



AGENDA
Ordinance Advisory Board Meeting
January 5, 2023 - 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/UCqgiipdJL0ywl-LZrcN5MpQ/featured>.

- 1. Call to Order/Roll Call**
- 2. Approval of Minutes**
 - 2.A. Consider approval of the December 15, 2022 special meeting minutes. (*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. Consider a Town Board sponsored amendment TA 22-12 to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings in addition to the Rules of Construction provisions in Section 12.1 of the Zoning Ordinance and Section 2.20 in the Subdivision Ordinance (*Jack Simoneau*)
- 5. Other Business**
 - 5.A. Take questions about table for UNC School of Government checklists (*Kayleigh Mielenz, Emily Sloop*)
 - 5.B. Discussion on Sub-Committees ()
 - 5.C. Discuss petition TA22-16, a request by the Huntersville Planning Department amending the Town Zoning Ordinance to place standards for a single multi-family home on one lot. (*Jack Simoneau*)
- 6. Adjourn**

Minutes of the Town of Huntersville Ordinance Advisory Board

The Town of Huntersville Ordinance Advisory Board met virtually at 3:30 p.m. on Thursday, December 15, 2022.

Call to Order/Roll Call

Chairman Jones called the meeting to order at 3:30 pm.

Voting Members Present: M. Jones, J. Kluttz, A. Hallman, K. Jones, F. Gammon, B. Skelly, H. Whittaker (logged on at 3:38 p.m.), and T. Finlay (logged on at 3:43 p.m.)

Voting Members Absent: T. Taylor

Non-Voting Members Present: Commissioner Munger, J. Simoneau, T. Barron, E. Sloop, and J. Glass

Non-Voting Members Absent: None

Approval of Minutes

Item 2A. Consider approval of the December 1, 2022, Regular Meeting Minutes

Motion: B. Skelly made a Motion to Approve the December 1, 2022, minutes. A. Hallman seconded the motion.

Vote: The motion passed unanimously (6-0).

Public Comments

No comments.

Action Agenda

Item 4A: Consider recommendation on petition TA22-12, a Town Board sponsored text amendment to Article 4, Urban Workplace and Shopfront Building Types to clarify how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the proposed amendment with the normal definition of commercial use, exclusions to commercial use category as outlined in Article 4. Staff reviewed local area communities and it is staff's recommendation for commercial use requirement to be at 50%. This is an increase over the current requirements, and it is Staff's opinion that it would be a disincentive to increase the first-floor commercial requirement to 75-100%.

A. Hallman commented that she would support an increased percentage requirement for commercial since developers would still have the opportunity to request that be reduced with the Town Board.

M. Jones asked Staff to confirm that definition of non-residential and commented on concerns over the clarity. After reviewing the definition M. Jones expressed concern over the use of the

word non-residential. Staff stated that the word non-residential is not new and Staff is comfortable with it.

M. Jones asked Staff if the definition should be improved with the statements added by E. Sloop that all Commercial is Non-Residential but not all Non-Residential is Commercial. Staff responded that the Board is welcome to make a recommendation of that. M. Jones followed up that he thinks the definition of Non-Residential should be more specific because in his mind he does not necessarily think Commercial.

A. Hallman asked when this will go to Public Hearing. Staff responded that Public Hearing is January 3, 2023, and a recommendation from the Ordinance Advisory Board would be preferable. The Town Board could also keep the Public Hearing open and not close it and forward it to the Planning Board, otherwise it would go to the Planning Board on January 24, 2023, and then to the Town Board for final decision on February 20, 2023.

A. Hallman followed up and said it would be nice to understand more of what the Non-Residential uses could be that are not Commercial and additional time to figure that out would be helpful.

M. Jones commented that the interpretation is also important to create a more comprehensive solution which he believes is what the Town Board was trying to address. He then stated that he has written up some recommendations to the rules of construction for the Zoning Ordinance and Subdivision Ordinance that he thinks would be in keeping with the solution that the Town Board is seeking. Staff responded that they would defer to Legal to weigh in since staffs concern is that the rules of construction amendments have not been advertised so if there is going to be discussion on amending Section 2.2 of the Subdivision Ordinance or Section 12.1 of the Zoning Ordinance, that needs to be a clear agenda item. E. Sloop responded that this is a Special Meeting, and that discussion is not on the agenda we should wait until it is properly advertised to discuss it. M. Jones commented that he brought this up at each of the previous two discussions on this item so he does not understand how this would be new or unrelated. Staff commented that it was understood M. Jones wanted to work on those sections but it was not clear that was meant to be in conjunction with TA22-12, so the sections referenced have not been advertised.

F. Gammon commented that his understanding of the Rules of Procedure was that the Board had more leniency to discuss the ordinances that may apply but he would defer to Legal.

A. Hallman said that if it cannot legally be discussed now then the Board should not spin their wheels discussing part of the problem versus the entire solution that as a Board they should be considering for clarity for all future users of the Zoning Ordinance for years to come.

F. Gammon followed up that he does not want to encumber this text amendment with discussion that has not been totally vetted and will slow down the process. It may be appropriate for discussion in Item 5A on how to improve the Zoning Ordinance.

M. Jones asked Commissioner Munger if in his opinion the proposed text amendment is a comprehensive solution that addresses the concerns expressed by the Town Board that led to the proposal of the amendment. Commissioner Munger commented that while he can see room for improvement it is a step in the right direction, and he would be open to the Ordinance Advisory Board trying to work out whatever additions may be appropriate. Another consideration is that the Town Board does review the notes forwarded from the Ordinance Advisory Board meetings and that is taken into consideration when determining how to proceed and what the final amendment should look like when the Town Board reviews it.

M. Jones then asked Commissioner Munger if he felt like conditions imposed by the Town Board that the applicant agrees to should have precedence over other aspects or everything else. Commissioner Munger stated he would defer to Legal. Staff clarified that the Board is specifically authorized in the Ordinance through conditional rezoning to modify existing codes which takes precedence.

M. Jones said he would entertain a motion to defer if the Board was with him to broaden the discussion related to this text amendment to include the aspects he has brought up.

Motion: K. Jones made a Motion to Defer TA22-12 until next regularly scheduled meeting and include aspects of rules of construction in that recommendation. A. Hallman seconded the motion to support some more thought about what non-residential but not commercial is.

F. Gammon asked Staff if their recommendation would now fall after Town Board Public Hearing. Staff responded it is possible that Town Board will decide to leave Public Hearing pending feedback from this Board. F. Gammon stated that he would not support this motion because he does not feel the adjustments can be vetted and prepared to be ready with the adjustments requested by the January meeting. He would prefer for this text amendment to continue as proposed and the additional items for discussion be heard under item 5A of the agenda or another text amendment proposal.

H. Whittaker asked what is driving the January deadline. Staff advised the legal ad and this item being heard twice by this Board have created the January meeting schedule. The Town Board does not necessarily have to close the public hearing if they choose to hold it open to hear from the Ordinance Advisory Board. Commissioner Munger commented that from the Town Board perspective if it is the wish of the Ordinance Advisory Board to have the public hearing held open until there is a recommendation from this Board that the Town Board will look favorably on that.

M. Jones asked if a special request to the Town Board can be made to hold the public hearing open. Staff said it is appropriate to make that request. Commissioner Munger commented that he will need 4 votes but he does not see that as being a huge hurdle.

Vote: The motion passed (5-3) with T. Finlay, F. Gammon, B. Skelly opposed

Staff stated they would try to work with the Town Attorney to add the rules of construction. M. Jones asked staff to include looking at the non-residential definition for clarity as well.

Item 5A: Discuss making ordinances more user-friendly

K. Mielenz, Planner I reviewed the suggestions made by the Board and how Staff has or is addressing each of these issues. She then demonstrated the newly rolled out MuniCode.

