



**Town of Weaverville
Board of Adjustment
Monday, March 14, 2022, 6:00pm**

Agenda

1. Call to Order – Chair Tycer Lewis
2. Approval of the Agenda
3. Approval of the Minutes from the February 14, 2022 Meeting of the Board
4. Variance Application – Unaddressed Carden Drive
 - Evidentiary Hearing Regarding a Proposed Variance for Lot #9, Carden Drive
 - Consideration of a Motion Establishing the Ruling of the Board on the Proposed Variance
5. Any other Business to Come Before the Board
 - Mountain Xpress Development Guide
 - 2021 Law Bulletin
 - GIS Update
6. Adjournment

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

The Board of Adjustment almost exclusively does its work by making **QUASI-JUDICIAL** decisions on appeals from administrative decisions, variance requests, applications for special use permits, and applications for waivers of sidewalk and vegetative screening requirements. Strict adherence to statutorily prescribed procedures before, during, and after a hearing must be followed to ensure that constitutional due process rights of all parties are preserved. **AS RIGHTS ARE DETERMINED IN THESE HEARINGS IT MAY BE ADVISABLE FOR YOU TO CONSULT WITH AN ATTORNEY ON THESE MATTERS.**

PUBLIC NOTICE OF HEARING

The Town Staff must provide notice of the hearings.

MAILED NOTICE – Notice of hearings must be mailed to the applicant, the owner of the affected property, and owners of properties abutting the property affected. Mailings are sent first class to addresses maintained by Buncombe County Tax Office and must be sent at least 10 days but not more than 25 days prior to the scheduled hearing.

POSTING OF PROPERTY – The property that is subject to an appeal, variance request, special use permit application, or other request must be prominently posted. This posting must be on the property affected or on an adjacent street or highway right of way and must also be done at least 10 days but not more than 25 days prior to the scheduled hearing.

INTRODUCTION AT HEARING

The Chairman of the Board of Adjustment or the Board's attorney will provide an introduction prior to the start of the hearing in order to make sure that those in attendance understand the matter to be heard, who is allowed to participate, and a general overview of the procedural aspects of the hearing including the burden of proof and standards the Board of Adjustment must apply.

BURDEN OF PROOF – All decisions of the Board must be based on competent, material, and substantial evidence presented during the hearing. The person appealing an administrative decision, or applying for a variance, special use permit, or sidewalk or vegetative screening/buffering waiver has the burden of providing sufficient evidence for the Board of Adjustment to conclude that the applicable standards have been met. If insufficient evidence is presented, the application must be denied or the Board of Adjustment can continue the hearing to a later date to receive additional evidence. Once sufficient evidence has been presented that the standards have been met, the applicant is entitled to approval. If conflicting evidence is presented, the Board must determine which facts it believes are correct.

STANDARDS - The Town's land development regulations provide specific standards for the issuance of variances, special use permits, sidewalk waivers, and vegetative screening/buffering waivers. See separate Section on Standards.

BOARD DISCLOSURES AND RECUSALS

The Board of Adjustment must make sure that it is an impartial decision maker and that all communications with the Board on the matter prior to the hearing have been disclosed.

RECUSAL FOR BIAS/CONFLICT OF INTEREST - Prior to the opening of the hearing, the Chairman will inquire of the Board members if there is any reason that they could not be an impartial decision maker. If any member has a fixed opinion prior to the hearing, a close familial, business or other associational relationship with an affected person, or a direct or indirect financial interest in the outcome he or she should not participate in that hearing, deliberation or vote. Alternate members of the Zoning Board of Adjustment have been appointed to fill a seat in those situations. If there are members who express bias or conflict of interest then the recusals of those members would be appropriate.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

OUTSIDE COMMUNICATION – The Chairman will also provide an opportunity for members of the Board to disclose any communication that has occurred prior to the hearing. Some incidental communication is common and hard to avoid. However, substantial communication that occurs outside of the hearing should be disclosed.

IDENTIFICATION OF PARTIES

Only those people who have a sufficient interest, or standing, in the outcome of matter before the Board are allowed to become a party and present evidence. Anyone that can show some “special damage,” or damage not common to all other persons who may oppose what is being requested, will have standing to contest the matter and will be a proper party. The following have standing:

- (1) Anyone that has an ownership interest in the property that is the subject of the hearing;
- (2) Anyone that has a leasehold interest in the property that is the subject of the hearing.
- (3) Anyone that has an interest in the property that is the subject of the hearing that has been created by an easement, restriction, or covenant.
- (4) Anyone that has an option or contract to purchase the property that is the subject of the hearing.
- (5) Anyone that is an applicant before the decision-making board.
- (6) Any other person who will suffer special damages as the result of the decision.
- (7) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual.
- (8) The Town if the Town believes that the Board of Adjustment improperly granted a variance from or made a decision that it believes is inconsistent with the proper interpretation of an ordinance adopted by Town Council.

OATH OF WITNESSES

State law requires that the Board of Adjustment’s decisions be based on testimony that is given under oath. The Chairman will ask that anyone wishing to testify at the hearing come forward to be sworn under oath before the hearing begins.

HEARING IS OPENED FOR THE PRESENTATION OF EVIDENCE

The hearing is conducted in order to determine the facts relevant to the matter before the Board of Adjustment. The decision of the Board of Adjustment must be made based on competent, material, and substantial evidence in the record of the hearing. The Board of Adjustment’s scope is limited to applying facts to the standards set forth in the land development regulations. Any testimony as to unrelated matters is inappropriate and cannot be considered.

DOCUMENTARY EVIDENCE/EXHIBITS – Examples of documents that can be entered into evidence include: the application, staff reports, supporting documentation, documents from witnesses, maps, photographs, videos, studies.

FACTUAL TESTIMONY – Testimony about facts within the personal knowledge of a witness can be fully considered by the Board of Adjustment. Factual testimony should be limited to those facts which relate to the standards. The Board of Adjustment can only rely on opinions offered by qualified experts. The testimony of lay witnesses offering only opinions or conclusions is not considered as competent evidence on which the Board can basis its determination.

OPINION TESTIMONY BY QUALIFIED EXPERTS – Opinion testimony should be provided only by properly qualified experts. North Carolina law specifically prohibits the use of non-expert testimony on how the use of a property would affect property values, the increase in vehicular traffic resulting from the proposed development would pose a danger to public safety, or any other matters that a court would require expert testimony in court. Non-expert opinions on these technical matters are not considered to be competent evidence upon which a decision can be made.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

CROSS-EXAMINATION

In order to preserve constitutional rights, parties have the right to cross-exam or question all witnesses. Board members are also free to pose questions to anyone presenting evidence.

HEARING IS CLOSED AND BOARD DELIBERATION BEGINS

At the close of the hearing the Board then takes an opportunity to review the evidence in light of the standards that the Board must apply. The Board's review should focus on contested facts. Where conflicting evidence is presented, the Board of Adjustment has the responsibility of deciding how much weight to accord each piece of evidence. The Board also has the responsibility of determining credibility of witnesses. In its discussion the Board can consider conditions that might be imposed in order to bring the project into compliance with a standard.

VOTING

For most matters coming before the Board of Adjustment a simple majority vote is all that is needed. For variance applications, however, North Carolina law requires a super majority of at least 4/5.

WRITTEN DECISIONS

The Board's decision must be reduced to writing; however, this is usually done at a subsequent meeting. Prior to that it is permissible to issue a temporary order consistent with the Board's deliberations and vote. The written decision must determine any contested facts and apply the facts to the applicable standards. Staff drafts a written decision and presents it to the Board at the Board's next meeting for consideration and adoption.

APPEALS

Anyone "aggrieved" by a decision of the Board of Adjustment can appeal a decision by filing a petition for writ of certiorari with the Buncombe County Superior Court within 30 days of the mailing of the written decision or the filing of that decision with the Board's clerk or secretary, which is later. It is important to remember that the time is not measured from the date of the decision, but from the mailing of the written decision. It is also important to note that appeals are not heard by Town Council.

OVERVIEW OF BOARD OF ADJUSTMENT MATTERS – PROVIDED AS INFORMATION ONLY AND NOT AS LEGAL ADVICE

STANDARDS

The standards as adopted by the Town Council must be set forth in an unambiguous manner so that the Board of Adjustment can apply those standards to the facts of a particular case. This doesn't mean that the standards must all be objective standards; subjective standards (such as "general welfare" and "hardship") are permissible.

STANDARDS FOR SPECIAL USE PERMITS

- (1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- (2) The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood.
- (3) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (4) The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or with the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.
- (5) Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (7) The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the board of adjustment.

STANDARDS FOR VARIANCES

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting the variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation such that public safety is secured and substantial justice is achieved.
- (5) The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.
- (6) The variance is not a request to permit a prohibited sign.

Standards and limitations on **SIDEWALK REQUIREMENT WAIVERS** and **VEGETATIVE SCREENING/BUFFERING WAIVERS** are available upon request.

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

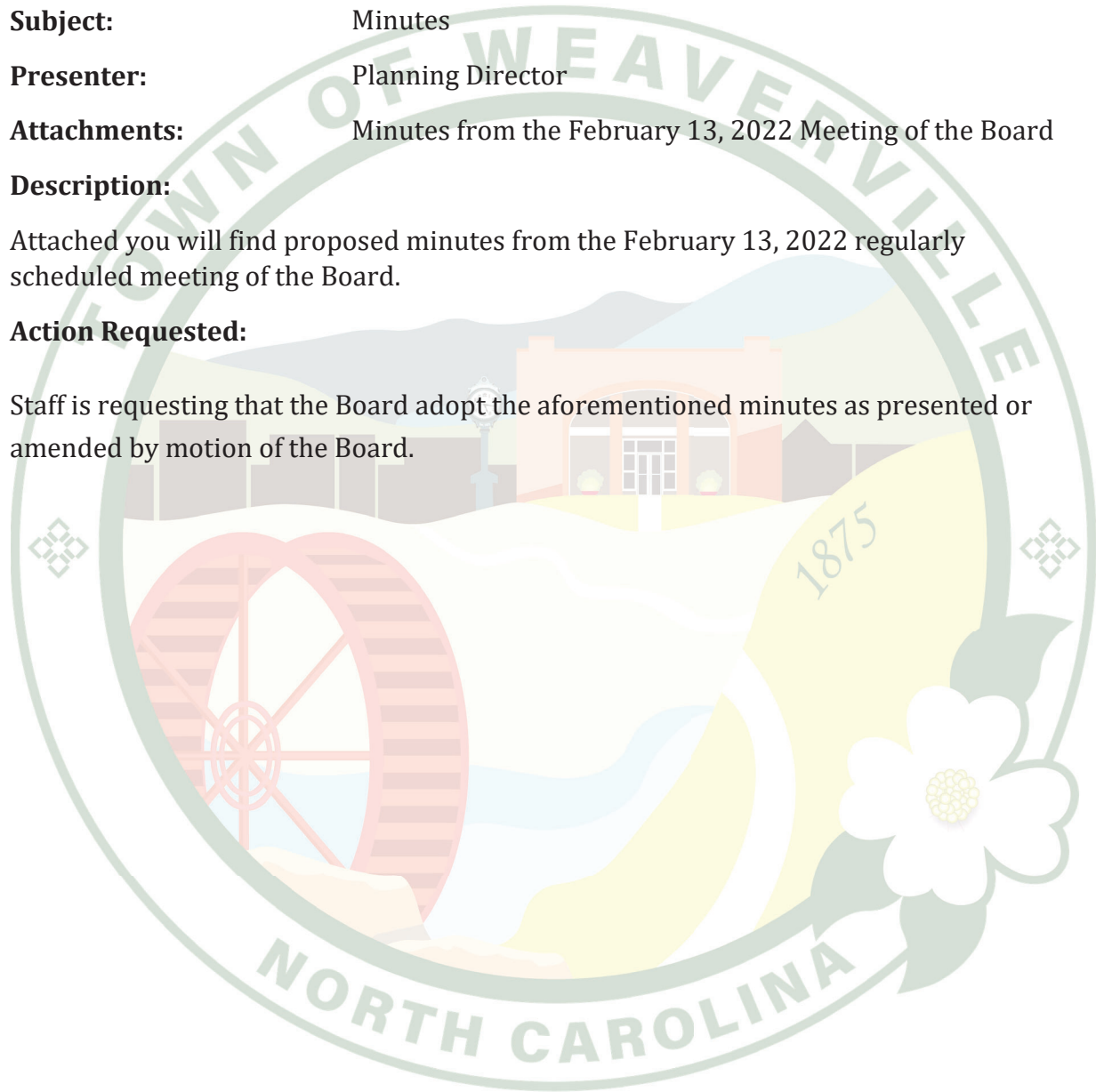
Date of Meeting: Monday, March 14, 2022
Subject: Minutes
Presenter: Planning Director
Attachments: Minutes from the February 13, 2022 Meeting of the Board

Description:

Attached you will find proposed minutes from the February 13, 2022 regularly scheduled meeting of the Board.

Action Requested:

Staff is requesting that the Board adopt the aforementioned minutes as presented or amended by motion of the Board.



Town of Weaverville
Board of Adjustment
Minutes – Monday, February 13, 2022

The Board of Adjustment of the Town of Weaverville met for a regularly scheduled monthly meeting at 6:00pm on Tuesday, December 13, 2021 as a remote electronic meeting via Zoom.

Present: Chair Tycer Lewis, Board Members Peter McGuire and Roger Parkin, Alternate Members Caleb Fieser and Larry Murray, Town Attorney Jennifer Jackson and Planning Director James Eller. Vice Chair Cindy Wright and Regular Member Paul Clauhs were absent.

1. Call to Order

Chair Tycer Lewis called the meeting to order at 6:00 pm.

Noting the absence of two regular Board Members Mr. Lewis recognized Mr. Fieser and Mr. Murray as regular voting members of the Board for the night's proceedings.

2. Approval of the Agenda

Mr. McGuire motioned to approve the agenda as presented. Mr. Parkin seconded and via a roll call vote all voted unanimously in favor of the motion.

3. Approval of the Minutes from the December 13, 2021 Meeting of the Board

Mr. Murray motioned to approve the minutes as presented. Mr. McGuire seconded and via a roll call vote all voted unanimously in favor of the motion.

4. Board Training Materials

Mr. Eller noted that the purpose of the present agenda item was to serve as an orientation for new members Mr. Fieser and Mr. Murray as well as a refresher on quasi-judicial matters for other board members.

Ms. Jackson presented information to the Board related to an overview of quasi-judicial procedures and jurisdiction and standards for Board of Adjustment matters. Such information included the jurisdiction, standards and question for deliberation on each of the following items: appeals of administrative decisions, special use permits and amendments thereto, variances, sidewalk waivers, and vegetative buffer waivers.

5. Any Other Business

No further business was discussed.

6. Adjournment.

Mr. Murray motioned to adjourn the meeting. Mr. Parkin seconded and via a roll call vote all voted unanimously in favor of the motion. Meeting adjourned.

Tycer Lewis, Chair
Board of Adjustment

ATTEST:

James W. Eller
Planning Director / Town Clerk

TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, March 14, 2022
Subject: Evidentiary Public Hearing – Variance Request
Presenter: Planning Director / Applicant
Attachments: Public Notice; Staff Report; Variance Application and Supporting Documents; Affidavit of Mailing and Posting

Description:

INTRODUCTION: Marie Marcelin & Jeffrey Chapman are the owners of property bearing the Buncombe County Parcel Identification Number of 9752-49-9087 which is zoned R-2. The applicant has applied for a variance from the front yard setback.

