc. v. Town of Cary*, 354 N.C. 298, 305–06, 554 S.E.2d 634, 639 (2001).

¶ 30 But we cannot reach that step unless we first determine that there is a conflict. And, in examining that question, we are guided by two common law principles governing interpretation of zoning ordinances. First, when interpreting provisions of a law that are all part of the same regulatory scheme, we should strive to find a reasonable interpretation "so as to harmonize them" rather than interpreting them to create an irreconcilable conflict. *McIntyre v. McIntyre*, 341 N.C. 629, 634, 461 S.E.2d 745, 749 (1995). In other words, even in the presence of this conflicting provisions criteria in the ordinances, we will first seek a reasonable interpretation that has no internal conflicts because we must presume that the drafters would not intend to create regulations that are internally inconsistent and conflicting. *See Taylor v. Robinson*, 131 N.C. App. 337, 338–39, 508 S.E.2d 289, 291 (1998).

¶ 31 Second, when interpreting zoning regulations, which are "in derogation of common law rights," and faced with more than one reasonable interpretation of the regulations, we should choose the reasonable interpretation that favors "the free use of property." *Cumulus Broad., LLC v. Hoke Cty. Bd. of Comm'rs*, 180 N.C. App. 424, 427, 638 S.E.2d 12, 15 (2006).

¶ 32 With these common law principles in mind, we hold that there is a reasonable interpretation of these provisions that harmonizes them to avoid conflicts. We adopt that interpretation, consistent with the principle that laws should not be construed to be conflicting when there is a reasonable interpretation that contains no internal conflicts. *McIntyre*, 341 N.C. at 634, 461 S.E.2d at 749. Under that interpretation, the specific, express limitation on off-premises signs contained in the Sign Regulations portion of the ordinance supersedes the other two ordinances and controls the use of off-premises signs on this property. UDO § B.3-2.1. This is so both because these sign-specific rules directly apply to the use at issue and because these sign-specific rules state that other zoning restrictions do not apply if the use is "regulated by specific regulations of this section." *Id.*

¶ 33 Under these sign-specific regulations, off-premises signs are permitted at the property on which Visible desires to install its digital billboard. We therefore reject the Village of Clemmons's argument and hold that the trial court erred by affirming the Board of Adjustment's determination that the off-premises sign was precluded by the zoning regulations in the Lewisville Clemmons Road (South Overlay District) provision.

II. Prohibited signs regulation

¶ 34 We next turn to the alternative ground on which the Board of Adjustment relied, concerning the permissible types of off-premises signs.

¶ 35 Visible applied for approval of a digital billboard described as an "outdoor advertising structure with digital changeable copy." The digital billboard would display a static image like a traditional billboard, without any moving or scrolling images, video, blinking or flashing lights, or other animation. But, unlike a traditional billboard, the static image displayed on the billboard would change every six to eight seconds to a different image. Thus, the digital billboard would be capable of rotating through a series of different images over time.

¶ 36 The Village of Clemmons contends that this type of digital billboard is prohibited by two provisions of the Sign Regulations section of the ordinance, one addressing "Moving and Flashing Signs" and the other addressing "Electronic message boards." These two prohibitions are found in Section B.3-2.1(A)(3) of the Village's zoning ordinances:

> **3-2.1 SIGN REGULATIONS**
>
> **(A) General Requirements**
>
> . . .
>
> **(3) Prohibited Signs.** The following signs or use of signs is prohibited.
>
> (a) Flashing Lights. Signs displaying intermittent or flashing lights similar to those used in governmental traffic

> signals or used by police, fire, ambulance, or other emergency vehicles.
>
> (b) Use of Warning Words or Symbology. Signs using the words stop, danger, or any other word, phrase, symbol, or character similar to terms used in a public safety warning or traffic signs.
>
> (c) Temporary, Nonpermanent Signs. Temporary, nonpermanent signs, including over-head streamers, are not permitted in any zoning district, unless otherwise specified in these regulations.
>
> *(d) Moving and Flashing Signs (excludes electronic time, temperature, and electronic fuel pricing). Moving and flashing signs, excluding electronic time, temperature, and message signs, are not permitted in any zoning district. This includes pennants, streamers, banners, spinners, propellers, discs, any other moving objects; strings of lights outlining sales areas, architectural features, or property lines; beacons, spots, searchlights, or reflectors visible from adjacent property or rights-of-way.*
>
> (e) Exterior exposed neon signs are prohibited.
>
> *(f) Electronic message boards are prohibited.*

UDO, § B.3-2.1(A)(3) (emphasis added).