F. Gammon asked if the Ordinances in Municode reference the date that they were adopted and when text amendments were made so that users can identify which area of the ordinance may have changed and when it changed to identify if they are grandfathered in under previous Ordinances. Staff stated that we would review this and identify if it can be included.

M. Jones commented that a survey to stakeholders and the public specific to making the ordinances more user-friendly and easier for an applicant or citizen to read and interpret is specifically what he had in mind. He asked if the surveys previously conducted specifically addressed this issue. Staff responded that the latest survey was face-to-face and conducted over a year ago. It was coordinated by the Town Managers office and developers of industrial, commercial, and residential were invited to participate. It was a survey of if it is not easy to read the ordinance, do you not like a specific provision of the ordinance, do you think something should be changed as well as any other areas that the participants wanted to include. M. Jones followed up and asked if there was a summary of the comments and feedback and how were these addressed. Staff responded that there is a summary which can be provided to the Board. All items were reviewed, and some were addressed, others were not.

M. Jones asked how we would move forward addressing the list of ambiguous terms. Staff recommended that the Board identify what terms they feel are ambiguous and provide that to staff to review as a starting point for the discussion.

Item 5B: Discuss petition TA22-16, a request by the Huntersville Planning Department to amend the Town Zoning Ordinance to place standards for a single apartment building on one lot.

J. Simoneau, Planning Director reviewed our current ordinance which allows one building on one lot with no limit to the size or density of that one building. Recent state legislation changes have made it so that if the developer has two or more affordable housing units at or below 80% AMI then you cannot ask for any architectural changes. Staff is considering that smaller multi-family buildings make excellent infill development opportunities. The buffers do not currently increase based on the proposed size of the building and what type of development they are adjoining. Townhomes may be an appropriate alternate to large apartment buildings when single-family dwellings are adjacent.

Staff is recommending an amendment to move multi-family from a use permitted by right to a use permitted with conditions and create new standards specific to multi-family one building on one lot apartments to increase the buffer width based on what the adjoining use and

density is within the zoning of NR, NC, TC, and HC. Staff reviewed the proposed amendment to Article 9.64 of the Zoning Ordinance. Staff reviewed how recently approved projects could have been affected.

Staff identified that this is for discussion and staff would appreciate the feedback of the Board to craft the best ordinance possible to address an issue including if there is agreement that there is an issue which needs to be addressed.

M. Jones asked Staff how the text amendment voted on at the previous meeting related to adjoining development would affect this proposed amendment. Staff stated that they would review how the two amendments would interact and provide feedback on that at the next meeting.

Staff requested that the Board email any questions they arrive at so that staff can address that in our next consideration of this item.

Item 5C: Take questions about table for UNC School of Government checklists

Motion: T. Finlay made a Motion to Defer Item 5C and 5D to the next meeting in January 2023. H. Whittaker seconded the motion.

Vote: The motion was unanimously approved (8-0).

Item 5D: Discussion on Sub-Committees

Other Business

No other business.

Adjourn

Motion: H. Whittaker made a Motion to Adjourn. M. Jones seconded the motion.

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

Approved this ____ day of _____ 2022.

Chairman or Vice Chairman

Board Secretary

TA 22-12 – Town of Huntersville: Clarifying First Floor Residential and Commercial Area for Shopfront and Workplace Mixed-Use Buildings

PART 1: DESCRIPTION

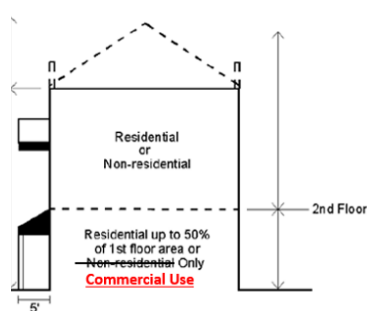
TA 22-12 is a request by the Huntersville Town Board to amend Article 4 of the Zoning Ordinance clarifying first floor residential and commercial area requirements for Shopfront and Workplace mixed-use buildings.

PART 2: BACKGROUND

First floor Shopfront and Workplace Buildings have the following standard: “Residential up to 50% of 1st floor area or Non-residential Only”.

The Town Board disagreed with staff assigning shared residential and non-residential floor area (i.e., mechanical rooms, maintenance space, etc.) as non-residential floor area. They requested an amendment indicating that only floor area dedicated 100% to non-residential uses would qualify as non-residential floor area.

Through the review process, it was determined the term “non-residential” should be replaced by the term ‘commercial’ as it better aligned with the Town Board’s intentions and is defined in the Zoning Ordinance (see below).



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by district regulations.
5. Where an existing residential building converts to a mixed-use building, at least 40% of the habitable floors area shall be residential
6. **First floor commercial area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.**

PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2040 COMMUNITY PLAN

The proposed text amendment **could be supported** by the following policies in the Huntersville 2040 Community Plan:

Policy LU-6: Support a mix of land uses in key locations.

LU 6.1: A mix of land uses is encouraged in Mixed Use Centers, Activity Centers, Employment Centers identified on the Future Land Use Map.

LU 6.2: Commercial uses are encouraged in the Town Core and as specified in adopted Small Area Plans.

LU 6.3: Small scale, neighborhood-serving commercial and office uses may be allowed in Town Core and Moderate Density areas specified on the Future Land Use map at key locations if designed in a context sensitive manner.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy EV-1: Support a balanced economy through job growth in target industry sectors.

EV 1.4: Review development standards to support business growth.

- Support efforts to improve efficiency and responsiveness of the development review process for development proposals. Regularly review the market to ensure that standards are in line with current demand.
- Prioritize changes to standards that would encourage small business growth.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy EV-2: Encourage existing economic assets and entrepreneurial business development.

EV 2.1: Promote and encourage local businesses, particularly small businesses.

EV 2.2: Leverage Downtown as a unique destination.

EV 2.3: Attract businesses to Downtown.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

Policy DT-1: Encourage future development in the Downtown area to adhere to the Regulating Plan.

DT 1.1: Encourage vertical mixed-use development with active visual engagement between the street and the ground and upper floors along Active Frontages

DT 1.2: In Tier 1 areas, encourage multistory buildings and allow for a mix of uses, including commercial, office, and residential.

Staff Comment: The proposed text amendment clarifies ambiguities for calculating residential and commercial floor area and may remove barriers to constructing mixed-use buildings.

PART 4: STAFF RECOMMENDATIONS

Approval. See Part 9 below.

PART 5: HUNTERSVILLE ORDINANCE ADVISORY BOARD

The HOAB heard the request at the November 3, December 1 and December 15, 2022, meetings. At the 12/15/22 meeting the HOAB voted 5-3 in favor to defer TA22-12 until next regularly scheduled meeting on January 5, 2023 and include aspects of rules of construction in that recommendation (Section 12.1 of the Zoning Ordinance).