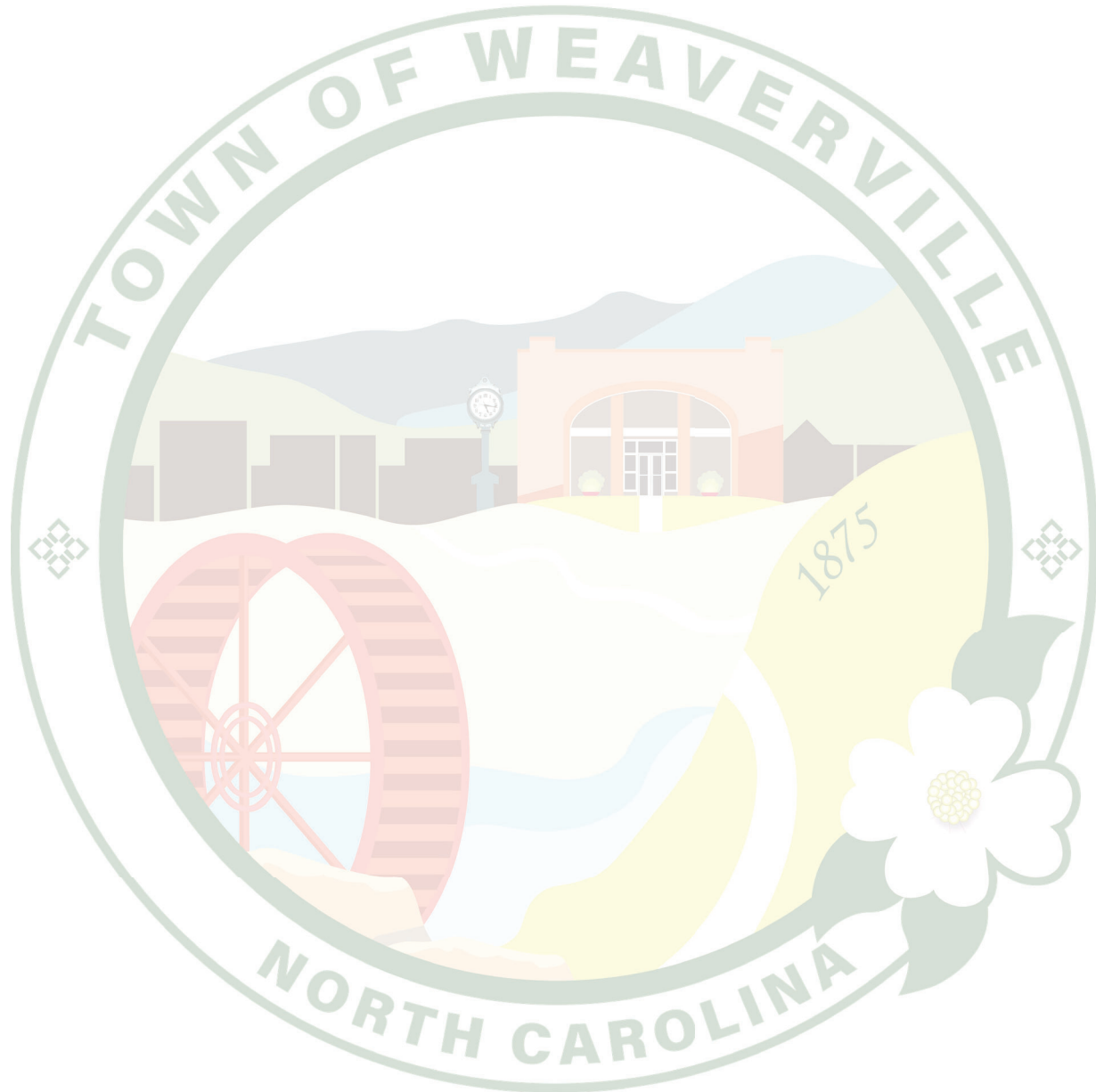
JURISDICTION: Code Sec. 20-3108(d) authorizes the BOA to grant variances when hardships would result from carrying out the strict letter of the terms of the land development regulations. Variances require a 4/5 vote of the board.

STANDARDS FOR VARIANCES:

1. Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting the variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation such that public safety is secured and substantial justice is achieved.
5. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.

6. The variance is not a request to permit a prohibited sign.

QUESTION FOR DELIBERATION: Does the record include competent, material, and substantial evidence that the variance requested by the property owner meets the standards and should therefore be granted?



NOTICE OF PUBLIC EVIDENTIARY HEARING

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Evidentiary Hearing following quasi-judicial procedures on Monday, March 14, 2022 at 6:00p.m. This meeting will occur within Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a Variance related to the front yard setbacks established by the R-2 Zoning District for a property bearing Buncombe County PIN# 9752-49-9087, unaddressed Carden Drive, Weaverville, NC.

If you would like additional information or to review the content related to the Public Evidentiary Hearing you may contact Planning Director and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org.

Publication Dates: 3/3/20 and 3/10/20

Town of Weaverville, North Carolina

Staff Report: Proposed Variance

at Lot #9, Fox Lair Crossing

Prepared March, 2022

Sources: Town of Weaverville Code of Ordinances, Fox Lair Crossing Plat: Book 102 / Page 58

Introduction to the Property

The subject parcel, an unaddressed property on Carden Drive, consists of .62 acres as shown on Buncombe County tax records. Carden Drive is bisected by Camsyn Drive which leads to Pink Fox Cove Road. The property is also found in close proximity to the Reems Creek Golf Course and community which can be seen to the south on the following map.



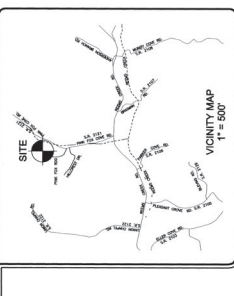
Question of Jurisdiction

Section 20-3108 tasks the Board of Adjustment to consider requests for variances when unnecessary hardship would result from carrying out the strict letter of a zoning regulation. Additionally the Board of adjustment shall vary any of the provisions of the zoning regulations when, based on competent, material and substantial evidence, it finds the standards applicable to a variance are met.

Based upon the aforementioned variables, it is the belief and understanding of staff that the Board of Adjustment is duly authorized to consider a variance application for this property.

Staff Opinion

Staff has reviewed and confirms each statement made by the applicant in Section D. Variance Burden of Proof of the variance application. As represented by the correspondence between Jason Gilliland, the primary contact of the property owner and applicant, and Buncombe County Stormwater Administrator Victoria Hoyland we are experiencing a unique scenario which could be considered peculiar to the subject property. In short, the recorded plat for the property, and subdivision in which the property resides, was recorded prior to the adoption of the Buncombe County Stormwater Ordinance, which the County administers within the corporate limits of the Town of Weaverville. Said ordinance dictates a 25 foot buffer, rather than the 10 foot buffer, which was in place at the time of plat recordation, thus reducing the buildable area on the lot as the buffer traverses the property.



OWNER/DEVELOPER: WEST COAST P.O. BOX 40324 TAMPA FLORIDA 33684 WILLIAM MARTINEZ (PRESIDENT)

FOX LAIR CROSSING SUBDIVISION PHASE 1 SHEET 1 OF 2 BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 1345 PAGE 738 REEMS CREEK TOWNSHIP - TOWN OF WEAVERVILLE BUNCOMBE COUNTY - NORTH CAROLINA

WMM WASHINGTON & MARTINEZ ARCHITECTS, INC. 1000 W. WASHINGTON ST. SUITE 1000 RALEIGH, NC 27601

DRAWING NO. 2-2-2006-01 DATE: FEBRUARY 14, 2006 SCALE: 1" = 50'

CALLS ALONG MARGIN OF NEW ROAD RIGHT OF WAYS

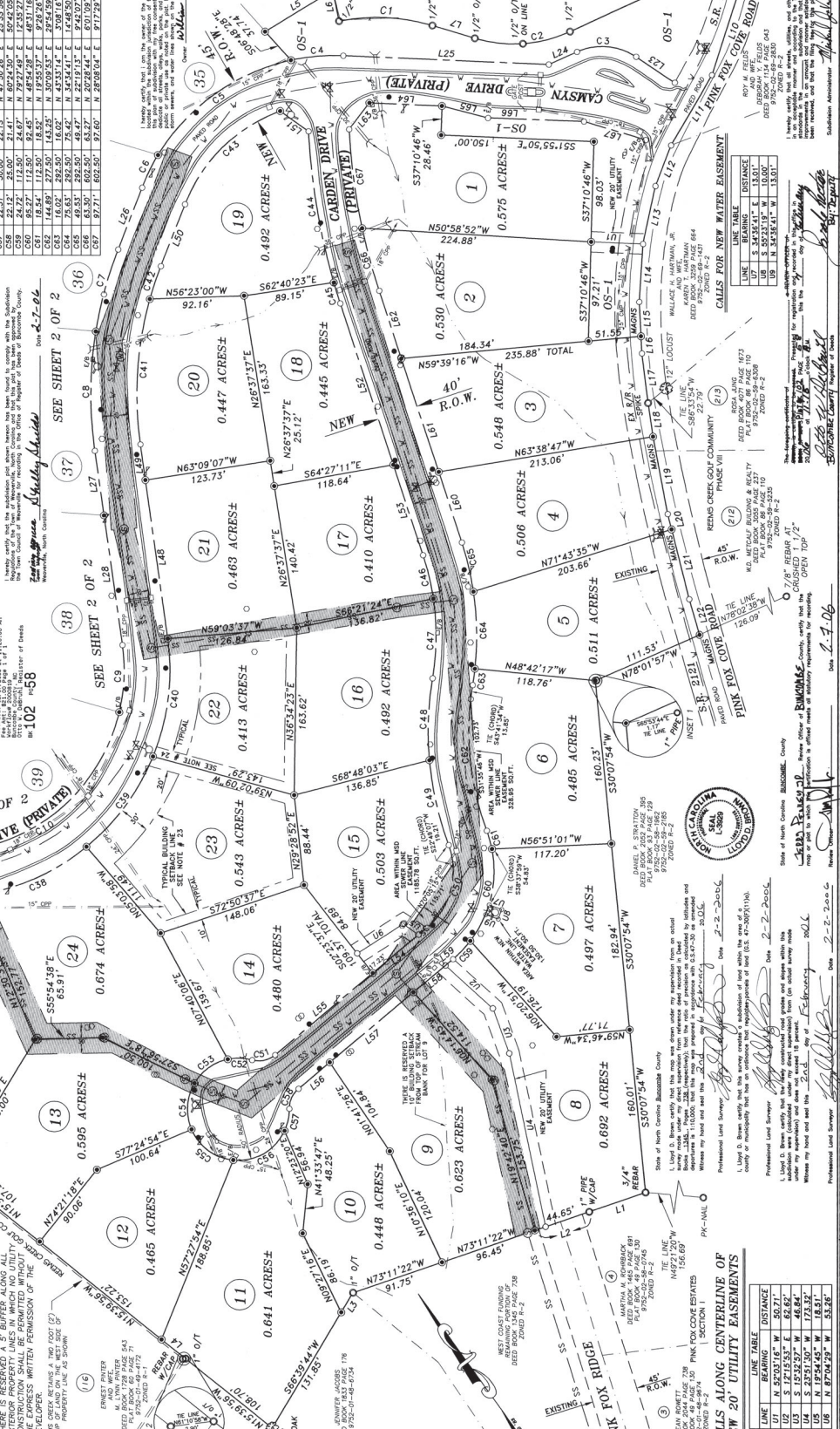
Table with columns: LINE, BEARING, DISTANCE, CURVE LENGTH, RADIUS, CHORD, DELTA. Lists survey data for lines 124 through 137.

Table with columns: LINE, BEARING, DISTANCE, CURVE LENGTH, RADIUS, CHORD, DELTA. Lists survey data for lines 138 through 151.

Table with columns: LINE, BEARING, DISTANCE, CURVE LENGTH, RADIUS, CHORD, DELTA. Lists survey data for lines 152 through 165.

Table with columns: LINE, BEARING, DISTANCE, CURVE LENGTH, RADIUS, CHORD, DELTA. Lists survey data for lines 166 through 179.

Table with columns: LINE, BEARING, DISTANCE, CURVE LENGTH, RADIUS, CHORD, DELTA. Lists survey data for lines 180 through 193.



NOTES: 1. ALL AREAS INCLUDE ANY AND ALL PORTIONS OF PROPERTY UNDER RIGHTS OF WAY AND OR EASEMENTS EITHER ACQUIRED OR CLAIMED. 2. AREAS DETERMINED BY COORDINATE METHOD. 3. THE CURRENT OWNER OF RECORD IS WEST COAST FUNDING AS PER DEED BOOK 1345 PAGE 738. 4. RECORD REFERENCE: P.B. 106 PG. 49 - P. 20 PG. 7 - D.B. 1345 PG. 738. 5. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 6. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 7. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 8. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 9. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 10. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 11. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 12. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 13. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 14. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 15. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 16. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 17. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 18. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 19. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 20. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 21. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 22. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 23. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 24. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED. 25. THE DISTANCES ON THIS MAP ARE UNADJUSTED HORIZONTAL GROUND MEASUREMENTS UNLESS OTHERWISE NOTED.

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee: \$250.00

General Notes:

- Applications for a variance are required to be submitted at least three weeks in advance of the next scheduled meeting of the Zoning Board of Adjustment to afford sufficient time for the legal advertising of the evidentiary hearing.
- Fees associated with the application cover the cost of legal advertising of the evidentiary hearing and are nonrefundable once submitted.
- Subsequent permit fees may be applicable dependent upon the type and scope of construction.
- The Zoning Board of Adjustment follows a quasi-judicial process when making a determination on an application for a variance. Strict adherence to statutorily prescribed procedures before, during and after a hearing must be followed to ensure that constitutional due process rights of all parties are preserved.
- A document providing an overview of Zoning Board of Adjustment matters can be furnished by staff at the request of the applicant.
- Each item listed in subsections A-F listed below must be addressed in order for an application to become complete and eligible for review by the Zoning Board of Adjustment.

A. Property Information

Address of Subject Property: **99999 Carden Drive Weaverville, NC 28787**
PIN(s) of Subject Property: **9752-49-9087**

B. Contact Information

Owner's Name: **Marie Carmelle Marcelin & Jeffrey Chapman**
Mailing Address: **2728 Misty Oaks Circle Royal Palm Beach, FL 33411**
Telephone #: **561-755-9852** Email: **superjchap@aol.com**

Primary Contact if Other Than Owner and Authorization to Represent
Owner: **Jason Gilliland, PLA (Site Design Studio, PLLC)**
Mailing Address: **10-D South Main Street Weaverville, NC 28787**
Telephone #: **828-545-5989** Email: **jason@sds-la.com**

C. Type of Submission

Describe the Variance
Requested: **Reduction of 10' to the required 30' front yard setback per underlying R-2 Zoning District**

Provision of Ordinance Relevant to Variance Application Including Section Title, Section Number, Subsection Number or
Letter: **Section 20-3206, Table of Dimensional Requirements**

TOWN OF WEAVERVILLE APPLICATION FOR A VARIANCE

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002 --- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee: \$250.00

D. Variance Burden of Proof

The Zoning Board of Adjustment is authorized to grant a variance when unnecessary hardships would result from carrying out the strict letter of the terms of Chapter 20 of the Code of Ordinances upon a showing of all of the following criteria. The burden of proof falls upon the applicant for each of the six standards listed below. Following each standard please indicate the facts you intend to demonstrate and the arguments you intend to make in support of the variance application. You may attach a separate page if necessary.

a. Unnecessary hardship would result from the strict application of this chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

In the absence of the variance, no reasonable use can be made of the property as the existing creek bisecting the parcel drastically reduces adequate area to construct a single family home.