¶ 37 As noted above, when interpreting these provisions, we apply the same principles of construction used to interpret statutes. *Morris Commc'ns Corp.*, 365 N.C. at 157, 712 S.E.2d at 872. The terms "Moving and Flashing Signs" and "Electronic message boards" are not given special definitions in the ordinance and we therefore assume that the drafters "intended to give them their ordinary meaning determined according to the context in which those words are ordinarily used." *Id.*

¶ 38 We begin with the provision addressing "Moving and Flashing Signs." The parties present two fully contradictory interpretations of this provision, both based on what (in that party's view) is the plain and ordinary meaning of the words used in the provision. The Village of Clemmons contends that Visible's digital billboard unquestionably is a "Moving and Flashing Sign" because the static image would change frequently and thus, by its nature, "moves" in the sense that the image displayed on the sign changes to something else.

¶ 39 The Village also argues that this is the only logical interpretation of the provision, in light of the exclusion of electronic time, temperature, and message boards contained in the provision, because if "moving and flashing" only referred to "scrolling text, animation or blinking like 'Rudolph's nose'" and not "a sign that electronically changes its content on a periodic basis," then there would be no need to separately exclude electronic time, temperature, and message signs—signs that, like digital billboards, typically do not move or flash, but instead change their image over time to reflect the updated information.

¶ 40 There are a number of problems with the Village's argument. First, in ordinary English usage, moving means "marked by or capable of movement" and flashing means "to give off light suddenly or in transient bursts." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003). Neither of these adjectives squarely describe Visible's proposed digital billboard, which is not capable of movement and has no sudden or transient display of lights.

¶ 41 Second, the exclusion of "electronic time, temperature, and message signs" does not compel an interpretation that includes digital billboards within the definition of moving and flashing signs. Likewise, a contrary interpretation does not render this exclusion superfluous. After all, there could be categories of electronic time, temperature, and message signs that have images in motion (a ticking clock) or are flashing (an electronic sign flashing the phrase "slow down") that the drafters reasonably intended to exempt from this prohibition.

¶ 42 Indeed, another provision in the sign ordinances permits "electronic digital fuel pricing" signs at convenience stores but states that "electronic prices shall not be allowed to flash, blink or move at any time." UDO, § B.3-2.1(G)(3). Notably, this provision recognizes that the terms "moving" and "changing" are different, because the provision then explains that the "digital technology shall solely be used to display the numerical price of fuel and shall only be *changed* when the price of fuel is modified." *Id.* (emphasis added). This demonstrates that the drafters understood some electronic signs can contain moving or flashing features and that "moving" or "flashing" is this context is not the same as the information on the sign changing over time.

¶ 43 Finally, there are specific examples listed after the general term "Moving and

Flashing Signs" and all of these examples—things such as pennants, banners, spinners, beacons, spotlights, and searchlights—are capable of either physically moving or shining light in a sudden or intermittent way. This reinforces the notion that the words "moving" and "flashing" are used in their ordinary meaning. *See Jeffries v. Cty. of Harnett*, 259 N.C. App. 473, 493, 817 S.E.2d 36, 49 (2018).

¶ 44 To be sure, we are not suggesting that it is *unreasonable* to interpret the prohibition on "Moving and Flashing Signs" as applying to a digital billboard like the one proposed by Visible. But that interpretation is not the *only* reasonable one. Visible also asserts an alternative, reasonable interpretation of this provision—one in which a digital billboard capable of changing its static image is not considered a moving or flashing sign and instead, in ordinary English usage, would be described as something else, such as a digital sign or electronic sign, or perhaps, more specifically, a digital or electronic sign capable of changing the information displayed over time.