PART 6: PUBLIC HEARING

January 3, 2023

PART 7: PLANNING BOARD RECOMMENDATION

To be held January 24, 2023

PART 8: ATTACHMENTS

1. Application
2. Ordinance
3. Huntersville Ordinance Advisory Board Minutes November 3, December 1 and December 15, 2022, Minutes
4. Floor Area Requirement Comparison of Nearby Cities

PART 9: STATEMENT OF CONSISTENCY

Planning Department	Planning Board	Board of Commissioners
APPROVAL: In considering the proposed amendment TA22-12, the Planning Staff recommends approval based on the amendment being consistent with LU-6, EV-1, EV-2, and DT-1 of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because the amendment clarifies first floor residential and commercial area requirements.	APPROVAL: In considering the proposed amendment TA22-12, the Planning Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)	APPROVAL: In considering the proposed amendment TA22-12, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)
	DENIAL: In considering the proposed amendment TA22-12, the Planning Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)	DENIAL: In considering the proposed amendment TA22-12, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u> of the Huntersville 2040 Community Plan. It is not reasonable and in the public interest to amend the Zoning Ordinance because.... (Explain)

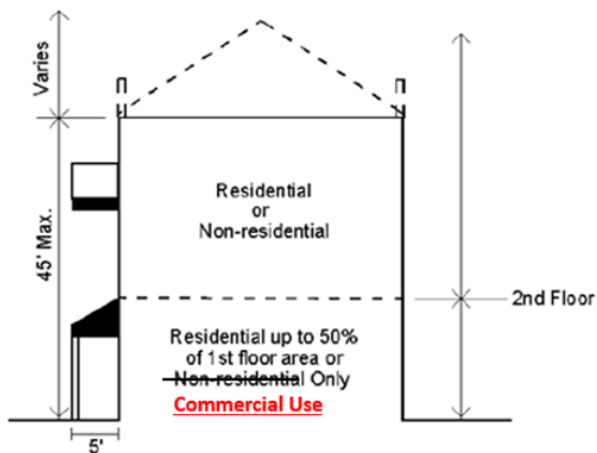
AN ORDINANCE TO AMEND ARTICLE 4, URBAN WORKPLACE AND SHOPFRONT BUILDINGS OF THE ZONING ORDINANCE TO CLARIFY THE RESIDENTIAL AND COMMERCIAL FLOOR AREA REQUIREMENTS

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 12, Definitions, of the Zoning Ordinance is hereby amended by modifying the definition of Commercial Use and adding a new definition of non-residential use as follows:

Commercial use. A category of uses that includes retail establishments, offices, professional and personal services, light manufacturing and assembly, branch banks, financial services, health care services, indoor motion picture theatres, conference centers, laboratories and associated research facilities whose products or waste products entail no special environmental handling requirements, studios, broadcast facilities (excluding towers), inns, theatres, restaurants without drive-through windows, bars, and day care facility as a principle use. Each use permitted in the commercial use category shall also meet any applicable conditions set out in Article 9, Conditions for Certain Uses. Excluded from the commercial use category are adult uses; vehicle, boat, or manufactured home sales, service, and repair; drive-through windows as a principal or accessory use; wholesale sales; heavy manufacturing; outdoor storage; **floor area that is shared with residential uses as provided in Article 4;** outside commercial kennels, and other uses that, by their nature or service characteristics are auto dependent, have potential for environment degradation, or are otherwise incompatible with nearby residential use.

Non-residential use. All uses that are not a residential use.

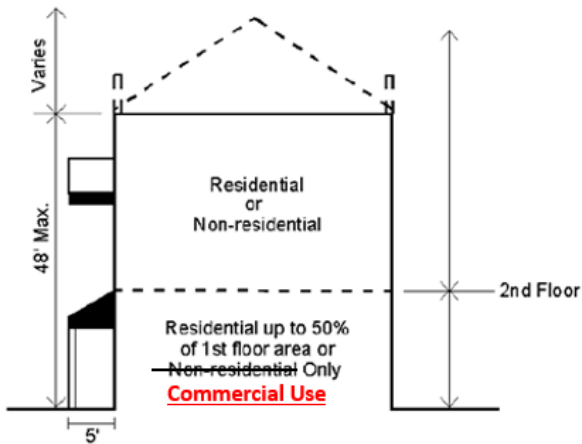
Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 4, Workplace Building, of the Zoning Ordinance is hereby amended as follows:



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by zoning district standards.
5. Hotels in the Highway Commercial (HC) zoning district may exceed the maximum building height (shown above), not to exceed six (6) stories, subject to the provisions of Article 9.45.
6. **First floor commercial floor area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.**

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 4, Shopfront Building, of the Zoning Ordinance is hereby amended as follows:

TA 22-12: Residential and Commercial Floor Area



1. Building height shall be measured as the vertical distance from the highest finished grade relative to the street frontage, up to the eaves or the highest level of a flat roof.
2. The height of parapet walls may vary depending upon the need to screen mechanical equipment.
3. Building height to the ridge may vary depending on the roof pitch.
4. Permitted uses are indicated above and are further controlled by district regulations.
5. Where an existing residential building converts to a mixed-use building, at least 40% of the habitable floors area shall be residential
6. **First floor commercial area shall include floor area used exclusively for commercial use and shall not include any floor area that contains or is shared with residential uses, such as storage, mechanical rooms, etc. Any floor area devoted partially or wholly to serving residential uses, shall be considered residential floor area.**

Section 4. This ordinance shall become effective upon adoption.

HUNTERSVILLE ORDINANCE ADVISORY BOARD: November 3, December 1, and December 15, 2022

PUBLIC HEARING DATE: January 3, 2023

PLANNING BOARD MEETING: January 24, 2023

TOWN BOARD DECISION: February 20, 2023

	Definition of Mixed-Use?	1st Floor Use Restriction for Mixed-Use Buildings in the Downtown?
Huntersville	Mixed-Use Building: The mixed-use building duplicates the shopfront building type and has at least two occupiable stories; at least 50% of the habitable area of the building shall be in residential use, the remainder shall be in commercial use.	Yes, mixed-use buildings allowed up to 50% of the 1st floor area as residential
Charlotte	Mixed-Use Development: Development of a project with a residential component listed in the Residential Uses category and a nonresidential component listed in the Commercial Uses category or the Industrial Uses category of the Use Matrix in Article 15.	No
Cornelius	Mixed-Use Building: Buildings with the ground floor occupied by commercial/retail/service uses and residential units above	Yes, the ground floor of any mixed-use building shall exclusively contain retail, service, or office uses.
Davidson	None	Yes, the 1st floor facing the primary streets of a mixed-use building (storefront building type) shall be designed to accommodate retail uses
Matthews	Mixed Use Development: A development which includes at least two of the following uses: office, institutional, civic, residential, and/or service/retail in 1 or more buildings or a combination of single and mixed use buildings in a pedestrian-oriented environment.	Yes, 1st floor of a mixed-use building in the Historic Urban Core zoning district must devote 50% of the gross floor area to "retail acitvities". The term “retail” includes the sales of merchandise and personal services, but not drive-through financial services.
Mooresville	Mixed-Use: A single structure or tract of land containing more than one type of use, where the different types of uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas.	In the Traditional Downtown zoning district, vertical mixed-use development with residential uses above ground-floor nonresidential development is encouraged but not required .
Concord	Mixed Use Building: A vertically integrated mixed-use building. The building is able to accommodate a wide variety of uses, including apartments for sale or rent, small professional offices, ground floor retail or restaurant.	Yes, the first floor (street level) of any new multi-story building in the City Center zoning district shall be devoted to retail, commercial, and service uses. Such buildings shall include said uses along not less than 50% of its street frontage.

Definition of Commercial Use

Commercial use. A category of uses that includes retail establishments, offices, professional and personal services, light manufacturing and assembly, branch banks, financial services, health care services, indoor motion picture theatres, conference centers, laboratories and associated research facilities whose products or waste products entail no special environmental handling requirements, studios, broadcast facilities (excluding towers), inns, theatres, restaurants without drive-through windows, bars, and day care facility as a principle use. Each use permitted in the commercial use category shall also meet any applicable conditions set out in Article 9, Conditions for Certain Uses. Excluded from the commercial use category are adult uses; vehicle, boat, or manufactured home sales, service, and repair; drive-through windows as a principal or accessory use; wholesale sales; heavy manufacturing; outdoor storage; **floor area that is shared with residential uses as provided in Article 4;** outside commercial kennels, and other uses that, by their nature or service characteristics are auto dependent, have potential for environment degradation, or are otherwise incompatible with nearby residential use.

HOAB November 3, 2022, Minutes

Item 4C: Consider a Town Board sponsored amendment to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the recent approved plan that identified that referencing non-residential space may not be achieving the desired results of the use of the space. The proposed amendment would adjust 'non-residential' to 'commercial' use for shopfront and workplace building types with the added wording to achieve the percentage indicated being used for commercial purposes only.