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The hardship results from existing creek bisecting the parcel per 2006 Plat recorded prior to Buncombe County adopting the Stormwaater Ordinance, requiring a 25' trout buffer and standard erosion control buffers.

c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

The property owner has not taken any action that has caused or aggravated the hardship.

d. The requested variance is consistent with the spirit, purpose, and intent of this chapter such that public safety is secured and substantial justice is achieved.

The requested variance will allow the homeowner to make a significant investment in the neighborhood. Adequate distance (30+ feet) will be provided from existing street to structure for vehicular use / parking.

e. The variance is not a request to permit a use of land, building or structure which is not permitted in the zoning district in which the property is located.

The variance is not a request to permit a use which is not permissible within the R-2 Zoning District.

f. The variance is not a request to permit a prohibited sign.

The variance is not a request to permit a prohibited sign.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

**TOWN OF WEAVERVILLE APPLICATION FOR
A VARIANCE**

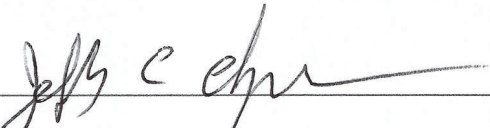
Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC 28787
(828) 484-7002 --- fax (828) 645-4776 --- jeller@weaverville.org
Application Fee: \$250.00

E. List of Supporting Documents

Please provide an inventory of additional documentation submitted to the Board in support of the application. Such documentation should include a site plan with such information as the zoning administrator determines as needed for a full review of the application: Sheet L100 – Fox Lair Crossings Lot 9 Site Plan Front Setback Variance Request
Buncombe County e-mail correspondence dated 1-5-22 verifying required creek setbacks

F. Certification

*I hereby certify that the information contained on this application is accurate to the best of my knowledge.

Signature of Owner:  Date: 02-21-2022

Please indicate on the following line how you wish to receive a copy of the written order establishing a decision related to this application.

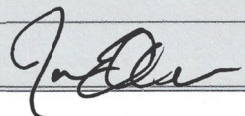
EMAIL - SUPERJCHAP@AOL.COM

OFFICE USE ONLY

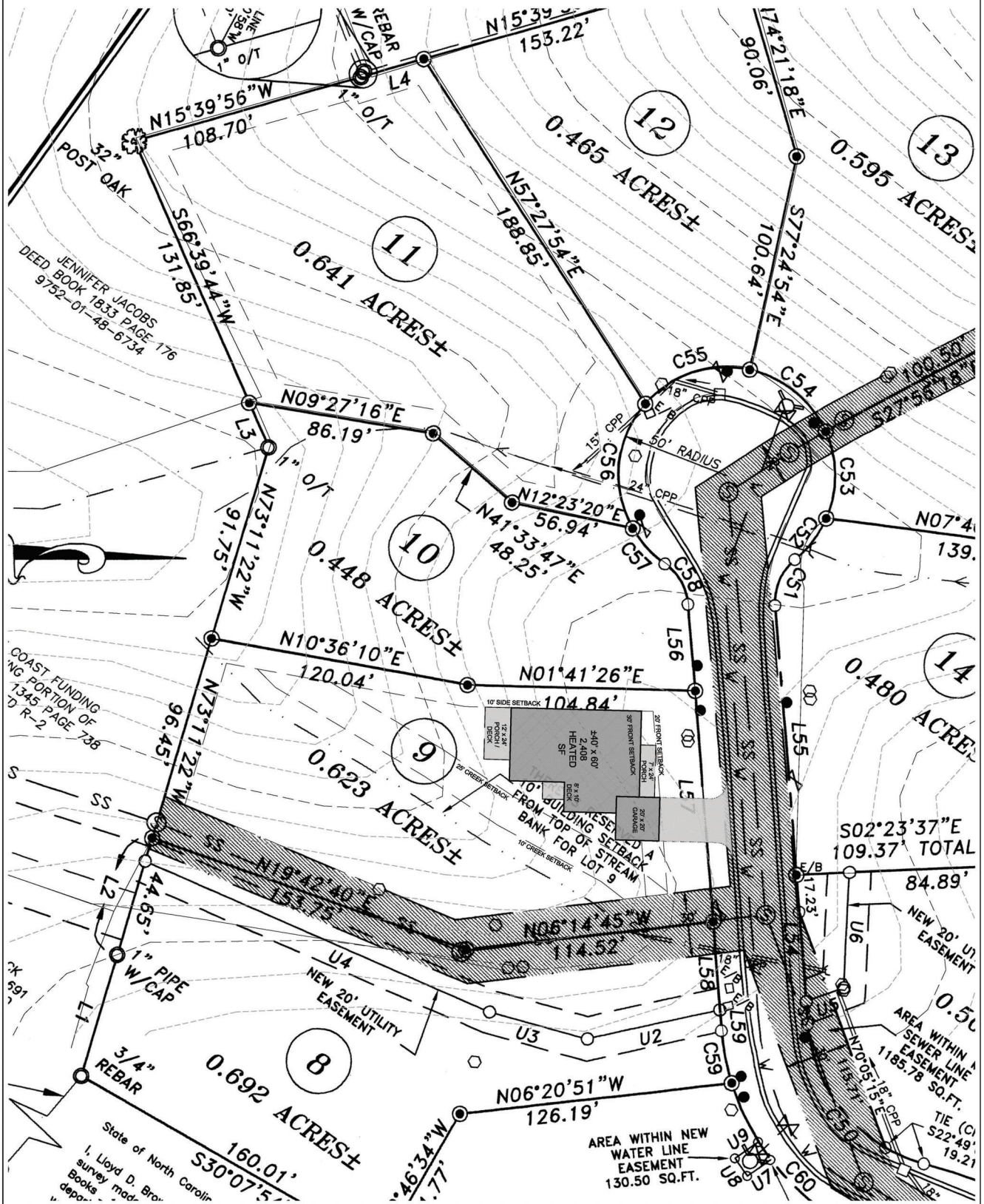
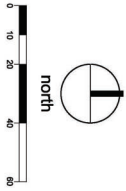
Date Received: February 21, 2022
Date of Public Hearing: March 14, 2022

Staff
Comments: Staff has reviewed and confirmed each statement made by the applicant.

Fee: \$250 Date: _____
Decision: _____ Date: _____
Approved with
Conditions: _____

Signature of Zoning Administrator: 





SHEET NUMBER
L100

PROJECT TITLE
 LOT 9 SITE PLAN
 FRONT SETBACK
 VARIANCE
 REQUEST

DATE: DECEMBER 8, 2021
 DESIGNED BY: JMG
 CHECKED BY: JMG
 SCALE: 1" = 20'
 PROJECT #: 21-198
 REVISIONS:
 DECEMBER 10, 2021
 FEBRUARY 21, 2022

FOX LAIR CROSSINGS - LOT 9
 99999 CARDEN DRIVE
 WEAVERVILLE, NORTH CAROLINA



Jason Gilliland

From: Victoria Hoyland <Victoria.Hoyland@buncombecounty.org>
Sent: Wednesday, January 05, 2022 3:37 PM
To: Jason Gilliland
Cc: 'Chip Knight'; superjchap@aol.com
Subject: RE: Lot 9 in Fox Lair Crossings - Parcel Pin # 9752-49-9087

Jason,

As you noted, this plat was recorded prior to the adoption of the stormwater ordinance in 2006. I don't have any evidence of a stormwater permit for this subdivision, so the stormwater buffers would not apply. Similarly, it is not in the watershed, so watershed buffers do not apply. It does appear, however, that this lot drains to a designated trout stream, so the 25' trout buffer (and standard erosion control buffers) would apply. It is also worth noting that this lot is within the Town of Weaverville, so it is possible that they may have requirements that we do not enforce.

Thanks,
Victoria



Victoria Hoyland, PE

She/Her

Buncombe County Planning
Stormwater Administrator

(828) 250-4854

46 Valley Street, Asheville, NC 28801

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From: Jason Gilliland <jason@sds-la.com>
Sent: Tuesday, December 14, 2021 11:03 AM
To: Victoria Hoyland <Victoria.Hoyland@buncombecounty.org>
Cc: 'Chip Knight' <cknight7882@gmail.com>; superjchap@aol.com
Subject: Lot 9 in Fox Lair Crossings - Parcel Pin # 9752-49-9087
Importance: High

Victoria,

Per my voice message, attached please find the Plat associated with Lot 9 (Parcel Pin # 9752-49-9087). My clients are in due diligence and we wanted to get clarification / feedback regarding the reservation of the 10' creek setback on this lot referenced on the plat. Note 22 on the plat also references that all other lots had to adhere to the 25' creek setback (now 30') but Lot 9 had a reservation of 10'. This was back in 2006 and I'm not confident that would still be the case.

Any assistance on this matter would be greatly appreciated.

Regards,

Jason T. Gilliland, RLA
jason@sds-la.com

Mobile: 828.545.5989

**TOWN OF WEAVERVILLE
REGARDING THE MATTER OF:**


Variance – Public Evidentiary Hearing
Unaddressed Carden Drive, PIN: 9752-49-9087

AFFIDAVIT OF MAILING AND POSTING

Being first duly sworn, I, James W. Eller, do hereby swear or affirm that on the 22nd day of February, 2022, I:


1. Mailed the attached Notice of Public Hearing, attached as Exhibit A, to all of the persons listed on the attached Exhibit B and that said mailing was accomplished by putting the Notice in envelopes, with postage pre-paid, addressed to all persons shown and at the addresses reflected on the attached Exhibit B, and that said envelopes were deposited in a U.S. Mail Box under the exclusive control of the U.S. Postal Service; and
2. Posted the attached Notice of Public Hearing Sign(s), Exhibit C, at the locations shown on Exhibit C and that a Notice of Public Hearing, Exhibit A, was affixed to the reverse side of same.

This the 22 day of February, 2022.



James W. Eller

Sworn to and subscribed before me
this 22 day of Feb, 2022



Notary Public

My Commission Expires: 3/21/2026

[Notary Seal]

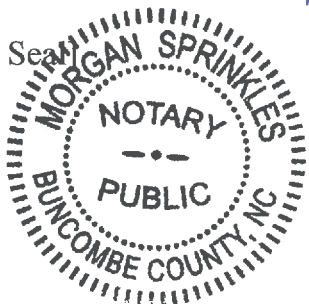


Exhibit A

NOTICE OF PUBLIC EVIDENTIARY HEARING

Public Notice is hereby given that the Town of Weaverville Board of Adjustment will hold a Public Evidentiary Hearing following quasi-judicial procedures on Monday, March 14, 2022 at 6:00p.m. This meeting will occur within Council Chambers at Town Hall located at 30 South Main Street, Weaverville, NC to consider the following item:

An application for a Variance related to the front yard setbacks established by the R-2 Zoning District for a property bearing Buncombe County PIN# 9752-49-9087, unaddressed Carden Drive, Weaverville, NC.

If you would like additional information or to review the content related to the Public Evidentiary Hearing you may contact Planning Director and Deputy Town Clerk James Eller at 828-484-7002 or jeller@weavervillenc.org.

Publication Dates: 3/3/20 and 3/10/20

Exhibit B

OWNER	ADDRESS	CITYNAME	STATE	ZIPCODE
LYCAN GEORGE C	8 BALLANTREE DR	ASHEVILLE	NC	28803
MARTINEZ RICARDO;PUTNAM ELIZABETH	PO BOX 8117	ASHEVILLE	NC	28814
CHAPMAN JEFFREY CREIGHTON;MARCELIN MARIECARMELLE	2728 MISTY OAKS CIR	ROYAL PALM BEACH	FL	33411
CORTE FABRIZIO;CORTE LAURA A	47 CARDEN DR	WEAVERVILLE	NC	28787
SHREVE AMANDA WILKINS	7 PINK FOX RDG	WEAVERVILLE	NC	28787
COLLIERS AVENUE PROPERTIES LLC	ATTN PROPERTY TAX DEPT 332 MILITARY CUTOFF RD	WILMINGTON	NC	28405
BUZZANELL CHARLES A	22 JEFF DR	ASHEVILLE	NC	28806
FOX LAIR CROSSINGS HOMEOWNERS ASSOC	19311 GOPHERTRAIL PL	LAND O LAKES	FL	34638

Exhibit C



TOWN OF WEAVERVILLE
BOARD OF ADJUSTMENT AGENDA ITEM

Date of Meeting: Monday, March 14, 2022
Subject: Any Other Business
Presenter: Planning Director
Attachments: Mountain Xpress Development Guide, 2021 Law Bulliten

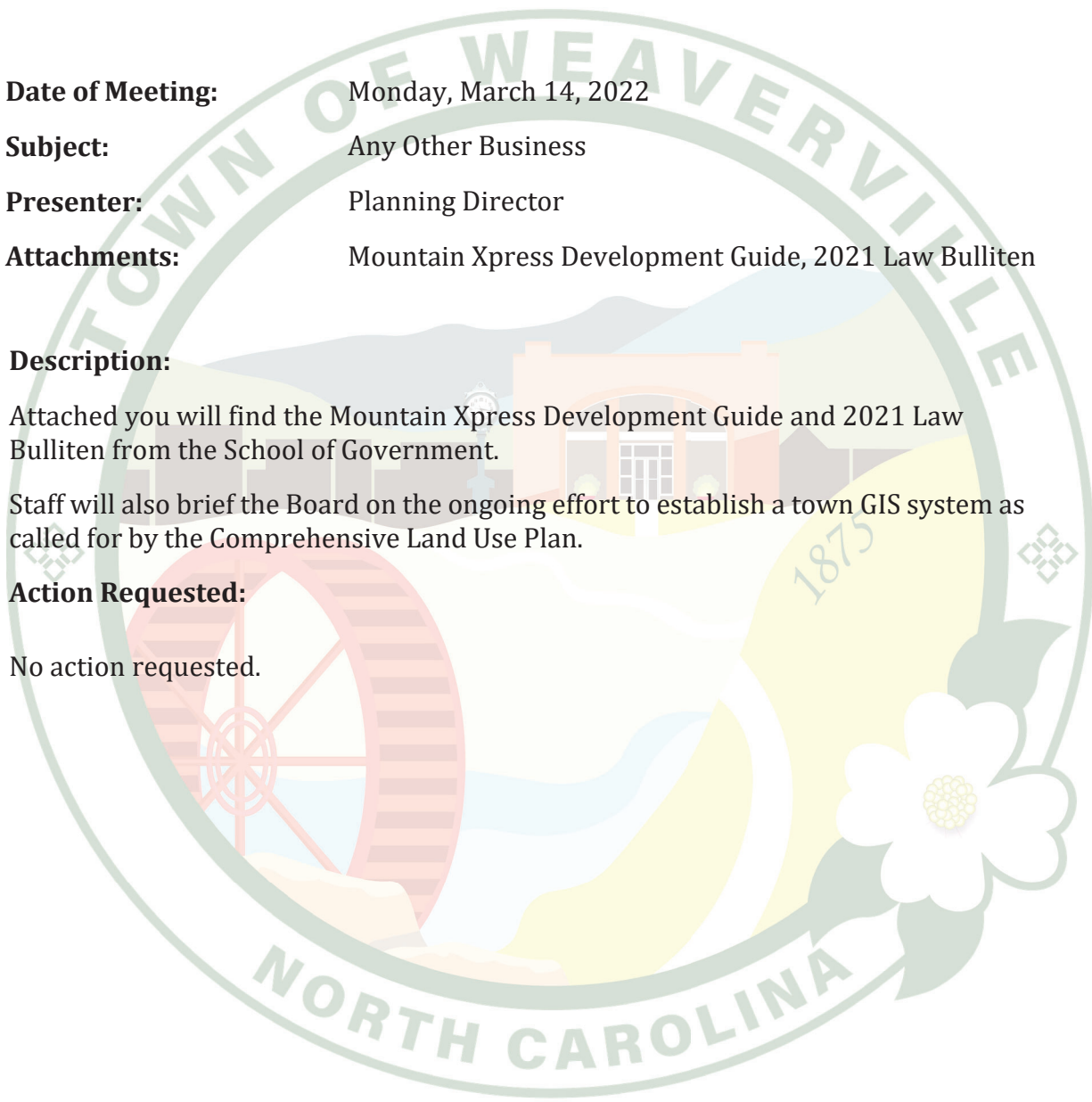
Description:

Attached you will find the Mountain Xpress Development Guide and 2021 Law Bulliten from the School of Government.