¶ 45 When there are two or more reasonable interpretations of a law, the law is ambiguous. *JVC Enters., LLC v. City of Concord*, 376 N.C. 782, 2021-NCSC-14, ¶ 10. And, as discussed above, when that ambiguous law is a zoning regulation, we should adopt the reasonable interpretation that favors "the free use of property." *Cumulus Broad.*, 180 N.C. App. at 427, 638 S.E.2d at 15. Accordingly, we reject the Village of Clemmons's argument and hold that the trial court erred by affirming the Board of

Adjustment's determination that the proposed digital billboard was prohibited because it unambiguously fell within the definition of a "Moving and Flashing Sign" under the zoning ordinances.

¶ 46 We next turn to the provision prohibiting "Electronic message boards." Again, the phrase "Electronic message board" is not defined in the ordinance. And unlike the prohibition on "Moving and Flashing Signs," this provision contains no explanatory context. The Village of Clemmons correctly contends that Visible's proposed digital billboard is "electronic." The Village also correctly asserts that the ordinary meaning of a "message board" is a "a board or sign on which messages or notices are displayed." *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003). Combining these two definitions, the Village asserts that any electronic sign displaying any form of message—including any form of electronic billboard—unambiguously fits the definition of an "Electronic message board."

¶ 47 There are several problems with this argument. First, the ordinance contains a definition of the word "sign." That definition is essentially the same as this broad definition of message board advanced by the Village:

> **SIGN**. Any form of publicity which is visible from any public way, directing attention to an individual, business, commodity, service, activity, or product, by means of words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or trademarks, or other pictorial matter designed to convey such information . . .

UDO, § A.1-3.

¶ 48 Throughout the zoning ordinances, a board on which a message is displayed is consistently referred to as a "sign" or a "billboard." *See generally*, UDO, § A.1-3 (defining "sign"); UDO, § B.2-5.70 (prohibiting "signs" and "billboards" on transmission towers); UDO, § B.3-2.1 (providing use criteria for "off-premises signs"). Thus, if the intent of this provision was to prohibit all digital signs and billboards, one would expect the drafters to use the term "sign" or "billboard," not a separate term—"message board"—that is undefined and appears nowhere else in the ordinance.

¶ 49 Moreover, in ordinary English usage, one would not look at a looming roadside billboard and describe it as a "message board." It is a sign or a billboard. Similarly, in ordinary usage, there is a narrower category of signs that could be described as "electronic message boards"—things such as the mobile electronic signs seen near road construction, or the digital message boards often affixed beneath a business's name or logo and listing business hours or product offerings. Visible included an example of this type of electronic message board in the record. In ordinary English usage, one would not describe these types of electronic message boards as "billboards."

¶ 50 Simply put, this provision, too, has more than one reasonable interpretation.

It is ambiguous. As with the "Moving and Flashing Signs" provision, we must resolve this ambiguity in favor of the reasonable interpretation that permits the free use of property. *Cumulus Broad.*, 180 N.C. App. at 427, 638 S.E.2d at 15. Accordingly, we again reject the Village of Clemmons's argument and hold that the trial court erred by affirming the Board of Adjustment's determination that the proposed digital billboard was prohibited because it unambiguously fell within the definition of an "Electronic message board" under the zoning ordinances.

¶ 51 We conclude by noting that our holding today does not impact the authority of municipalities, through zoning ordinances, to restrict or prohibit digital billboards like the one proposed by Visible. But the drafters of zoning ordinances that restrict property rights have a responsibility to provide clear rules on which property owners can rely. This is so because zoning regulations are not intended to be a system of murky, ambiguous rules where the permitted uses of property ultimately depend on the interpretive discretion of government bureaucrats.

¶ 52 Here, for example, the zoning ordinances could include a prohibition on "digital billboards" or "electronic billboards," terms that are widely used and readily understood, or more specifically prohibit digital or electronic billboards that change the displayed information over time. Similarly, the ordinances could include within the overlay district regulations a statement that those rules supersede any other regulations otherwise applicable within the overlay district, including the sign regulations.

¶ 53 The convoluted, conflicting, ambiguous provisions at issue in this case did not do so and instead yielded competing reasonable interpretations. When that occurs, we will resolve this interpretive competition in favor of the free use of property.

Conclusion

¶ 54 We reverse the trial court's order and remand this matter for entry of an order reversing the Board of Adjustment's decision.

REVERSED AND REMANDED.

Judges DILLON and GRIFFIN concur.