K. Jones reviewed the use of 'up to' in the proposed language and when would a developer be allowed to adjust this requirement. Staff confirmed that the proposed language would allow for the residential use to vary from 0 – 50% with the remaining square footage being used for commercial and a developer can always request a conditional rezoning that the Town Board would have to decide to grant or not grant on a variance from the standard.

K. Jones asked if 100% commercial could be proposed. Staff stated that the Board could offer that recommendation, staff would recommend keeping it as it is since there are times that commercial may not make sense on the first floor of these buildings, such as when facing a side property yard.

F. Gammon commented on approaches to the language that could create the requirement for this to be a conditional rezoning and allow for the developer to come before the Planning and Town Board to assist with avoiding further issues.

A. Hallman commented that she would like to see greater commercial percentage on the first floor in Town Center and that commercial areas that do not face the storefront may be a good opportunity for start-up businesses with a lower rent option that can be connected to larger businesses.

M. Jones commented that there seems to be two pieces to this, the ordinance, and the interpretation. Staff agreed that clarity is the goal and the proposed language is intended to achieve that. M. Jones commented that a clear and consistent method for interpretation of the Board, motions, Staff, and the Ordinances.

NOTE: NO MOTION WAS MADE AS THIS WAS A DISCUSSION ITEM.

HOAB December 1, 2022, Minutes

Item 4C: Consider a Town Board sponsored amendment to Article 4, Urban Workplace and Shopfront Building Types clarifying how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director presented the proposed amendment that would adjust 'non-residential' to 'commercial' use for shopfront and workplace building types with the added wording to achieve the percentage indicated being used for commercial purposes only. Staff reviewed research completed of a comparison of mixed-use standards in Downtown for local area municipalities.

F. Gammon referenced paragraph 5 of Article 4, Shopfront Building Types and asked about the reference to 40% habitable area requirement. Staff responded that this refers to an existing building and would be different criteria than the land development criteria being discussed.

F. Gammon shared that there is no definition for 'commercial, residential or non-residential' in the Ordinance and this could leave it open to interpretation which seems to lend to the confusion. Staff responded that the proposed amendment is to clarify the text and use and staff is comfortable with interpreting this in reviewing land development.

K. Jones commented that she would like the requirement to be 75% or greater for commercial use.

A. Hallman agreed that it should be 75% or greater for commercial use particularly because this is for Town Center, and we are focused on invigorating our Downtown and we do not have that many existing store front/shop front roads, so we need this type of requirement to attract as much commercial development as possible. She then expressed her support of definitions for words as F. Gammon stated. She agreed that the purpose of the definitions is not for staff but rather for developers who may have one use and definition of terms and may not choose to update the descriptions on their plans which can lead to lack of clarity between developers, planners, and citizens as to what the intended use is for that space. The definition and the implementation of the words would be important. Staff commented that the new software for the Ordinances will allow you to search for a word and find all references to that word which will assist with accessing existing definitions such as commercial.

F. Gammon commented that he agreed with the recommendations of 75% commercial, but he does not want to be too restrictive for a developer. He would recommend a 75% commercial, 25% residential through a modification request to be approved by the Town Board so they could view the circumstances of that development and not overregulate the developer.

Commissioner Munger agreed that the true definition of commercial would be beneficial to alleviate confusion. He then referred to the local area municipality research that was shared and commented that the wording of Concord is good phrasing. Staff agreed that presenting the definition with the proposed amendment would be beneficial. The current definition of commercial use is all encompassing.

Commissioner Munger responded that the goal is to clearly identify that a mailroom, storage room or other shared space are not what is intended. The intention is tax revenue generating space.

M. Jones requested staff bring up MuniCode and the definition for Commercial in the Zoning Ordinance.

F. Gammon recommended the implied understandings be included in the definition such as storage rooms, HVAC space when used for commercial only versus HVAC that is shared with commercial and residential. E. Sloop commented that the Ordinances currently define residential and commercial, and she would recommend the addition of non-residential to the definitions as 'everything not residential.'

M. Jones commented that the definition piece and interpreting Town Board conditions and the Ordinance in a consistent fashion is also critical, and he recommends it be wrapped into this as well.

Motion: M. Jones made a motion to call a virtual Special Meeting of the Ordinance Advisory Board on Thursday, December 15, 2022, at 3:30 p.m. to hear Items 4C, 5A, 5B & 5C from the December 1, 2022, agenda and to include an Item 5D to discuss forming sub-committees. K. Jones seconded the motion.

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

HOAB December 15, 2022, Minutes

Item 4A: Consider recommendation on petition TA22-12, a Town Board sponsored text amendment to Article 4, Urban Workplace and Shopfront Building Types to clarify how to count residential and non-residential floor areas in mixed-use buildings.

J. Simoneau, Planning Director reviewed the proposed amendment with the normal definition of commercial use, exclusions to commercial use category as outlined in Article 4. Staff reviewed local area communities and it is staff's recommendation for commercial use requirement to be at 50%. This is an increase over the current requirements, and it is Staff's opinion that it would be a disincentive to increase the first-floor commercial requirement to 75-100%.

A. Hallman commented that she would support an increased percentage requirement for commercial since developers would still have the opportunity to request that be reduced with the Town Board.

M. Jones asked Staff to confirm that definition of non-residential and commented on concerns over the clarity. Staff stated that this is not a new definition and Staff is comfortable with it.

M. Jones asked Staff if the definition should be improved with the statements added by E. Sloop that all Commercial is Non-Residential but not all Non-Residential is Commercial. Staff responded that the Board is welcome to make a recommendation of that. M. Jones followed up that he thinks the definition of Non-Residential should be more specific because in his mind he does not necessarily think Commercial.

A. Hallman asked when this will go to Public Hearing. Staff responded that Public Hearing is January 3, 2023, and a recommendation from the Ordinance Advisory Board would be preferable. The Town Board could also keep the Public Hearing open and not close it and forward it to the Planning Board, otherwise it would go to the Planning Board on January 24, 2023, and then to the Town Board for final decision on February 20, 2023.

A. Hallman followed up and said it would be nice to understand more of what the Non-Residential uses could be that are not Commercial and additional time to figure that out would be helpful.

M. Jones commented that the interpretation is also important to create a more comprehensive solution which he believes is what the Town Board was trying to address. He then stated that he has written up some recommendations to the rules of construction for the Zoning Ordinance and Subdivision Ordinance that he thinks would be in keeping with the solution that the Town Board is seeking. Staff responded that they would defer to Legal to weigh in since staff's concern is that the rules of construction amendments have not been advertised so if there is going to be discussion on amending Section 2.2 of the Subdivision Ordinance or Section 12.1 of the Zoning Ordinance, that needs to be a clear agenda item. E. Sloop responded that this is a Special Meeting, and that discussion is not on the agenda we should wait until it is properly advertised to discuss it. M. Jones commented that he brought this up at each of the previous two discussions on this item so he does not understand how this would be new or unrelated. Staff commented that it was understood M. Jones wanted to work on those sections, but it was not clear that was meant to be in conjunction with TA22-12, so the sections referenced have not been advertised.

F. Gammon commented that his understanding of the Rules of Procedure was that the Board had more leniency to discuss the ordinances that may apply but he would defer to Legal.

A. Hallman said that if it cannot legally be discussed now then the Board should not spin their wheels discussing part of the problem versus the entire solution that as a Board they should be considering for clarity for all future users of the Zoning Ordinance for years to come.

F. Gammon followed up that he does not want to encumber this text amendment with discussion that has not been totally vetted and will slow down the process. It may be appropriate for discussion in Item 5A on how to improve the Zoning Ordinance.