Staff will also brief the Board on the ongoing effort to establish a town GIS system as called for by the Comprehensive Land Use Plan.

Action Requested:

No action requested.



DEVELOPMENT GUIDE

FEATURING

- *Tips for effective public comment*
- *How projects get approved*
- *Flowcharts of planning processes*

**YOUR COMPANION TO
LAND-USE PLANNING
IN BUNCOMBE COUNTY**

Introduction

BY DANIEL WALTON
dwalton@mountainx.com

Few who lay eyes upon Western North Carolina would disagree that its landscape is magnificent. Layers of undulating mountain stretch to the horizons, shot through with crystal rivulets and waterfalls, tied together by the generous flow of the French Broad River — the place has attracted residents and visitors since at least 10,000 years ago, the age of the earliest Indigenous sites discovered on what is now the Biltmore Estate in Asheville.

Agreeing that land is desirable is easy. Agreeing how people should use it is hard. And in Buncombe County, questions of land use reverberate beneath many other difficult conversations.

Approaches to managing the impacts of tourism, for example, largely depend on where hotels are allowed to be built and where short-term rentals are permitted to operate. Affordable housing advocates push for new rules that would require developers to offer units at cheaper rates. Those concerned about climate change wonder how the county can absorb the thousands of migrants likely to arrive as rising sea levels eat away at U.S. coastlines. Rural residents worry about urban sprawl disrupting cherished ways of life.

While all of these issues are influenced by policy at the state and federal levels, local governments arguably have the greatest ability to determine land use. Through the legislative tools of zoning, cities and counties can specify what types of buildings go where, how big those buildings can be and what's permitted to happen in them.

Those future-shaping decisions are happening every day in the city of Asheville, in unincorporated Buncombe County, in the towns of Biltmore Forest, Black Mountain, Montreat, Weaverville and Woodfin. The goal of the *Mountain Xpress* Development Guide is to give residents the tools to engage with those decisions in the most effective ways possible.

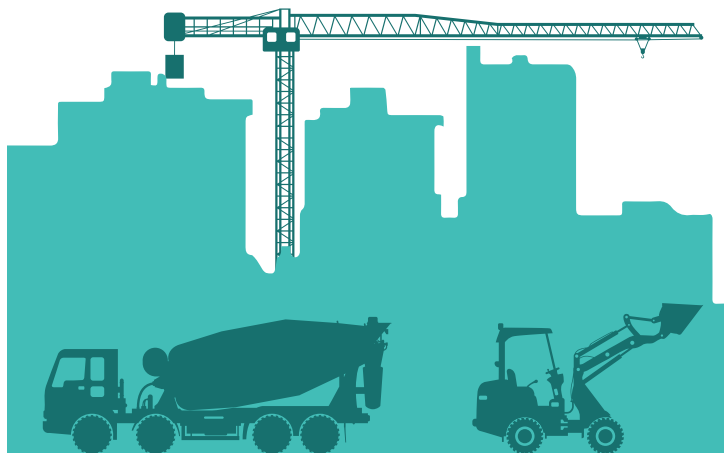
This guide has itself been guided by the more than 230 readers who filled out an *Xpress* survey or participated in listening sessions last year. In response



“
Decisions about land use
are too important to be left
solely to elected officials,
government staffers
and developers —
they involve all of us.
”

to that feedback, we've included a section about how to find projects in their earliest stages, as well as details on the limits of local government action. Many readers were particularly interested in learning how developers might be influencing politicians, leading to a section on campaign finances.

We hope that the engagement we saw while creating the guide will now be dwarfed by the public participation it empowers. Decisions about land use are too important to be left solely to elected officials, government staffers and developers — they involve all of us, and by their impacts on the patterns of society, they involve those yet to come to WNC as well.



Contents //

- 4 **Cans and can'ts**
- 8 **Staying in the loop**
- 10 **Beyond NIMBYism**
- 14 **City of Asheville development process**
- 22 **Buncombe County development process**
- 28 **Not quite court**
- 29 **Other towns**
- 34 **Here's the plan**
- 38 **Muddy ground**
- 40 **On the records**
- 42 **Changing the rules**
- 44 **Terms of the trade**

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CANS AND CAN'TS

How zoning, land-use rules work

BY MARK BARRETT
markbarrett@charter.net

When North Carolina's state government created local governments like the city of Asheville and Buncombe County, it didn't hand out magic wands.

Court rulings and state laws sometimes mean local governments can't adopt zoning rules their constituents might like — and in some cases, it's uncertain just how much authority municipalities have, say Asheville City Attorney **Brad Branham** and other lawyers working in the field.

"We can only do what the state legislature lets us do," Branham says. "Where that line is, is not always specified."

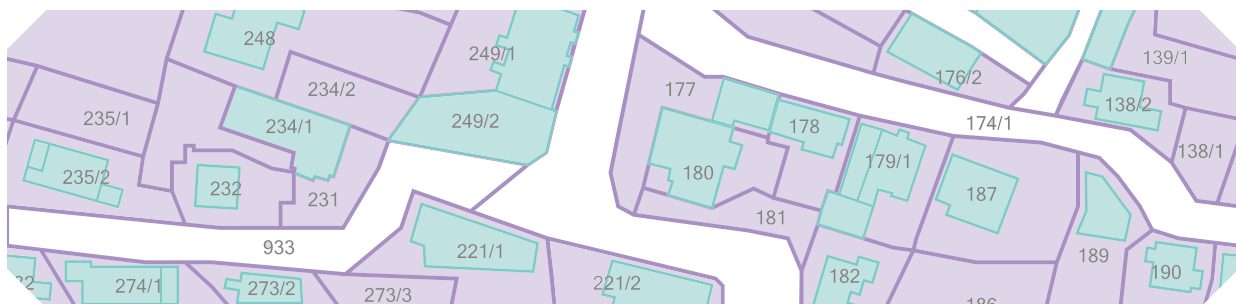
Unlike in so-called "home rule" states, few barriers prevent the N.C. General Assembly from limiting local power or simply telling local governments what to do. But courts usually say the general state laws that do allow local officials to regulate many activities can be interpreted relatively broadly.

Some restrictions on local zoning authority can be quite specific. For example, local governments can't make different zoning rules for a college's official fraternity and sorority houses than for Greek houses not recognized by a school.

Since Republicans took control of the General Assembly in 2011, state legislators have not been shy about limiting local government authority if they see something they don't like. Orange County used to have special state permission to charge an impact fee for school construction needs caused by new development, a power not granted to most other counties or municipalities. Legislators took it away in 2017. In 2013, the state struck the ability of Asheville and Weaverville to apply their zoning rules to property just outside their borders, a power enjoyed by almost all other cities and towns in the state.

Other restrictions stem from broader constitutional principles, like those in the federal 14th Amendment saying states — and by implication, their local governments — cannot "deprive any person of life, liberty, or property without due process of law."

Here's a capsule look at what local governments can and cannot do when it comes to zoning and land use, as well as some areas where their powers are unclear.





Can

- * **Regulate what gets built where.** One of local governments' basic powers is to establish zoning ordinances and maps that set out where different types of land uses, such as single-family homes, apartments, retail stores and industrial plants, can be located. Arbitrary rules can be struck down in court, but the power to institute zoning rules is undisputed.
- * **Dictate the details.** Local governments can require that buildings be set back a certain distance from property lines or that they be built flush with the front of a lot in a downtown setting. They can require buffers of trees and shrubs between different lots, especially when one type of use sits next to another.
- * **Keep it dry.** Governments can require that new buildings not worsen flooding. That includes requiring developers to channel or contain stormwater and ensure that buildings will withstand floods. The most common compliance method is to elevate the lowest occupied floor of a building above the level a 100-year flood is expected to reach. Property owners can't get federal flood insurance unless their local government has an ordinance requiring flood prevention measures.
- * **Call a halt – for a little while.** Governments can impose moratoriums on some types of development while they consider new restrictions, as Asheville did with hotels in 2019 while the city wrote new rules on where and how they can be built. A moratorium must be temporary – usually less than two years, says **Adam Lovelady**, a professor at the University of North Carolina Chapel Hill School of Government — and in all but a few cases can't block projects approved before the moratorium was imposed.
- * **Provide for traffic.** Local governments can require developers to make road improvements before their projects are hooked up to the existing system. Common measures include installing a new traffic light, building turn lanes or widening the pavement. Improvements don't have to be right at the entrance to a development, but their scale and location must have some relationship to the amount of traffic the development will generate. Local governments can also require developers to build sidewalks, bike lanes and bicycle parking, although not all do this.
- * **Build or subsidize affordable housing.** Most local governments are more likely to give a developer financial help, either through tax breaks or reduced permit fees, than they are to build affordable housing themselves.
- * **Make a deal.** Zoning rules sometimes allow a developer more freedom if a project provides facilities or benefits a local government wants. A common example is allowing construction of more housing on a given lot if some of the units are set aside as affordable.
- * **Protect mountain views.** Local governments can limit the height of new buildings on mountain ridges. They also have authority to regulate construction on steep slopes.

Maybe, maybe not

- * **Dictate building style.** State law specifically says local governments can't require one- or two-family homes be built in a particular architectural style or impose other rules on appearance, like requiring certain paint colors. Certified historic districts are an exception: Governments have broad authority to set up rules on all types of new buildings there to require that they fit in with existing structures.
- * **Lay down design lines.** Governments can also adopt broad design rules, like ensuring that windows make up a certain percentage of a wall or setting a maximum height or size for buildings. And officials can consider design issues when deciding whether

to approve some larger projects. But there's some uncertainty about just how far local governments can go, UNC's Lovelady says, because state law is largely silent on the issue. A blanket rule dictating the architectural style of new buildings outside a historic district is probably beyond governments' authority, he says.

- * **Regulate group homes.** State law says family care homes, which house up to six people with physical or mental disabilities, must be allowed in all residential zones in a local government's jurisdiction. However, the rules vary for other types of small group facilities, like halfway houses.

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Can't

- * **Call a halt forever.** “For the most part, you don’t have the authority to simply ban a land use,” Asheville City Attorney Branham says; for example, Asheville couldn’t halt all hotel construction indefinitely. Lovelady has the same view. Courts have not given a “clear answer,” he says, and a small resort town might be able to argue there simply isn’t room for some types of uses. But, he adds, “for most jurisdictions in the state, allowing for lawful land uses somewhere in the jurisdiction is certainly prudent, if not required.”
- * **Keep your neighbor from building anything.** In most cases, governments can’t make a private landowner keep their property as is for the long term without paying compensation. State law even sets out a procedure whereby landowners can get exceptions to zoning rules that would otherwise prevent them from getting an economic benefit from their property. As Buncombe County Planning Director **Nathan Pennington** puts it, if you like your view of the woods across the street and want to ensure it will stay that way, “The best way to protect yourself ... is a property acquisition.” In other words: Buy it.
- * **Act without adequate reason.** Courts can and do strike down development decisions that judges decide were made without a sound basis. They’ll often look to see whether a decision fits with a community’s existing ordinances and comprehensive plan.
- * **Refuse to consider a proposal.** If an application for a project is properly submitted, a government can’t just toss it in the trash.
- * **Prohibit mobile homes.** Generally, a city or county must allow them somewhere in their jurisdiction.
- * **Keep renters out.** Turning down a residential project because its houses or apartments will be rented out instead of owner occupied is not allowed. Development rules must be the same for rental housing as for owner-occupied housing.
- * **Control rents.** State law specifically prohibits government rent-control rules.
- * **Block affordable housing.** Turning down a development because it would include affordable housing is illegal. The only exception is to avoid concentrations of affordable housing in one part of a government’s jurisdiction.
- * **Discriminate.** Zoning and land-use decisions can’t be based on the race, religion, ethnicity, gender or other protected statuses of property owners, applicants or residents. Governments also are not supposed to let officials’ opinions of a property owner or applicant affect zoning decisions. That extends to consideration of the brand of a proposed store and whether it is a chain or locally owned, Lovelady says.
- * **Prevent demolition of historic buildings.** Governments can make a property owner wait for a year before tearing down buildings with certain historic designations, but demolition can proceed after that.
- * **Take it back.** Generally, the rules in place when a property owner or developer applies for permission to build are the ones that must apply when a government gives the project a thumbs up or thumbs down. For instance, if a property’s zoning allows buildings up to 10 stories when a developer seeks a permit, a municipality can’t block it by reducing the limit to five stories. And once a project is permitted, that permission stays in place for a period of time, even if the applicant doesn’t start right away or sells the property to someone else.

Staying in the loop

How to keep abreast of proposed development projects

BY DANIEL WALTON
dwalton@mountainx.com

When residents organize to influence a proposed development in their neighborhood, they can sometimes feel like they're starting on the back foot. By the time a project makes its way into the public eye, it's often been through several layers of review by government staff or appointed boards, and issues such as building size and parking availability have already been considered. Although that doesn't prevent officials from seeking changes to development plans, they're often content just to go with what's been recommended.

But both Asheville and Buncombe County offer a number of tools to help residents avoid getting caught off guard. The following resources give early notification of development proposals and provide more information about each project's movement through the overall approval process.

Asheville

- * **The city's notification service** (avl.mx/b6n) enables residents to sign up for email alerts concerning large-scale development proposals filed with the Development Services Department, as well as new projects that include affordable housing or are targeted for steep slopes. These emails can be sent for projects anywhere in the city or within up to 3 miles of a given city address.
- * **All large-scale projects** for which a permit application has been filed since Dec. 1, 2018, **are shown on a city map** at avl.mx/av9. Older proposals filed from 2015 on are included in a different map at avl.mx/avb.
- * **SimpliCity** (avl.mx/b6o), the city's open data portal, provides a search tool to find all development permits for sites within a mile of a given city address. Another tool (avl.mx/avc) reveals all development permits filed for a specific address.
- * **The full SimpliCity map** (avl.mx/ave) lists all development permits filed with the city, including those not involving major new construction. Among the types included are residential building alterations, changes to historic structures and event-related temporary use permits. Further permits and planning records are available through the city's **Citizen Access Portal** at avl.mx/avk.
- * An employee of the city's Development Services Department, designated the **"planner of the day,"** is on call during business hours to answer questions about development projects. More information is available by calling 828-259-5450 or emailing POD@AshevilleNC.gov.



Buncombe County

- * The county's Planning and Development Department doesn't currently have a notification tool, and no neighborhood meetings are required prior to submitting a development plan.
- * **All projects submitted since May 2020** for which a rezoning, special use permit or subdivision approval is necessary **are shown on a county map** at avl.mx/8qr, with planning documents linked to each project name. Users can search for all projects within a given distance from any county address.
- * The map doesn't cover **projects submitted prior to May 2020**; information concerning these must be requested from county staff via an online form (avl.mx/avt) or by phone at 828-250-4830.
- * **The county's online permits portal** (avl.mx/avx) enables users to search for all permits filed for a given address, whether they pertain to building, planning or environmental health.
- * **Buncombe County's geographic information systems website** (avl.mx/aw0) provides data on specific parcels of land, including ownership, zoning designation and property value.

Neighborhood MEETINGS

In Asheville, developers planning a Level II project, major subdivision or request for conditional zoning are required to hold a neighborhood meeting before submitting their plans to the city. At this informational session, project representatives provide an overview of their proposal and gather feedback from nearby residents and property owners. A written report about the meeting must then be submitted along with the plans.

City ordinances require developers to post notice of such neighborhood meetings on the property in question at least 10 days in advance. They must also mail notices to all property owners within 200 feet of the site; for projects in the central business district, notice must be sent to all physical addresses within 200 feet, including both residential renters and business tenants.

Although developers are not required to notify the city in advance of a neighborhood meeting, many choose to do so. A calendar containing details of those meetings is available at avl.mx/avm.

Beyond NIMBYism

How to participate effectively in land-use decisions

BY MARK BARRETT
markbarrett@charter.net

An email sent to Asheville City Council in October 2021 opposing a proposed apartment building on Charlotte Street begins this way: “Are you people insane?”

A few sentences later, the writer asks Council members, “Where are your brains?... In your well-padded pockets?”

How did that work out for the writer, who argued that the 186 apartments proposed for a former Fuddruckers restaurant property would overtax neighborhood streets and other infrastructure?

Not so well. Council approved the project 6-1. The only “no” vote came from Council member **Kim Roney**, who was concerned not over infrastructure but about whether the building would include enough affordable housing.

It is highly unlikely that one intemperate email among many other, more reasoned messages persuaded Council to back the project. Nonetheless, the example illustrates what local attorney **John Noor** says is an unproductive approach for convincing decision-makers to see things your way: Personal attacks.

“I think that just allows people to tune you out,” says Noor, who has represented residents in several high-profile land-use battles in recent years.

The following guidelines are best practices for getting public officials to tune you in if you are involved in a development issue. With apologies to self-help author **Stephen Covey**, let’s call them the seven habits of highly effective public involvement. Each piece of advice is based on interviews with people who used to turn thumbs up — or thumbs down — on development projects and others with experience in the field.

Don’t be a NIMBY

Among the objections former Asheville City Council member **Chris Pelly** heard most often during development debates was his least favorite: when people said, “I’m all for affordable housing, but this isn’t the right location.”

That objection amounts to a resident saying, “I’m not a part of the solution here. ... This is something for somebody else to figure out,” Pelly says. “The fact is, we’re all in this together,” he continues, and a

shortage of affordable housing is one of the area’s most pressing problems.

Several other officials made the same point. They say local governments must allow residential construction — often at densities greater than some citizens would like — to attack the problem.

“Your personal interests still have to be weighed against the collective,” says **Laura Hudson**, a former chair of Asheville’s Planning and Zoning Commission. “Think about future generations. Think about people that would love to have an opportunity to live in this neighborhood.”



“Not-in-my-backyard thinking should be recognized for what it is, selfishness, and not confused with constructive contribution to a decision-making process,” adds former City Council member **Carl Mumpower**.

Communities around the country are debating the extent to which zoning should keep residential neighborhoods the same or allow more construction of apartments and condominiums. Critics say strict zoning, especially rules that allow only single-family homes in certain areas, can keep people of color or those with lower incomes out of wealthier, whiter neighborhoods.

Hudson says residents can get too invested in keeping their neighborhoods

as is. “I think [neighborhood] character evolves. It’s not static,” she says.

Shape the big plan

When a developer proposes a shopping center a few blocks from your home, the battle may already be half won — or lost, depending on your perspective. If the comprehensive plan and zoning map for your area identify the site as suitable for retail development, it will be more difficult to persuade a governmental body to block the project.

In some cases, approval might come at a staff level and be virtually automatic. If the project meets the standards for things like building size, vehicle access



and stormwater facilities, a government employee might OK it without a public hearing or even public notice.

Governments often struggle to get citizens involved in drawing up comprehensive plans or providing feedback on new land-use rules. The process isn't so interesting to many people until something is proposed near their home that they don't like.

But decisions made at the macro level shape those made on specific projects. **Nathan Pennington**, director of the Buncombe County Planning Department, says a comprehensive plan often plays a major role in elected officials' decisions on questions like rezoning. Involvement in drawing up a plan, he notes, may also help residents understand why a particular property is zoned a certain way to start with.

Start early

Many jurisdictions require developers who propose projects greater than a certain size to hold informal meetings at which neighbors can learn more. Sometimes, says Noor, those events are held just to meet the requirement. In other cases, they can result in a real dialogue between developers and neighbors that shapes what ultimately gets built.

A development project often goes through several governmental bodies before reaching the board that makes the final decision. Noor says it's worth attending as many of those meetings as possible instead of voicing support or opposition at the last minute.

Otherwise, he explains, "The advice that City Council is going to get from the staff and the developer is that this is not controversial."

“
**Think about future generations.
 Think about people that would love to have an opportunity to live in this neighborhood.**

— *Laura Hudson*

”

Prepare to negotiate

Developers are often willing to change their projects to assuage neighborhood concerns. Some aren't, but officials may hold that against them when it's time to decide whether to give a project an OK – or make granting some concessions a condition of approval.

Those changes can include everything from the size of a project to the location of roads and sidewalks. Noor says it's not realistic to expect a developer to cut a project in half: "This is a business just like any other," he points out, and developers need to make a profit. But there's usually some flexibility if neighbors or government officials ask, says Noor, who has also had developers as clients.

Mumpower says talks between developers and residents often become just "a PR opportunity for one side or the other," but others say they see great value in the dialogue.

"The input on how to make [a proposed project] better is very helpful, very useful and usually more impactful" than outright opposition, says Hudson.



Focus on facts

When development projects came before Asheville City Council for public comment during the tenure of former Mayor **Terry Bellamy**, she says, “The most impactful presentations were individual stories. ... And they had specifics.”

People who could document issues that a development might exacerbate or help with were more likely to affect debate and the outcome, she says.

Mumpower agrees: “New and credible information about problems that may have been missed by the developer or staff is always helpful.”

Be civil

Speakers at public hearings sometimes say they will turn officials out of office if a decision goes against them, or they’ll demonize those on the opposite side of an issue.

Elected officials realize a particular vote may affect their political futures. And when a governmental body has considerable discretion as to how it decides an issue, contacts from the public can make a big difference, Noor says. But threats or rude behavior can allow decision

makers to discount a speaker as simply unreasonable.

Former Buncombe County Commissioner **Ray Bailey** says he focused on what was best for the county as a whole when making decisions. “If somebody threatened me with the fact that they wouldn’t vote for me, that would be fine,” he says — but it wouldn’t change his vote.

Bellamy notes that when anyone in a debate before Council is belligerent or makes negative comments about others, that “really takes the focus off the issue they were hoping to support.”

Remember the basics

Government boards usually ask anyone making a public comment to share their name and where they live, and most have a time limit for each speaker. Three minutes is common.

It pays to give some thought before a meeting to what you want to say and how to say it in the allotted time. Speakers can usually also submit written documentation or extended remarks after their comments. Simply repeating at length what others have said doesn’t help your case, Mumpower says. Brevity, however, might at least draw a sympathetic smile from a weary official about to cast a vote.



City of Asheville development process



The city of Asheville's approach to regulating development generally obeys the following rule: the greater an impact a project will have on its neighbors, the more levels of review it must clear before being approved.

Small-scale projects, such as new single-family homes or boutique retail spaces, are processed entirely by city staff, with no opportunities for public input. In contrast, a 300-unit apartment complex proposed for downtown would go through five levels of neighborhood meetings, board reviews and public comment before a final decision by the elected City Council.

The flowchart in the pages that follow tracks the course of the development process for different project types, each of which is explained below. More information is available through the city of Asheville website at avl.mx/b3u.

Development classifications

Level I



The smallest type of “large-scale development” defined by city ordinances, Level I projects include small restaurants, commercial spaces and apartment buildings. No opportunities for public input are available for these projects, but permit details are posted on the city's website.

- * If located downtown, includes projects between 500 and 19,999 square feet.
- * If not located downtown, includes projects containing between 3 and 19 residential units or 500 to 34,999 square feet of commercial space.

- * Major subdivisions involve the creation or extension of a road and usually result in the creation of new residential lots.

Level II



Projects such as grocery stores, medium-sized apartment complexes and some hotels don't go before City Council, but they do require neighborhood meetings and review by appointed boards if located in specific parts of the city.

- * If located downtown, includes projects between 20,000 and 99,999 square feet. Downtown Level II projects are reviewed by both the Design Review Committee and Planning and Zoning Commission.

Major Subdivision



This level is the first to allow public input. All major subdivisions require a neighborhood meeting, with notifications given to all property owners within 200 feet of the project.

- * If not located downtown, includes projects containing between 20 and 49 residential units or 35,000 to 99,999 square feet of commercial space. Hotel projects and those located in the River Arts District are reviewed by the Design Review Committee.

Conditional Zoning

CZ

Projects at this level, including developments previously designated as Level III, require a change to the zoning laws of the city and therefore must be approved by City Council. Examples include large apartment complexes, office buildings and hotels of more than 115 rooms.

- * Projects of 50 or more residential units or in excess of 99,000 square feet are covered by conditional zoning. All such projects involve a neighborhood meeting, review by the Planning and Zoning Commission and City Council.
- * All hotel projects and those located downtown or in the River Arts District are also reviewed by the Design Review Committee.

Conditional Use Permit

CUP

These projects don't require a change of zoning but are nonetheless subject to strict review due to their potential public impacts. CUP developments include cell towers, adult establishments and car dealerships; a full list of regulated uses is included in the city's Unified Development Ordinance at avl.mx/b3v.

- * All CUP developments involve a neighborhood meeting, review by the Planning and Zoning Commission and City Council.
- * CUP projects located downtown or in the River Arts District are also reviewed by the Design Review Committee.

SIGN UP FOR Notifications



The city of Asheville is piloting a system that allows people to receive an email notification when a developer submits an application for a new large-scale development.

Visit Notifications.AshevilleNC.gov to sign up or change your notification settings.

The development process

After the developer submits an application, it goes through a decision-making process that includes city staff, elected and appointed city officials, developers and residents. Who is involved at what step depends on the type of project.

Before the application is submitted II MS CZ CUP	
<p>Pre-application meeting</p> <p>What? Developers and city staff meet to look at initial sketches, discuss process and schedule and identify applicable regulations.</p> <p>Who? Developer • City Staff</p> <p>When? Required before application submission</p> <p>Where? Development Services Department offices</p>	<p>Neighborhood meeting</p> <p>What? Developers must notify all property owners within 200 feet of the proposed development, and all physical addresses within 200 feet if downtown, and share information on their plans.</p> <p>Who? Developer • Neighbors</p> <p>When? At least 10 days before application submission (see avl.mx/avm)</p> <p>Where? Somewhere near the proposed development site/Remote</p>



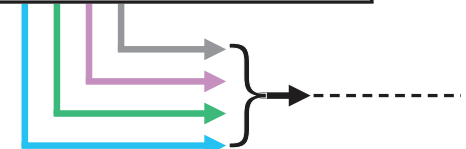
Permit application I II MS CZ CUP	
<p>What? Submission of required plans and documents and payment of application fees to the Development Services Department.</p> <p>Who? Developer</p>	<p>When? After all required preliminary steps are completed.</p> <p>Where? Development Services Department offices</p>

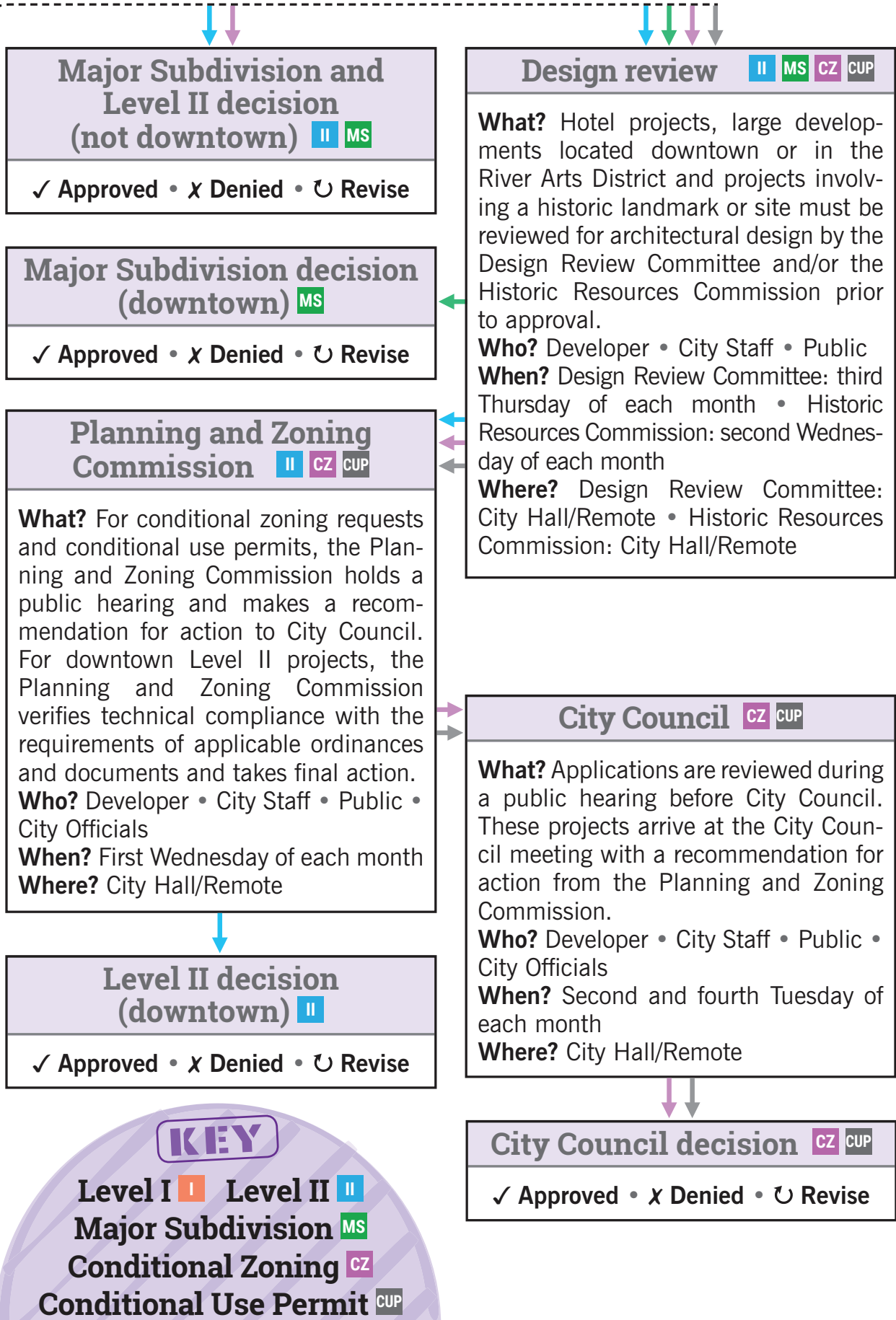


Staff review I
<p>What? A staff member reviews plans for compliance with applicable ordinances and documents and creates a report.</p> <p>Who? City Staff</p> <p>When? Within 10 days of application submittal.</p> <p>Where? Development Services Department offices</p>

Technical Review Committee II MS CZ CUP
<p>What? An eight-member body that ensures compliance with city standards and requirements. Meeting agendas are available on the city website; no public comment is allowed.</p> <p>Who? Developer • City Staff</p> <p>When? First and third Monday of each month.</p> <p>Where? Development Services Department offices/Remote</p>

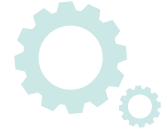
Level I decision I
<p>✓ Approved • ✗ Denied • ↻ Revise</p>







City of Asheville development boards



BY XPRESS STAFF

Over 30 boards and commissions guide the work of Asheville's government, but three are critical to the fate of large-scale development in the city: Asheville City Council, the Design Review Committee and the Planning and Zoning Commission. Below you'll find more about what each body does, who's on it and how you can get involved with its meetings.