M. Jones asked Commissioner Munger if in his opinion the proposed text amendment is a comprehensive solution that addresses the concerns expressed by the Town Board that led to the proposal of the amendment. Commissioner Munger commented that while he can see room for improvement it is a step in the right direction, and he would be open to the Ordinance Advisory Board trying to work out whatever additions may be appropriate. Another consideration is that the Town Board does review the notes forwarded from the Ordinance Advisory Board meetings and that is taken into consideration when determining how to proceed and what the final amendment should look like when the Town Board reviews it.

M. Jones then asked Commissioner Munger if he felt like conditions imposed by the Town Board that the applicant agrees to should have precedence over other aspects or everything else. Commissioner Munger stated he would defer to Legal. Staff clarified that the Board is specifically authorized in the Ordinance through conditional rezoning to modify existing codes which takes precedence.

M. Jones said he would entertain a motion to defer if the Board was with him to broaden the discussion related to this text amendment to include the aspects he has brought up.

Motion: K. Jones made a Motion to Defer TA22-12 until next regularly scheduled meeting and include aspects of rules of construction in that recommendation. A. Hallman seconded the motion to support some more thought about what non-residential but not commercial is.

Vote: The motion passed (5-3) with T. Finlay, F. Gammon, B. Skelly opposed

Subdivision Ordinance

2.200 RULES OF CONSTRUCTION

For the purposes of these regulations, the following rules of construction apply.

1. These regulations will be construed to achieve the purposes for which they are adopted.
2. In the event of any conflict in limitations, restrictions, or standards applying to a project, the provision more consistent with the Huntersville Zoning Ordinance shall apply.
3. The words "shall", "must", and "will" are mandatory in nature, implying an obligation or duty to comply with the particular provision.
4. The word "may" is permissive in nature except when used in the negative.
5. References to "days" will always be construed to be working days, as defined in Article 12 of the Zoning Ordinance, unless the context of the language clearly indicates otherwise.

Zoning Ordinance

12.1 Rules Of Construction

For the purposes of these regulations, the following rules of construction apply.

1. These regulations will be construed to achieve the purposes for which they are adopted. Interpretations shall be guided by statements of intent.
2. In the event of any conflict in standards applying to a project, the standard more consistent with the Plan shall apply. (Move to section 10)
3. The words "shall", "must", and "will" are mandatory in nature, implying an obligation or duty to comply with the particular provision.
4. The word "may" is permissive in nature except when used in the negative.
5. The word "should", whether used in the positive or the negative, is a suggested guideline.
6. References to "days" will always be construed to be working days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.
7. For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined below. Except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.
8. Whenever a conflict exists between the text of this ordinance and any graphic representation herein, the text shall prevail. (Move to section 10)
9. Any terms considered ambiguous shall be construed in favor of the free use of real property.
10. Any conflicts shall be interpreted so as to harmonize them rather than create an irreconcilable conflict. In the event there is a conflict it shall be resolved in order of the following priority:
 - a. Development conditions imposed by the Huntersville Town Board of Commissioners will take precedence over any other requirements of development.
 - b. In the event of any conflict in standards applying to a project, the standard more consistent with the Plan shall apply
 - c. When there are two or more sections of the Ordinance that apply the more specific section controls over the more general section.
 - d. Whenever a conflict exists between the text of this ordinance and any graphic representation herein, the text shall prevail.
11. In the event of development conditions imposed by the Huntersville Town Board of Commissioners ("Board") that are considered ambiguous Town Staff will request guidance from the Board to determine the Board's intent.
12. Interpretations of the ordinance should not render any ordinance language irrelevant or superfluous

We should consider consolidating any language in the subdivision and zoning ordinances related to interpretation or rules of construction into these sections of the ordinances and incorporate interpretive principals from Visible Properties v. Village of Clemmons case.

NOTES ON RULES OF CONSTRUCTION EDITS SUGGESTED BY MATT JONES

- The Zoning Administrator (not the court) has the initial authority to interpret and enforce the Town's Zoning and Subdivision Ordinances. The text of the ordinances is controlling.
- The Town's Zoning Ordinance specifically states that terms are to be interpreted as defined in the ordinance (when a definition is provided) and by the dictionary's plain language meaning of the terms when they are undefined in the ordinance.
 - The inclusion of this language effectively reduces ambiguity of terms.
 - It would likely be prudent to add similar language to the Subdivision Ordinance.
- Moreover, there is language in the Zoning Ordinance about the text vs. graphics prevailing in instances of conflicts between the text and graphic, as well as about applying standards more consistent with the plan, which further serves to limit ambiguity and resolve conflicts.
 - The language about conflicts between text and graphics should be added to the Subdivision Ordinance if there are any graphics included.
- As noted in a blog by Professor Adam Lovelady, <https://canons.sog.unc.edu/2016/07/interpreting-zoning-ordinance/>, when interpreting the language of ordinances, there are several "rules of thumb" for interpretation.
 - The rules of thumb, as discussed in case law regarding interpretations of ordinance requirements, can help guide the process of interpreting particular ordinance language, but do NOT guide what the actual interpreted meaning of the ordinance language itself should be.
 - Importantly, as further indicated in the blog: "The job for the zoning administrator is to consider the ordinance text, use the rules of thumb, and make the best interpretation possible. From there, parties can appeal to the board of adjustment [if appeals are assigned to that board] and on to the courts if necessary."
- As noted in the above-referenced blog, the interpretation should:
 - Start with the ordinance text;
 - Consider interpretive guidance included in the ordinance text (i.e. the language in the Town's ordinances about definitions of words, precedence of text over graphic, etc.);
 - Consider the definitions provided in the ordinance thoroughly;
 - Contrast other provisions of the ordinance;
 - Use the dictionary when the term is not defined; and
 - Consider intent language
 - Even though the text itself controls, any purpose and intent language about why the text of the ordinance was adopted may give guidance for interpretation.

- However, ordinances should not codify rules of thumb and/or case law, the latter of which is fluid and subject to change.
- *Visible Properties, LLC vs. The Village of Clemmons* discussed **judicial** interpretations of ordinances as made by a **court of law**, not initial interpretations made by the Zoning Administrator.
 - The case notes that **judicial** interpretations by the court are guided by two overarching “principles”:
 - 1) that the court should strive to harmonize provisions and avoid conflicts whenever possible; and
 - 2) in favor of real use of property when there is ambiguity in a zoning regulation.
- The proposed language to be included in the ordinance from the *Visible Properties* case is broad (i.e. “any terms considered ambiguous shall be construed in favor of free use of property”; “any conflicts shall be interpreted as to harmonize them rather than create an irreconcilable conflict”; “interpretations of the ordinance shall not render any ordinance irrelevant or superfluous;”etc.).
 - Such broad language invites arguments that terms are ambiguous and/or in conflict even when they are not and may hinder the Zoning Administrator’s authority to interpret the ordinance.
 - Rules of thumb and principles of interpretation are not triggered unless there is a true conflict between the terms and, even then, they are guiding principles.
 - As discussed above, the ordinance already includes more precise language to limit ambiguity of terms and resolve conflicts.
- It is not advisable to include such broad language about ambiguity of terms in the ordinances. Should an issue related to the Zoning Administrator’s interpretation of the ordinances arise, there are appeals processes (as noted in the Lovelady blog) available and a judicial interpretation, should the issue rise to that level, may be made relying on applicable principles of interpretation.
- The language of the ordinance has the highest priority for purposes of interpretation. The other interpretative guidance included in the ordinance is meant to always be applicable vs. be part of a prioritized list of how to resolve conflicts. (i.e. the text will always take precedence when there is a conflict between text and a graphic).