Asheville City Council

- * **Website:** avl.mx/8o4
- * **Development responsibilities:** Asheville City Council is the city's legislative body; its members establish laws and policies related to development, including zoning designations. The Council also focuses on the community's goals, major projects and long-term considerations such as community growth, land use development, capital improvement plans, capital financing and strategic planning. City policies are then carried out by a Council-appointed city manager who oversees day-to-day operations.
- * **Current members:** Asheville City Council consists of a mayor and six council members, all of whom are elected at-large for four-year, staggered terms. Current members include: attorney and Mayor **Esther Manheimer**; community consultant and Vice Mayor **Sheneika Smith**; retired CEO of outdoor manufacturer Coleman **Gwen Wisler**; piano teacher and service-industry worker **Kim Roney**; real estate agent **Sandra Kilgore**; **S. Antanette Mosley**, attorney; and French Broad Food Co-op project manager **Sage Turner**. Asheville's city manager is **Debra Campbell**.
- * **Meeting details:** Asheville City Council meetings take place on the second and fourth Tuesday of every month starting at 5 p.m. As of February, meetings occur remotely, with livestreams available through Asheville's public engagement hub at avl.mx/b3f and on the city's YouTube channel at avl.mx/6h6. Members of the public can also listen live by calling 855-925-280 and entering a code shared prior to each meeting or watch on Charter/Spectrum Cable channel 193 and AT&T U-Verse channel 99.
- * **Board agendas:** Agendas are typically posted the Friday before each meeting on the city's website. Members of the public can contact City Clerk **Maggie Burleson** at 828-259-5601 or MBurleson@AshevilleNC.gov to be added to the email distribution list to receive Council agendas and Council-related notifications.
- * **Public comment:** As Council continues to meet remotely in response to COVID-19, members of the public who wish to speak during the meeting must sign up in advance online at the city's public engagement hub or call 828-259-5900 no later than 9 a.m. the day of the meeting. Commenters must listen to the meeting via phone by calling 855-925-2801 and entering

the meeting code; they will then be prompted to speak by city staff. Pre-recorded voicemail messages can be left by calling 855-925-2801 and entering the meeting code. All spoken comments are limited to three minutes per person per item. Email comments are also accepted through 9 a.m. the day of the meeting. Council receives transcribed voicemail and email comments, which are posted online but not shared during the meeting itself.

Planning and Zoning Commission

- * **Website:** avl.mx/8b6
- * **Development responsibilities:** Asheville's Planning and Zoning Commission approves downtown Level II projects, reviews text for proposed amendments to the Unified Development Ordinance, hears proposals to zone or change the zoning of property and makes recommendations to City Council for final action.
- * **Current members:** The commission consists of seven members, each appointed for three-year terms. Five

are city residents appointed by City Council, and two are residents of areas outside the city limits appointed by the Buncombe County Board of Commissioners. The current members include: Chair **Joe Archibald**, owner at Narwhal Design; Vice Chair **Kim Levi**, architect at Novus Architects; real estate agent **Robert Hoke**; Vans store manager **Jenifer Bubenik**; **Brenton Faircloth**, estimator for Living Stone Design and Build; **Geoffrey Barton**, director of real estate development at Mountain Housing Opportunities; and **Kelsey Simmons**, program director at the YMI Cultural Center.

- * **Meeting details:** As of February, meetings take place remotely at 5 p.m. the first Wednesday of the month. Members of the public can watch the meeting live through the city's engagement hub at avl.mx/b21 or on the city's YouTube channel at avl.mx/6h6. Meetings are also available by phone by calling 855-925-2801 and entering the meeting code.
- * **Board agendas:** Agendas are posted to the Planning and Zoning Commission's webpage two weeks before each meeting.



* **Public comment:** The commission accepts prerecorded voicemail comments, written comments and live comments during the meeting. Voicemail and written comments must be submitted by 5 p.m. the day before the meeting. All public comments will be sent to the commission prior to the meeting but may not be read aloud.

Design Review Committee

* **Website:** avl.mx/anr

* **Development responsibilities:** The Design Review Committee reviews all major works in the River District and Central Business District, as well as hotels located outside those areas. The committee also performs studies and prepares plans for desirable standards and goals for the aesthetic enhancement of the city.

* **Current members:** Asheville City Council appoints three members to the Design Review Committee from the Downtown Commission and three members from the Asheville Area Redevelopment Commission. Council also appoints three at-large members from the broader public. As of February

2022, there were several vacancies. The committee's current members include: **Robin Raines**, vice president at Rowhouse Architects; **Jeremy Goldstein**, real estate broker; **Kimberly Hunter**, real estate agent, broker and cooperative business developer; **Steven Lee Johnson**, landscape architect; and **Bryan Moffitt**, architect.

* **Meeting details: As of February,** meetings take place remotely at 12:30 p.m. on the third Thursday of each month. Members of the public can watch the meeting live on the city's YouTube Channel at avl.mx/6h6.

* **Board agendas:** Agendas are posted between 10 and 14 days ahead of each meeting. Materials, such as plans and reports, are usually posted the Friday before the meeting.

* **Public comment:** Prerecorded voicemail comments can be made by 5 p.m. the day before the meeting by calling 855-925-2801 and entering the meeting code. Written public comments may be emailed to AVLDRC@PublicInput.com but must be submitted by 5 p.m. the day before the meeting. No live public comment is accepted.



OUR MISSION

To build community and strengthen democracy **by** serving an engaged, thoughtful constituency at the local level – where the impact of **citizen action** is greatest. **We report** on local events, regional issues and the area's vibrant arts-and-culture scene – **independently, fairly and in-depth.**

We partner with the community to create an ongoing **civic dialogue.** **We offer** exceptional and affordable media **opportunities** for local businesses, professionals and nonprofit groups to promote their offerings to the community.



CASE IN POINT:

The Flatiron Hotel

Community concerns can often change the path of a proposed project. But even the most determined opposition has its limits, as was the case with Asheville City Council's June 2019 approval of the conversion of the downtown Flatiron Building into a boutique hotel.

People began speaking out against the project at the earliest public opportunity, a November 2018 neighborhood meeting with nearly 60 in the audience. While developer **Philip Woollcott** argued hotel use was the only financially sustainable path for restoring the historic Flatiron, many downtown residents said the loss of the building's affordable office and retail space would harm local livability.

A subsequent online petition against the project gathered nearly 1,100 signatures, and the bulk of speakers at a May 2019 Council meeting also opposed the hotel. The developer's attorney temporarily withdrew the project from consideration after four Council members said they wouldn't support it.

However, when Woollcott agreed to cut the number of proposed hotel rooms from 80 to 71 and preserve the second floor of the building for office use, Council approved the plan in a 4-3 vote. Member **Julie Mayfield**, who had previously called the Flatiron "the soul of our city" and didn't support the hotel, said the changes were enough to allay her worries over small-business displacement and parking.

Buncombe County development process



Compared with the city of Asheville, Buncombe County has a much simpler process for development review. Many projects have no public input opportunities, and the elected Board of Commissioners only reviews property rezoning requests — not specific project plans.

County staff have exclusive review of most developments, making sure they comply with technical requirements for construction, steep slope protection and other aspects. Other levels of review come into play for large subdivisions or requests to deviate from existing rules.

The flowchart here tracks the course of the development process for different project types, each of which is explained below. More information is available through the Buncombe County website at avl.mx/b3w.

Application types

Special Use Permit (SUP)

Some types of development projects, such as large apartment complexes, manufactured home parks and recreation facilities, are allowed in certain zoning districts only after additional review by the Board of Adjustment. The board holds a quasi-judicial hearing to determine if the proposed use would detract from the surrounding neighborhood's quality of life or the general public welfare.

- * A full table of projects requiring an SUP by zoning district can be found in the county's zoning ordinance at avl.mx/b3x.

Subdivision/Zoning Variance

In other cases, a developer may want to build a project permitted by right in a zoning district but not adhere to all of the legal regulations. Common examples include constructing houses on smaller lots than usually permitted or not setting a building back from a road by the required distance. These variances are considered by the Board of Adjustment in a quasi-judicial hearing.

Major Subdivision

New Buncombe County subdivisions of 10 or fewer lots are reviewed only by staff, but those of 11 or more units must receive preliminary approval from the Planning Board. County staff then continue to review the project as it is constructed.

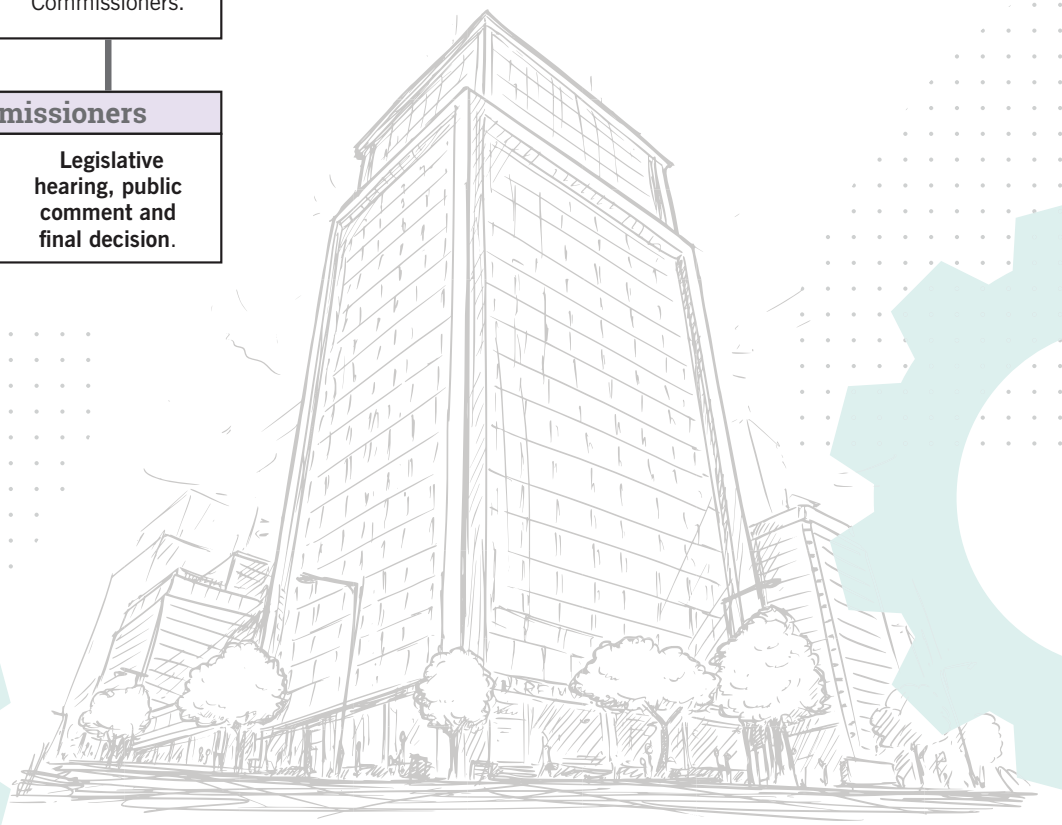
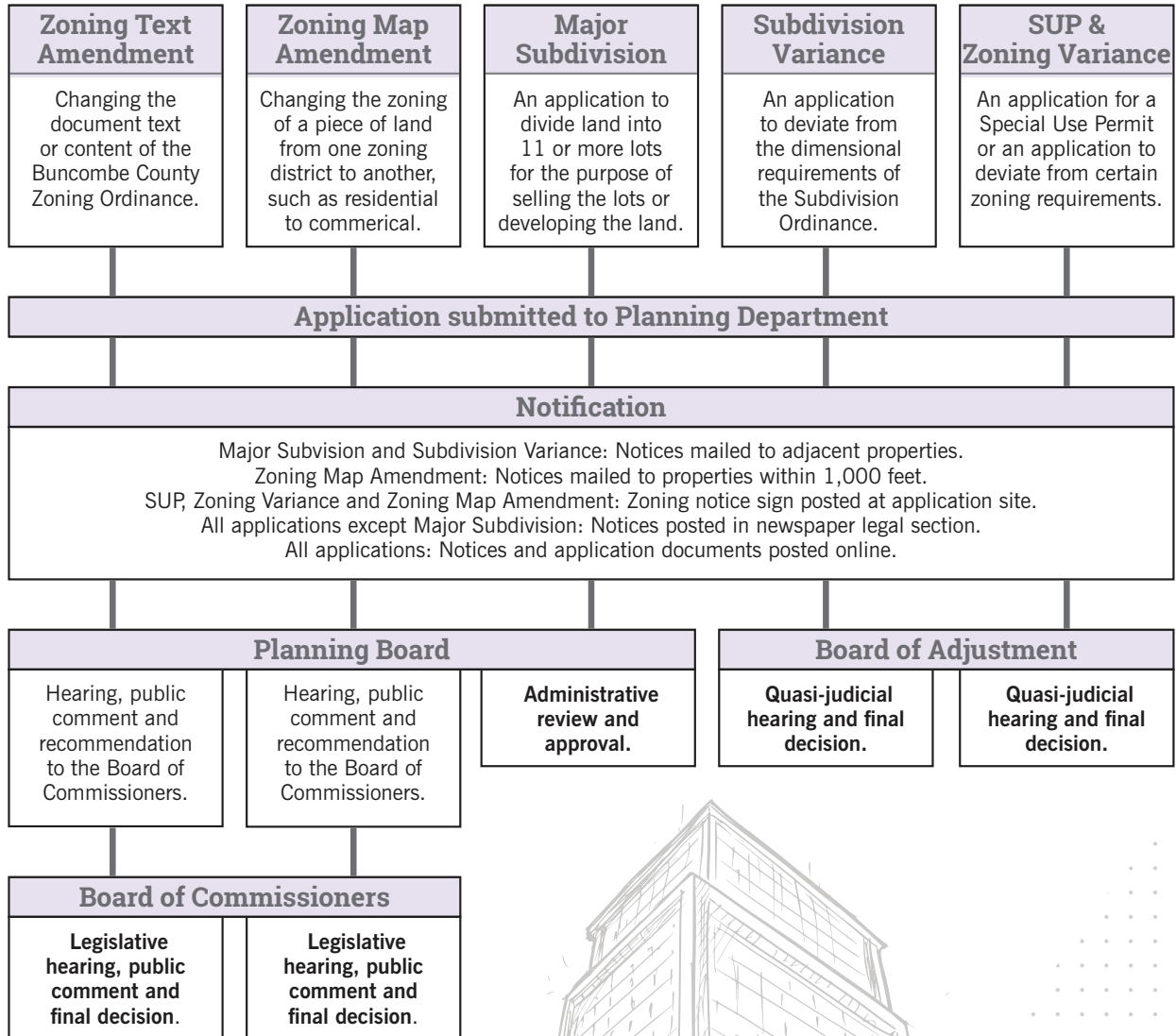
- * A flowchart showing the full process for major and minor subdivisions can be found on the county's website at avl.mx/b3z.

Zoning Amendments

Developers who want to use property in a way not currently permitted can submit a request to change the county's zoning map or regulations. For example, a residential property might be rezoned as commercial to allow a business use. The Planning Board reviews all zoning amendment requests and provides recommendations to the Board of Commissioners, which has the final say.

- * Zoning amendments are tied to the land itself, not a specific project. Although developers may have plans for a certain use, once the zoning has been changed, they are allowed to build anything permitted by the new rules.

Application review process





Buncombe County development boards



BY XPRESS STAFF

Buncombe County is a relative newcomer to land use regulation. Prior to 2009, no countywide zoning was in place whatsoever. Today, many outlying areas still remain under open use zoning. For parts of the county where development is more regulated, these three boards have the greatest say.

Buncombe County Board of Commissioners

- * **Website:** avl.mx/4ay
- * **Development responsibilities:** The Buncombe County Board of Commissioners is the county's legislative body. Its members make final decisions regarding zoning requests and text amendments, including rules about solid waste, subdivisions, erosion control, stormwater and more. The board also manages long-term considerations such as community growth, land use and strategic planning. County policies are then carried out by a board-appointed county manager who oversees day-to-day operations.
- * **Current members:** The seven-member Board of Commissioners consists of a chair, who is elected at large on a four-year cycle, and two commissioners from each of three districts, who are elected in even years for four-year, staggered terms. Current members include: Chair **Brownie Newman**, owner of Headwaters Solar; retired banker and civil rights leader **Al Whitesides**; farmer and WNC Communities Director of Community and Agricultural Programs **Terri Wells**; minister and Campaign for Southern Equality Executive Director **Jasmine Beach-Ferrara**; Vice Chair **Amanda Edwards**, executive director of the A-B Tech Foundation; Cypress Creek Renewables manager **Parker Sloan**; and retired NASCAR driver **Robert Pressley**. Buncombe's county manager is **Avril Pinder**.
- * **Meeting details:** Board of Commissioners meetings take place on the first and third Tuesday of every month starting at 5 p.m. at 200 College St., Suite 326, Asheville. Meetings are livestreamed through Buncombe's Facebook page at avl.mx/b3i and on Charter/Spectrum Cable channel 192.
- * **Board agendas:** Agendas are typically posted by 5 p.m. the Wednesday before each meeting on the county's website. Members of the public can contact County Clerk **Lamar Joyner** at 828-250-4105 or Lamar.Joyner@BuncombeCounty.org to be added to the email distribution list to receive board agendas and related notifications.
- * **Public comment:** Members of the public who wish to speak must attend in person. Open comment takes place at the start of each regular meeting, and additional public hearings are held on specific items. No formal phone or email comment is accepted, although phone and social media information for all commissioners is available on the county's website.

Board of Adjustment

- * **Website:** avl.mx/anq
- * **Development responsibilities:** Buncombe’s Board of Adjustment authorizes zoning variances, issues conditional use permits and hears appeals to decisions by county development staff.
- * **Current members:** The board consists of 14 members, appointed by the county Board of Commissioners to three-year terms. Seven are regular members, and the remainder are alternates who serve if a regular member is unable to attend a meeting. The board’s current makeup includes lawyers, real estate agents, construction managers and business owners.
- * **Meeting details:** Meetings take place at noon the second Wednesday of the month at 30 Valley St., Asheville. In response to COVID-19, members of the public are encouraged to participate via Zoom; those who are unable to participate virtually may request special accommodations through the Buncombe County Planning Department at 828-250-4830 or PlanningInfo@BuncombeCounty.org no later than 48 hours prior to the meeting.

- * **Board agendas:** Agendas are posted to the Board of Adjustment’s webpage at least 10 days before each meeting.
- * **Public comment:** Due to the quasi-judicial nature of Board of Adjustment hearings, people who wish to comment on a given matter must submit a formal request to participate. Those seeking to comment as witnesses should submit the form found at avl.mx/b3j via email to PlanningInfo@BuncombeCounty.org or by mail to county planning staff at 46 Valley St. at least 24 hours before the meeting. Those seeking standing in a board hearing should submit the form found at avl.mx/b3l via the same means.

Planning Board

- * **Website:** avl.mx/ans
- * **Development responsibilities:** The Planning Board is the final approval body for major subdivision applications. Members also issue recommendations on rezoning requests and zoning text amendments to the Board of Commissioners, as well as offer broader suggestions on land use.
- * **Current members:** The board consists of nine members, appointed by the county Board of Commissioners to three-year terms. The body’s current



members include several real estate agents, lawyers, architects and affordable housing advocates.

* **Meeting details:** Meetings take place at 9:30 a.m. the first and third Monday of the month. In response to COVID-19, members of the public are encouraged to participate via Zoom; those who are unable to participate virtually may request special accommodations through the Buncombe County Planning

Department at 828-250-4830 or PlanningInfo@BuncombeCounty.org no later than 48 hours prior to the meeting.

* **Board agendas:** Agendas are posted to the Planning Board’s webpage at least 10 days ahead of each meeting.

* **Public comment:** Live public comment is accepted on each public hearing before the board, as well as at the end of each meeting.

CASE IN POINT:

95 Broadway

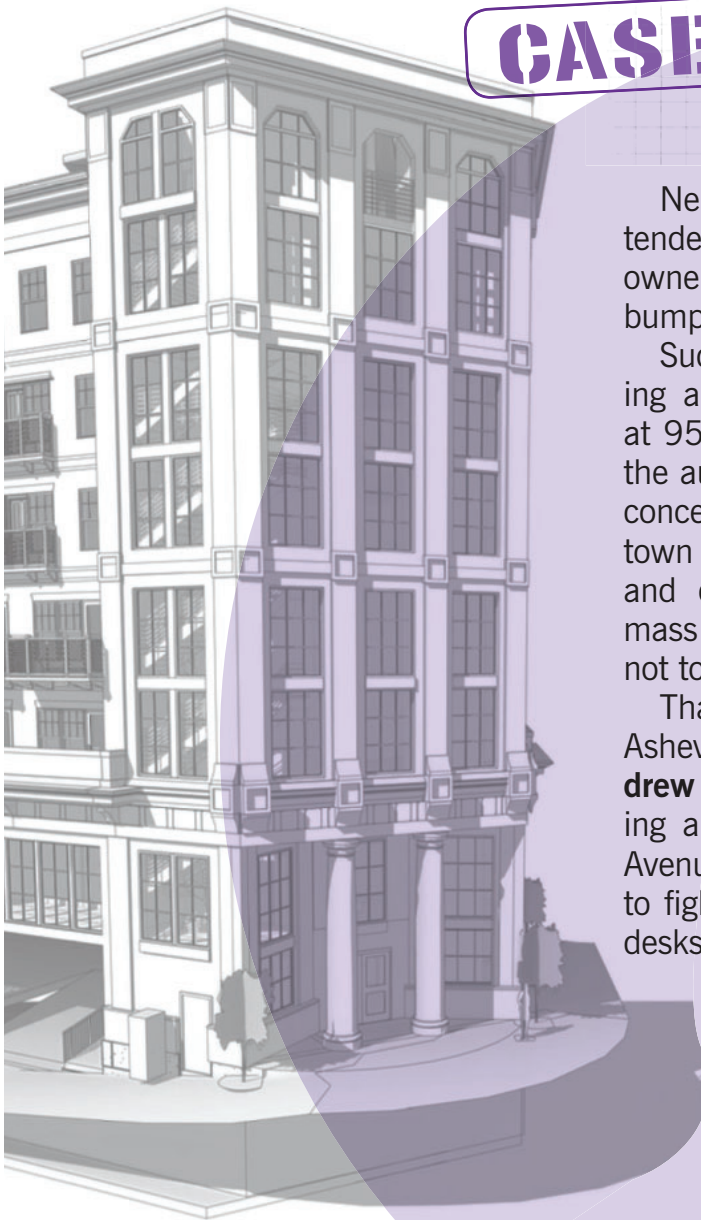
Neighborhood meetings are often sparsely attended. A large turnout by residents and business owners opposed to a project thus suggests a very bumpy road ahead for the developer.

Such was the case for a September 2018 meeting about a proposed hotel/condo development at 95 Broadway. Roughly 80 people gathered in the auditorium at Pack Memorial Library to raise concerns that the project would complicate downtown parking, suppress nearby live music venues and contribute to gentrification. Following the mass outcry, property owner **Victor Foo** decided not to move forward with the development.

That strong attendance was largely thanks to Asheville Downtown Commission member **Andrew Fletcher**, who posted flyers about the meeting and spread the news among the Lexington Avenue business community. “It’s very difficult to fight a project once it’s on Council members’ desks,” Fletcher tells *Xpress*.

“Council meetings are where decisions are issued, not where decisions are made.”

— *Andrew Fletcher*



Not quite court

'Quasi-judicial' procedures govern some development

BY MARK BARRETT
markbarrett@charter.net

People who go to a meeting of the Buncombe County Board of Adjustment might not realize the bland room where the board gathers is a first cousin to a court of law.

The board decides whether many larger developments proposed in unincorporated areas of the county can proceed. Projects that come before it typically include apartment complexes, groups of vacation rental homes and larger utility substations — all of which county rules say are allowed in a zoning district only if they meet specific requirements.

State law says the county Board of Adjustment and similar boards around the state must consider these applications in “quasi-judicial” proceedings. The same rules of evidence apply as in a regular court. Witnesses are sworn in, and board members can't consider communication from the public before the meeting on the issue to be decided. The board can only hear from expert witnesses and people who allege they may suffer what the law calls “special damages” from a project, not just anyone who wants to speak. Hearings may involve lawyers arguing for and against a project.

The proceedings are different from those in a regular court in that they are typically less formal and board members serve as both judge and jury, deciding whether a development can proceed. (They don't wear black robes, either.)

The board decides, in a process that's supposed to be objective and predictable, whether an applicant has met certain standards set out in state law and the county's zoning ordinance. Considerations include whether a proposal will harm nearby property values, create “noise, vibration, odor or glare” that will hurt neighbors and has adequate provisions to handle traffic.

The law says only people who might suffer damages from a development that are distinct from those incurred by the community at large can mount a case opposing a project. That means someone who thinks too many apartment complexes are popping up in Enka might not get to testify about a specific proposed complex, while someone who says the development would reduce the value of their home near the project site would.

Some North Carolina local governments, including Asheville, have changed their ordinances in recent years to avoid quasi-judicial hearings because applicants often seek rezonings with conditions. Asheville City Council approves many larger projects through conditional zoning, in which the applicant and government officials can negotiate terms with input from both neighbors and the broader community.

However, Asheville's Historic Resources Commission and city Board of Adjustment, which only hears appeals from staff decisions and requests for zoning exceptions, do employ quasi-judicial procedures.

Other Towns

Who handles development in municipalities beyond Asheville?

BY XPRESS STAFF

While Asheville city and Buncombe County leaders govern the bulk of local development, other municipalities set zoning rules and approve projects within their own borders. Here's the key information about when and where those decisions are made, as well as how you can weigh in.

Town of Black Mountain

Board of Adjustment

- * **Website:** avl.mx/anv
- * **Development responsibilities:** The Board of Adjustment hears zoning variance requests and appeals, as well as issues special use permits.
- * **Meeting details:** Meetings are held on the third Thursday of the month, 6 p.m., at Town Hall, 160 Midland Ave., Black Mountain.
- * **Board agendas:** Agendas are typically posted one week ahead of each meeting on the website.
- * **Public comment:** Public comments are allowed at the meetings under the limitations of the quasi-judicial process. People can also submit written comments to Comments@tobm.org if they choose not to attend in person.

Planning Board

- * **Website:** avl.mx/anw
- * **Development responsibilities:** The Planning Board is an advisory board that comments on rezoning applications and major subdivisions, with recommendations going on to the Town Council. The board

also provides general insight on land use ordinances and planning efforts.

- * **Meeting details:** Regular meetings are held on the fourth Monday of every month, 6 p.m., at Town Hall, 160 Midland Ave., Black Mountain.
- * **Board agendas:** Agendas are typically posted one week ahead of each meeting on the website.
- * **Public comment:** Public comments are allowed at the meetings. People can also submit written comments to PlanningBoard@tobm.org if they choose not to attend in person.

Town Council

- * **Website:** avl.mx/anx
- * **Development responsibilities:** The Town Council approves all rezoning applications and sets policy on general land use and planning matters.
- * **Meeting details:** Regular meetings are held on the second Monday of every month, 6 p.m., at Town Hall, 160 Midland Ave., Black Mountain. The board also holds an information-only "agenda meeting" at 5 p.m. on the Thursday prior to each regular session meeting in the same location.

- * **Board agendas:** Agendas are typically posted on the website by the first Tuesday of each month.
- * **Public comment:** Public comments are allowed at regular meetings; residents are asked to sign in at the start of the meeting if they plan to speak. People can also submit written comments to Comments@tobm.org if they choose not to attend in person.

Town of Biltmore Forest

Board of Adjustment

- * **Website:** avl.mx/ant
- * **Development responsibilities:** The board considers quasi-judicial matters, including special use and variance requests. The board also reviews landscaping plans associated with new construction, both residential and commercial, and hears appeals of decisions made by the zoning administrator.
- * **Meeting details:** Meetings are held on the third Monday of each month, 4 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest. Meetings may be canceled if there is no business to consider.
- * **Board agendas:** Agendas are typically posted on the town website the Friday before each meeting.
- * **Public comment:** Public comments are allowed at the meetings under the limitations of the quasi-judicial process. As of this writing, commenters can participate in meetings remotely via Zoom or in person. People can also email public comments to TownHall@BiltmoreForest.org.

Board of Commissioners

- * **Website:** avl.mx/b3h
- * **Development responsibilities:** The board sets policy via land use regulations and has final signoff on subdivision applications and sign requests.
- * **Meeting details:** Meetings are held on the second Thursday of the month, 4:30 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest.
- * **Board agendas:** Agendas are typically posted on the town website the Friday before each meeting.
- * **Public comment:** As of February 2022, commenters can participate in meetings remotely via Zoom or in person. People can email also public comments to TownHall@BiltmoreForest.org.

Design Review Board

- * **Website:** avl.mx/prwc
- * **Development responsibilities:** The board reviews all new structures for compliance with the town’s recommended design standards.
- * **Meeting details:** Meetings are held on an as-needed basis on Thursdays immediately following a Board of Adjustment meeting, 5:30 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest.
- * **Board agendas:** Agendas are typically posted the Tuesday before the meeting.
- * **Public comment:** People can email public comments to TownHall@BiltmoreForest.org.

Planning Commission

- * **Website:** avl.mx/b3g
- * **Development responsibilities:** The board reviews potential zoning/land use changes

and makes recommendations to the Board of Commissioners on those items; it also conducts preliminary review of subdivision requests. As of February 2022, board members are in the process of conducting a Comprehensive Land Use Plan review.

- * **Meeting details:** Meetings are held on an as-needed basis, usually on the fourth Tuesday of the month, 5:30 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest.
- * **Board agendas:** Agendas are typically posted on the town website the Friday before each meeting.
- * **Public comment:** People can email public comments to TownHall@BiltmoreForest.org.