- When conditions of approval are added to legislative or quasi-judicial approvals made by the Town Board via motion, it is up to the Town Board members to ensure that the specified conditions are not ambiguous and that they are legally permissible conditions.
 - The Board was given best practices to use for motion making, including having Town Legal and Planning staff review prospective conditions prior to a motion being made, but best practices are not law and should not be codified into the ordinance.
 - It should also be pointed out that interpreting the intent of a spoken motion is not the same as the Zoning Administrator's interpretation of the ordinances themselves, which is what the Rules of Construction apply to.
 - For votes that create vested development rights, the language of the motion itself is critical because asking for guidance on intent after a motion is approved does not nullify or modify a vested development right.

- A survey of other NC zoning and subdivision ordinances shows that they do not contain the language being proposed regarding judicial interpretation of ordinances:
 - Charlotte Section 2.01
https://charlottenc.gov/planning/Rezoning/Documents/Revised%20Zoning%20Ordinance/ZoningOrd_Chapter2_Rev.pdf
 - Davidson Section 1.6
<https://www.co.davidson.nc.us/DocumentCenter/View/3619/Davidson-County-Zoning-Ordinance-PDF>
 - Asheville Sections 7-2-2; 7-2-3
https://codelibrary.amlegal.com/codes/ashevillenc/latest/asheville_nc/0-0-0-3137#JD_7-2-3
 - Greensboro Sections 30-1-7; 30-1-8
<https://online.encodeplus.com/regs/greensboro-nc/doc-viewer.aspx?secid=8#secid-8>
<https://online.encodeplus.com/regs/greensboro-nc/doc-viewer.aspx?secid=8#secid-9>
 - Winston Salem Section 2.6
https://www.udoclearcode.org/_files/ugd/eea745_c44f22a3d5b74414a2a8446d04c30530.pdf
 - Raleigh Section 1.1.7
<https://user-2081353526.cld.bz/UnifiedDevelopmentOrdinance/6/>
 - Chapel Hill Section 9.2
https://library.municode.com/nc/chapel_hill/codes/code_of_ordinances?nodeId=CO_APXALOUSMA_ART9LEST_9.2COOTLA
 - Durham Section 1.7
<https://durham.municipal.codes/UDO/1.7>
 - Fayetteville Section 30-1.F
<http://online.encodeplus.com/regs/fayetteville-nc/doc-viewer.aspx?secid=9269#secid-9269>

- Wilmington Section 18.6
https://library.municode.com/nc/wilmington/codes/land_development_code?nodeId=Article%201%20-%20Purpose%20and%20Organization
 - Kannapolis Section 1.6
<https://www.kannapolisnc.gov/Portals/0/Departments/Planning/KDO%20Rewrite/Article%201%20General%20Provisions.pdf>
 - Mecklenburg County Section 2.101
<https://www.mecknc.gov/CountyManagersOffice/BOCC/Ordinances/Zoning%20Ordinance.pdf>
 - Wake County Section 1-18
https://library.municode.com/nc/wake_county/codes/unified_development_ordinance?nodeId=UNDEOR_ART1GEPR
- However, many of the jurisdictions do include language about applying the more restrictive or specific provision when there are two provisions that apply.
 - Therefore, I am not opposed to adding the following language as 12.1.9 to the Zoning Ordinance: “When two or more sections of the Zoning Ordinance apply, the more specific section controls.”

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

Ordinance terminology

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

Court's Interpretive Principles

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

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.”

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-references, 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 Symbolology. 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” in 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.

SCHOOL OF GOVERNMENT CHECKLIST

Checklist Item	Item Addressed?	How?
Ensure the local government has a reasonably maintained comprehensive or land use plan by July 1, 2022.	Yes	2040 Plan Adoption
Amend the local ordinance to comply with decriminalization of local ordinances, including decriminalization of local land use ordinances.	Yes	TA21-16
Ensure that remote meeting procedures adhere to new rules under S.L. 2021-35.	Yes	Rules of Procedures have been updated
Amend the local ordinance to strike any requirements for masonry curtain walls or masonry skirting for manufactured homes located on land leased to homeowners.	In process	TA22-13
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.	In process	TA22-07
Be aware of N.C. Department of Transportation (NCDOT) rules allowing relocation of billboards.	Yes	
Adjust policies and standards to confirm and preserve water and sewer capacity when requested by schools, including charter schools.	N/A	Board of Education requirement
For street right-of-way setbacks, update sight triangle calculations to ensure they measure from the edge of pavement or within the roadway	Yes	TA 22-03
Adjust timelines for approval of broadband development requests.	Yes	Public Works informed

SCHOOL OF GOVERNMENT CHECKLIST

Confirm that fees for small cell wireless projects conform to new statutory restrictions in S.L. 2021-180, Section 38.10.	In process	TA22-13
Consider updating any local regulations regarding voluntary agricultural districts for consistency with farm bill changes.	N/A	N/A
Revise limitations on redevelopment in water supply watershed areas.	Yes	TA21-16
Update sedimentation and erosion-control ordinances to align with new statutory limitations on fees, plan requirements, and enforcement.	Yes	Amendments approved on Oct 18, 2021 and further amendments approved on Aug 15, 2022
Incorporate limits on reinspection fees.	Yes	TA21-16
Align any building permit thresholds in ordinances to be consistent with new limits.	N/A	County issues building permits
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.	Yes	2040 plan adopted
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.).	Yes	Engineering policy was already in compliance
Note the slightly revised procedures for designating local historic landmarks.	Yes	Updated checklist that Planner uses for intake of historical designations
Consider farm use exceptions. Building inspectors should take note of the changes to the building code exclusion for farm uses, and zoning officials should	N/A	County is responsible for Building code

SCHOOL OF GOVERNMENT CHECKLIST

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.	Yes	Had discussions with County Fire Marshal
Amend development regulations to align appeals of subdivision plat decisions with the clarified statutory rules.	Yes	160D edits and TA 21-14
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).	Yes	Interlocal agreement with Mecklenburg County already in place
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.	Finance Dept. is aware of requirements	
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.	Bobby Williams/Finance Dept. is aware of requirements	
Update local notice requirements for Coastal Area Management Act (CAMA) land use plan amendments. Note that local health departments	N/A	N/A

SCHOOL OF GOVERNMENT CHECKLIST

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.	Yes	Ordinance Approved June 6. Revised Ordinance Approved August 15, 2022

Multi-Family Use on One Lot in One Apartment Building

One Building, One Lot Multi-Family Concerns

Large one building, one lot multi-family use next to lower density uses

- Concern with the density, scale, massing, setback, and buffering of the multi-family building to adjacent single-family homes.
- Scale and massing can be addressed UNLESS there are at least 2 affordable apartments below 80% AMI in the multi-family building (State Statute “Harmony” limitation).

In NR, NC, TC & HC zoning districts, the ordinance allows a multi-family use with 1 apartment building type on 1 lot but limits a **major subdivisions** to 30% attached housing. Major subdivisions have their own buffer standards that used to start at 20’ wide plus vegetation. Through the previous quasi-judicial process, the Town Board could have required a greater buffer. Now that major subdivisions are an administrative decision versus a quasi-judicial decision, text amendment TA 22-17 scheduled for Public Haring February 6, 2023, contains the following provision:

Residential	Any major residential subdivision abutting a property zoned residential or developed residential, not internal to a planned community ⁴	20 feet <u>minimum in Town Center zone when adjoining the Town Center zone and where density is less than two times greater than existing development. In all other cases 40 feet minimum is required.</u>	3 trees per 1000 sq/ft of buffer area; 25% large maturing; 25% small maturing; 25% evergreen	10 shrubs per 1000 sq/ft 100% evergreen
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Items to Consider:

- Smaller multi-family buildings such as triplexes, and quadplexes represent appropriate infill development opportunities
- Buffers from adjoining single-family do not currently increase based on apartment size (i.e., 4-unit apartment building has same buffer from adjoining single-family homes as a 250-unit apartment)

Proposed Amendment

1. Move multi-family homes from a **use permitted by right** to a **use permitted with conditions**. Create new standards specific to multi-family homes on 1 lot in 1 building where buffer width is increased based on adjoining land use and density. Two or more multi-family homes constitute a major subdivision and applicable buffers/standards will apply.

Zoning districts amendment would apply to:

- NR
- NC
- TC
- HC

**AN ORDINANCE TO AMEND ARTICLE 3 & 9 OF THE ZONING ORDINANCE TO
ESTABLISH BUFFER STANDARDS FOR A MULTI-FAMILY HOME USE IN ONE
APARTMENT BUILDING, ON ONE LOT**

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.4 of the Zoning Ordinance is hereby amended as follows:

3.2.4 NEIGHBORHOOD RESIDENTIAL DISTRICT (NR)

Intent: The Neighborhood Residential District provides for residential **infill** development around the Town Core, Activity Centers and Mixed-Use Centers and their logical extensions identified in adopted long range plans. Streets in the Neighborhood Residential District must be interconnected, according to Article 5, Streets, and Urban Open Space provided according to Article 7. A range of housing types is encouraged. Low-intensity business activity is permitted in mixed-use and commercial buildings at residential scale, according to locational criteria. The intensity to which permitted uses may be built is regulated by the building type which corresponds to the use.

a) Permitted Uses

Uses permitted by right

- bed and breakfast inns
- boarding or rooming houses for up to four roomers
- congregate housing designed within the “civic” building type
- family care home
- ~~multi-family homes~~
- single family homes

Uses permitted with conditions

- cemeteries, (9.7)
- religious institutions, (9.8)
- commercial use in a mixed-use building¹, located on an arterial or at the intersection of a local street and a larger capacity street
- commercial use, in a detached house building type, located within ¼ mile of a Town Center district and fronting a major or minor thoroughfare (Includes properties in which any portion falls within the ¼ mile boundary) (9.51)
- essential services 1 and 2, (9.14)
- government buildings up to 5000 sq. ft. of gross floor area
- neighborhood and outdoor recreation, (9.21)
- parks, (9.29)
- retirement communities (9.50)
- schools, (9.35)
- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)
- **multi-family homes (9.64)**

Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.5 of the Zoning Ordinance is hereby amended as follows:

3.2.5 NEIGHBORHOOD CENTER DISTRICT (NC)

Intent: The Neighborhood Center District is provided for the location of shops, services, small workplaces, civic and residential buildings central to a neighborhood or grouping of neighborhoods and within walking distance of dwellings. A neighborhood center shall be developed on an interconnected pattern of streets and is limited to approximately ¼ mile in radius. Uses in the neighborhood center will have a primary market area of 1 mile and buildings compatible with surrounding residences. If a neighborhood center is the focus of a planned transit stop, it should be designed to serve the neighborhood's residential base plus transit riders.

a) Permitted Uses

Uses permitted by right

- bed and breakfast inns
- boarding or rooming houses for up to six roomers
- civic, fraternal, cultural, community, or club facilities
- commercial uses
- congregate housing designed within the "civic" building type
- family care home
- indoor amusement
- indoor recreation
- ~~multi-family homes~~
- single family homes

Uses permitted with conditions

- cemeteries, (9.7)
- religious institutions, (9.8)
- commercial marinas, (9.43)
- day care center, (9.11)
- essential services 1 and 2, (9.14)
- government buildings up to 6,000 sq. ft. of first floor area neighborhood
- gasoline stations, excluding major service and repair of motor vehicles (9.22)
- parking lot as principal use (9.28)
- parks, (9.29)
- schools, (9.35)
- temporary mobile food sales (9.37)
- temporary outdoor sales of seasonal agricultural products and customary accessory products (example: farmers' markets, Christmas tree/pumpkin sales), (9.37)
- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)
- **multi-family homes (9.64)**

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.6 of the Zoning Ordinance is hereby amended as follows:

3.2.6 TOWN CENTER DISTRICT (TC)

Intent: The Town Center District provides for revitalization, reuse, and infill development in Huntersville's traditional town center. A broad array of uses is expected in a pattern which integrates shops, restaurants, services, work places, civic, educational, and religious facilities, and higher density housing in a compact, pedestrian-oriented environment. The Town Center anchors the surrounding residential neighborhoods while also serving the broader community. The district is coded to accommodate the higher overall intensity of development required to support a rail transit station. It is to be expected that the Town Center District will be expanded over time through the zoning change process to an approximate ½ mile radius to meet growth in demand for downtown facilities and services.

a) Permitted Uses

Uses permitted by right

- bed and breakfast inns
- boarding or rooming houses for up to six roomers
- civic, fraternal, cultural, community, or club facilities
- commercial uses
- congregate housing designed within the "civic" building type
- family care home
- government buildings
- hotels
- indoor amusement
- ~~multi-family homes~~
- nightclubs, music clubs, bars, and similar entertainment facilities
- single family homes

Uses permitted with conditions

- automobile and/or motorcycle sales, automobile service and repair, up to 2 acres in size, with a principal building of at least 8,000 sq. ft., all damaged vehicles and auto parts to be screened opaque (9.25)
- cemeteries, (9.7)
- religious institutions, (9.8)
- essential services 1 and 2, (9.14)
- neighborhood gasoline stations, excluding major service and repair of motor vehicles (9.22)
- parking lot as principal use (9.28)
- parks, (9.29)
- schools, (9.35)
- temporary mobile food sales (9.37)
- temporary outdoor sales of seasonal agricultural products and customary accessory products (example: farmers' markets, Christmas tree/pumpkin sales), (9.37)

- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)
- **multi-family homes (9.64)**

Section 4. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 3.2.7 of the Zoning Ordinance is hereby amended as follows:

3.2.7 HIGHWAY COMMERCIAL DISTRICT (HC)

Intent: The Highway Commercial District is established to provide primarily for auto-dependent uses in areas not amenable to easy pedestrian access and a comfortable pedestrian environment. It is expected that the Highway Commercial District will serve not only the Huntersville Community, but interstate travelers as well. Because of the scale and access requirements of uses in this category, they often cannot be compatibly integrated within the Town Center or Neighborhood Center Districts. Development at district boundaries must provide a compatible transition to uses outside the district; property boundaries adjacent to freeways or expressways will require a 50-foot foliated buffer yard; and frontages on major or minor arterials will require formal street tree planting.

a) Permitted Uses

Uses permitted by right

- amusement facilities: all indoor uses
- armories for meetings and training of military organizations
- auction sales
- boarding or rooming houses for up to six roomers
- religious institutions
- civic, fraternal, cultural, community, or club facilities
- commercial uses
- contractor offices and accessory storage yards, excluding the storage of general construction equipment and vehicles
- family care home
- government buildings
- indoor and outdoor recreation
- ~~multi-family homes~~
- nightclubs, music clubs, bars, and similar entertainment facilities
- pawnshops and second-hand shops
- single family homes
- vocational and technical schools
- wholesale sales with related office, storage and warehousing entirely within an enclosed building; truck terminals not permitted

Uses permitted with conditions

- adult establishments, (9.2)
- amusement facilities, outdoor, limited to par 3 golf courses, golf driving ranges, and archery ranges, (9.5)
- car wash, (9.6)
- commercial marinas, (9.43)
- day care center, (9.11)
- essential services 1 and 2, (9.14)
- gasoline service stations, including service and repair of motor vehicles, (9.22)
- hotels spaced 250' or more from residential or mixed-use zones, (9.45)
- parks, (9.29)
- temporary outdoor sales of seasonal agricultural products (example: Christmas tree/pumpkin sales), (9.37)
- temporary mobile food sales, (9.37)
- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)
- vehicle and boat service, rental, cleaning, mechanical repair, and body repair, (9.25; 9.26)
- **multi-family homes (9.64)**

Section 5. Be it ordained by the Board of Commissioners of the Town of Huntersville that Article 9 of the Zoning Ordinance is hereby amended as follows:

Article 9.64 – Multi-Family Homes

Multi-family homes in the NR, NC, TC and HC zones shall be subject to the following provisions:

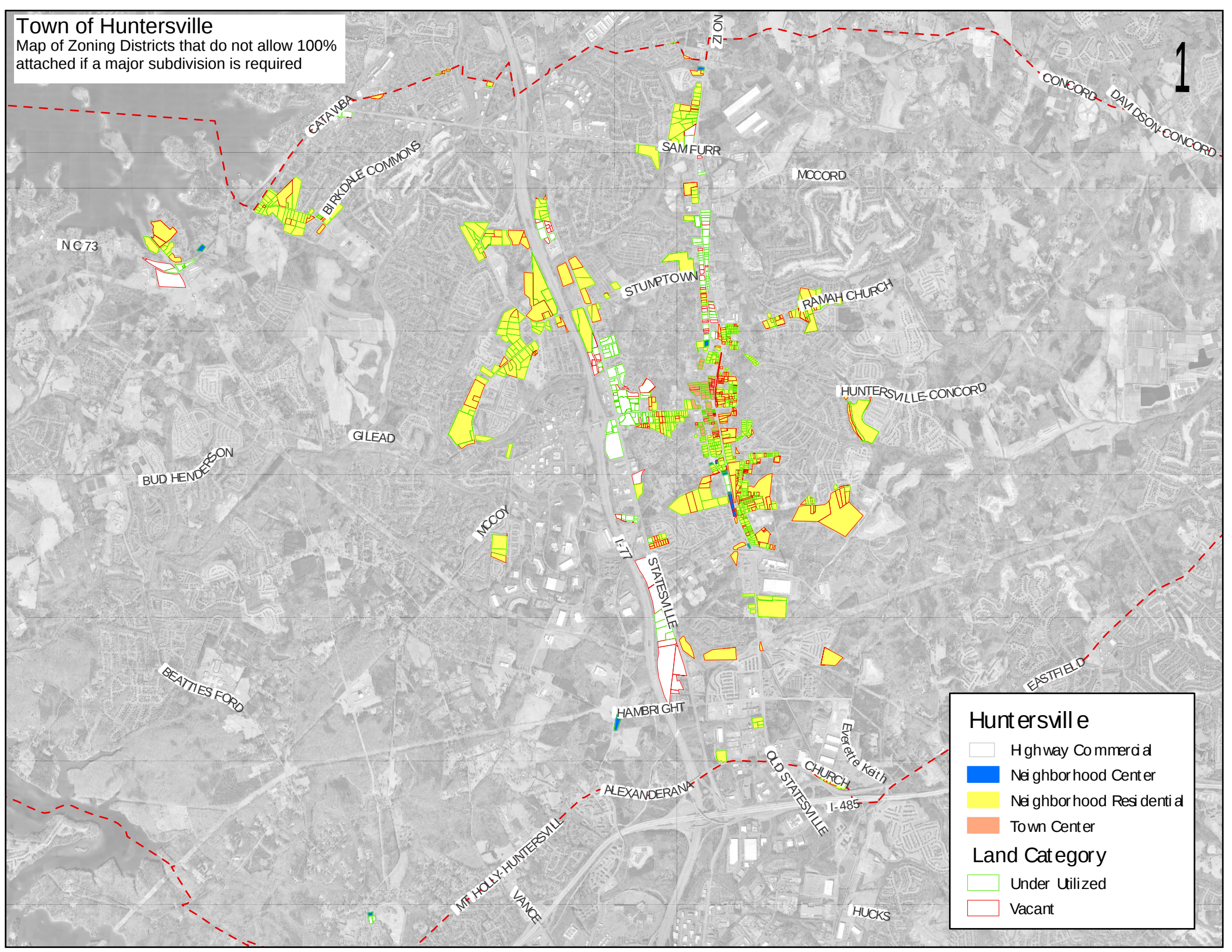
.1 One multi-family home on one lot shall be subject to the following:

a) Minimum buffer widths for adjoining property lines excluding street rights-of-way shall be as follows:

- 1. Five feet (5') minimum buffer width in any of the following circumstances: a) the apartment has four (4) dwelling units or less; b) boundaries are internal to a major subdivision containing the apartment; or c) the apartment adjoins property zoned TC, TOD R or TOD E regardless of number of units, density, or adjoining land use.**
- 2. Ten feet (10') minimum buffer width in either of the following circumstances: a) density is less than 10 units an acre regardless of the adjoining use; or b) the apartment is 10 units an acre or more and adjoins anything other than a detached house, duplex house, or attached house.**
- 3. Twenty feet (20') minimum buffer width when density is between 10 to 15 units an acre and is adjoining a detached house, duplex house, or attached house.**
- 4. Thirty feet (30') minimum buffer width when density is between 15+ to 20 units an acre and is adjoining a detached house, duplex house, or attached house.**
- 5. Forty feet (40') minimum buffer width when density exceeds 20 units an acre and is adjoining a detached house, duplex house, or attached house.**

- b) There shall be three (3) trees per 1000 square feet of buffer area with a minimum of 50% large maturing, minimum of 25% small maturing, and a minimum of 75% evergreen. Further, there shall be ten (10) shrubs per 1000 square feet of buffer area and 100% shall be evergreen.**
- .2 Two or more multi-family homes on one lot constitutes a major subdivision and shall comply with all applicable requirements, including the Multi-Building Sites approval process found in Section 6.800 of the Subdivision Ordinance.**

Town of Huntersville
Map of Zoning Districts that do not allow 100% attached if a major subdivision is required



Approved Multi-Family Use in 1 Apartment Building on 1 Lot

1. Mosaic Senior Living (approved)
9102 Beatties Ford Road
130 units, 9.85 acres (13 units/acre)



2. Norman Lofts (approved)
14801 Statesville Rd. 45 units
2 acres (22 units/acre)



3. Stumptown Apartments (under construction)
14801 Stumptown Rd
18 units, 1.07 acres (16 units/acre)



4. Bellamoore Senior Living (built)
16515 Old Statesville Rd
116 units, 5.03 acres (23 units/acre)



5. 14719 N Old Statesville Apartments (built)
8 units, .31 acres (25 units/acre)



6. Caldwell Station Senior Apartments (approved)
11130 Will Knox Road
134 units, 6.4 acres (20 units/acre)

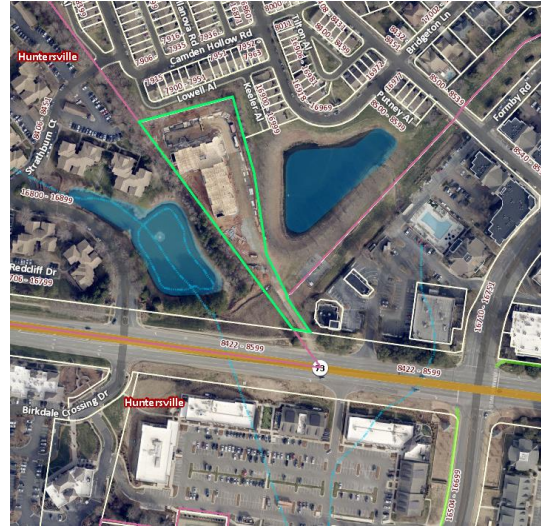


Approved Multi-Family Use in 1 Apartment Building on 1 Lot

7. Album Senior Living (under construction)
6930 Prosperity Church Rd
168 units, 5.77 acres (29 units/acre)



8. Sam Furr Senior (under construction)
8521 Sam Furr Rd.
62 units, 2.02 acres (30 units/acre)



9. Sam Furr Apartments (not approved yet)
10400 Sam Furr
244 units proposed, 10.03 acres (24 units/acre)