Town of Montreat

Board of Adjustment

- * **Website:** avl.mx/any
- * **Development responsibilities:** The Board of Adjustment hears zoning variance requests, appeals of town zoning decisions and applications for special use permits. Variances must be approved by a fourth-fifths majority, while other matters are decided by simple majority.
- * **Meeting details:** Meetings are generally held as needed on the fourth Thursday of the month, 7 p.m., at Town Hall, 1210 Montreat Road, Montreat.
- * **Board agendas:** Agendas are generally made available online one week before a scheduled meeting.
- * **Public comment:** Citizen testimony on any quasi-judicial matter must be given in person and under oath at the time of the hearing. Other witnesses may present competent, material and substantial

evidence as allowed by the board. To be entered into the record, all comments must be presented in person.

Board of Commissioners

- * **Website:** avl.mx/anz
- * **Development responsibilities:** The Board of Commissioners approves all conditional use permits and rezoning applications. The board also sets general town land-use policy.
- * **Meeting details:** Regular meetings are held on the second Thursday of every month, 7 p.m., at Town Hall, 1210 Montreat Road, Montreat. Each meeting is generally preceded by a public forum at 6:30 p.m. in the same location.
- * **Board agendas:** Agendas are generally made available online one week before a scheduled meeting.
- * **Public comment:** To be entered into the official record of the meeting, all public comment must be presented in person. People can also address unofficial written comments until 5 p.m. the day of the meeting to Info@TownOfMontreat.org.

Planning and Zoning Commission

- * **Website:** avl.mx/any
- * **Development responsibilities:** The Planning and Zoning Commission issues recommendations on conditional use permits and rezoning applications to the Montreat Board of Commissioners and prepares the town's comprehensive plan. The board also has final say on subdivision approvals.
- * **Meeting details:** Regular meetings are held quarterly on the second Thursday of January, April, July and October, 7 p.m., at Town Hall, 1210 Montreat Road, Montreat.

- * **Board agendas:** Agendas are generally made available online one week before a scheduled meeting.
- * **Public comment:** To be entered into the official record of the meeting, all public comment must be presented in person. People can also address unofficial written comments until 5 p.m. the day of the meeting to Info@TownOfMontreat.org.

Town of Weaverville

Planning and Zoning Board

- * **Website:** avl.mx/ao3
- * **Development responsibilities:** The board reviews zoning text and map amendments and issues recommendations to the Town Council based on compliance with the town’s comprehensive land use plan. This board also reviews development applications for compliance with subdivision standards and conditional zoning district applications.
- * **Meeting details:** Meetings are held on the first Tuesday of the month, 6 p.m., at Town Hall, 30 S. Main St., Weaverville.
- * **Board agendas:** Agendas and packets of information related to the meeting are posted to the town’s website on the Thursday before the meeting.
- * **Public comment:** General public comments may be made during the meeting or by writing in advance. Written comments can be submitted (1) by putting a written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least six hours prior to the meeting, (2) emailing to PublicComment@WeavervilleNC.org at least six hours prior to the meeting, (3) by mailing written comment (received not later than Monday’s mail delivery) to Town of

Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments.

Town Council

- * **Website:** avl.mx/ao4
- * **Development responsibilities:** Legislative decisions, such as ordinance changes and zoning text or map amendments, are ultimately ruled upon by Town Council, which considers the recommendations of the Planning and Zoning Board.
- * **Meeting details:** Regular meetings are held on the fourth Monday of every month, 7 p.m., at Town Hall, 30 S. Main St., Weaverville.
- * **Board agendas:** Agendas and packets of information related to the meeting are posted to the town’s website on the Thursday before the meeting.
- * **Public comment:** General public comments may be made during the meeting or by writing in advance. Written comments can be submitted (1) by putting a written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least six hours prior to the meeting, (2) emailing to PublicComment@WeavervilleNC.org at least six hours prior to the meeting, (3) by mailing written comment (received not later than Monday’s mail delivery) to Town of Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments.

Zoning Board of Adjustment

- * **Website:** avl.mx/ao3
- * **Development responsibilities:** The Zoning Board of Adjustment handles all quasi-judicial matters, such as variance requests and appeals of administrative decisions by town staff. As of 2017, Weaverville no longer issues special

use permits, which had previously been reviewed by this board.

- * **Meeting details:** Meetings are held as needed on the second Monday of the month, 7 p.m. at Town Hall, 30 S. Main St., Weaverville.
- * **Board agendas:** Agendas and packets of information related to the meeting are posted to the Town's website on the Thursday before the meeting.
- * **Public comment:** General public comments may be submitted during the meeting under the limitations of the quasi-judicial process.

Town of Woodfin

Board of Adjustment

- * **Website:** avl.mx/ao0
- * **Development responsibilities:** The Board of Adjustment approves variance requests and special use permits, as well as considers appeals of staff decisions.
- * **Meeting details:** Regular meetings are held on the fourth Thursday of the month, 6:30 p.m., at Town Hall, 90 Elk Mountain Road, Woodfin. Meetings are streamed live via Facebook.
- * **Board agendas:** Board agendas are available to the general public two business days before a scheduled meeting. Agendas are published on the town's website on the Board of Adjustment page
- * **Public comment:** The public is invited to provide comments in person during each monthly meeting under the limitations of the quasi-judicial process.

Board of Commissioners

- * **Website:** avl.mx/ao1

- * **Development responsibility:** The Board of Commissioners adopts land use plans and ordinances and approves the town's master plan, as well as annexation, rezoning and subdivision requests.

- * **Meeting details:** Regular meetings are held on the third Tuesday of every month, 6:30 p.m., at Town Hall, 90 Elk Mountain Road, Woodfin. Meetings are streamed live via Facebook.

- * **Board agendas:** Board agendas are available to the general public two business days before a scheduled meeting. Agendas are published on the town's website on the Board of Commissioners page.

- * **Public comment:** The public is invited to provide comments in person during each monthly meeting.

Planning Board

- * **Website:** avl.mx/ao2

- * **Development responsibilities:** The Planning Board issues recommendations for or against approval of land use plans and development ordinance adoption/amendments to the Board of Commissioners. The board also makes recommendations on master plans, rezoning and subdivision requests.

- * **Meeting details:** Regular meetings are held on the the first Tuesday of each month, 6 p.m., at Town Hall, 90 Elk Mountain Road, Woodfin. Meetings are streamed live via Facebook.

- * **Board agendas:** Board agendas are available to the general public two business days before a scheduled meeting. Agendas are published on the town's website under the Planning Board page.

- * **Public comment:** The public is invited to provide comments in person during each monthly meeting.

Here's the plan



High-level land-use discussions shape neighborhood decisions

BY MARK BARRETT
markbarrett@charter.net



Deciding what gets built on an empty lot down the street should, according to state law, begin with decisions about what gets built across an entire city or county.

Counties and municipalities that want to have zoning in their jurisdiction first need to write a comprehensive plan that looks at big questions like which areas are best for growth, what types of development should go where and how government services like water, sewer and roads should be improved, a 2019 revision of land-use laws says.

Asheville answered many of those questions when City Council adopted “Living Asheville: A Comprehensive Plan for Our Future” in 2018. The document says the city should become denser, with much of that growth contemplated in or near downtown and “urban centers” scattered around town.

Buncombe County’s current land-use plan, last updated in 2013, meets state requirements but is both less detailed and less prescriptive than the city’s plan, perhaps reflecting a historic aversion to zoning in the county’s rural areas. That’s likely to change soon. In the second half of 2021, the county began writing a new comprehensive plan in a process scheduled to take two years.

Areas near but outside Asheville city limits, and thus in the county’s jurisdiction, are seeing significant growth. With the city’s ability to annex property sharply limited by the state General Assembly in 2012, Buncombe County will have to look at whether to offer traditionally urban services in some places, says county Planning Director **Nathan Pennington**.

“The county historically has not been in the sidewalk-building business, but with the annexation law having changed so much,” the county might decide it should provide pedestrian facilities, Pennington offers as an example. “We have to look at how do we provide amenities on an urban level and a rural level” in less populated parts of the county, he adds.

Asheville’s 2018 plan says repeatedly that the city must allow construction of more housing to accommodate residents at various income levels and push back against the environmental impacts of sprawl. Some recommendations have been implemented, while other steps called for in the plan are on the way, says city Planning Director **Todd Okolichany**.

Results that have emerged from the Living Asheville plan, Okolichany says, include recent rezonings of property at Innsbruck Mall and around the Merrimon Avenue-Beaverdam Road intersection to encourage mixed-use development, adoption in September of an ordinance to make it harder to cut trees on private property and the city’s new rules on where and how hotels are allowed.



Guidebook, not law book

Comprehensive plans can look at broader issues, such as a community’s quality of life, in addition to choices more closely tied to land use and zoning, says Adam Lovelady, a professor at the School of Government at the University of North Carolina Chapel Hill. Done well, he continues, these plans can engage residents to make decisions about what they want, help officials decide where public dollars should be spent, spur structural changes in local government and hold local officials accountable for progress toward community goals.

Comp plans may also inject the wishes of the community at large into decisions on specific properties. If a developer proposes a large apartment complex, and the plan identifies a need for more housing and flags the neighborhood as a likely area, it’s easier for officials to approve the project — even if those living next to it are opposed. If the property is more rural and someone wants to put in a large shopping center, plan goals for open space and a more centralized growth pattern might tilt a decision against a project.

However, Lovelady points out, a plan’s recommendations do not bind the officials who make zoning decisions. If a major development like a large manufacturing plant is proposed, leaders can approve it even if the comprehensive plan doesn’t contemplate such a project for the area.

“In North Carolina, [a comprehensive plan] is a policy document. It is not a regulatory document,” he says.

In some situations, applicants for land-use permits are required to show that their proposals comply with a city or county comprehensive plan. And governing bodies must consider the plan’s provisions when considering a rezoning, Lovelady says, even though they don’t have to follow them.

Plans can also come into play when a land-use decision is contested in court. If the decision is consistent with the plan, it will likely be harder to overturn.

Making plans can be easier than implementing them. For instance, a previous Asheville comprehensive plan said the area around the Merrimon-Beaverdam Road intersection should become one of several nodes of denser development around the city, but the development pattern there has changed little.

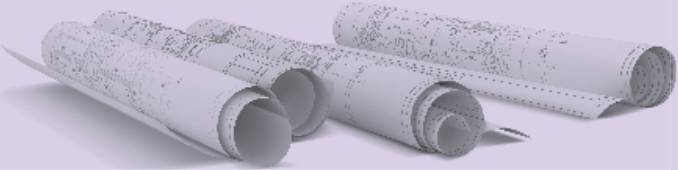
“
**In North Carolina,
[a comprehensive plan]
is a policy document. It is
not a regulatory document.**

— Adam Lovelady

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Plan to plan?

More information about the process of creating Buncombe County’s Comprehensive Plan 2043, including a form to sign up for an email newsletter, is available at avl.mx/arw.



'Popularity problem'

Most local governments have comprehensive plans, UNC's Lovelady says. State legislators gave those that didn't a shove in that direction in 2019 as part of a consolidation of the state's land-use laws. Counties and municipalities that haven't adopted a comp plan by July 2022 won't have the legal authority to enforce their zoning ordinances. The state won't take any steps to penalize those that don't comply, he says, but governments won't have a leg to stand on if anyone challenges their ordinances in court.

That 2019 law has sparked steps in Woodfin to comply after it was discovered that a plan drawn up several years ago was discussed but never formally approved by the town Board of Commissioners. The board adopted a placeholder plan in September 2021 to comply with the state requirement, and the town has begun developing a new plan, with completion scheduled sometime in 2022.

While Buncombe's current plan does comply with the law, the county hired consulting firm Clarion Associates on a roughly \$375,000 contract and appointed a 23-member committee of county residents in 2021 to guide an update. Meetings and other efforts to get the public involved are scheduled to run through summer 2022, and a final plan is to be approved in 2023.

County planner Pennington says it's much too early to predict what the plan will say. But it's clear that its authors will have to grapple with "the scarcity of land" to build on and what he calls the county's "popularity problem" – the desire of so many people to live here. He says he expects "policies and recommendations that would change how development is going to be regulated in the county in the future."

CASE IN POINT:

The Bluffs at River Bend

Western North Carolina's 2021 election cycle provided a perfect example of how a motivated local community can shift its government's decision-making. In Woodfin, a town of roughly 8,000 people to the northwest of Asheville, a record voter turnout replaced three incumbent commissioners in a race defined by development.

Woodfin's residents had been stirred up in March 2021 by The Bluffs at River Bend, a proposed residential project of nearly 1,400 new units slated for Richmond Hill next to the French Broad River. Believing that current town leaders were too lenient toward developers, a slate of three political newcomers — **Eric Edgerton**, **Jim McAllister** and **Hazel Thornton** — decided to run for office.

The three candidates and their supporters organized an aggressive get-out-the-vote effort, together knocking on nearly 800 doors and reaching thousands of Woodfin residents by phone. "I learned during the campaign that residents feel like the town is not listening to them and that it makes decisions privately and quietly, and they are angry about it," McAllister said. The candidates were rewarded for their outreach, with each receiving at least 615 votes, while none of the three incumbents earned more than 150 votes.

What's on paper now



Here's a look at key points in Asheville and Buncombe County's existing comprehensive plans. You can find the Asheville plan online at avl.mx/asj and the county plan at avl.mx/ask.

Asheville

The city's plan was not written by people who think it's possible to lock the gate and keep Asheville just the way it is. "The future growth of the city is inevitable," it says. But the direction of that growth must shift to preserve the environment, keep the city's quality of life, boost its economy and create a healthy and equitable community.

"Without intervention, the city risks becoming a strictly tourism-oriented destination and second-home community," says the Living Asheville plan, adopted in 2018. It describes a "need to balance preservation of the natural and built environment while accommodating population growth and the need to provide new and diverse housing that is priced affordably."

The plan says Asheville is a relatively low-density city today and identifies three types of areas where growth should be directed:

- ✿ Downtown
- ✿ North Charlotte Street, the South Slope and the River Arts District, all "innovation districts" where the city can use special financing for improvements.
- ✿ Land along major roads in the city. That includes projected town and urban centers that the plan says will provide a mix of residential uses in a denser, more walkable environment with enough population density to support transit. Corridors identified for that growth pattern include Hendersonville Road, Patton Avenue/Smokey Park Highway and Merrimon Avenue.

If the city's population were to grow at 1% a year, all of the expected increase could be accommodated in those areas for three generations, the plan says. Asheville grew faster than that target over the past decade: 13.4% from 2010 to 2020, according to the latest U.S. Census Bureau figures.

However, the plan suggests that the targeted growth areas could at least hold all of the population increase expected over the next 20 years. It projects that the city will grow from an estimated 91,000 in 2018 to 110,000 in 2038; Asheville's population was 94,589 in 2020.

Buncombe County

The most recent update of the county's land use plan was approved in 2013. It says the county should direct denser development toward areas with existing infrastructure, like water and sewer service, and prioritize efforts to conserve farmland and mountain ranges. Recommendations include:

- ✿ Providing incentives for the construction of affordable housing.
- ✿ Relaxing some standards for lot size and the distance a home must be from a property line in areas served by public water and sewer. Lot size rules in areas without public sewers should be adjusted to ensure there is room for septic systems, the plan says.
- ✿ Assessing new developments for their connection to bicycle and pedestrian facilities. The plan stops short of saying developers should be required to build sidewalks or bike paths.
- ✿ Adjusting rules to make it easier to place a manufactured home on land that's not part of a mobile home park.

MUDDY GROUND

Legality of affordable housing tool disputed

BY MARK BARRETT
markbarrett@charter.net

Can't local governments just make developers build more affordable housing?

The answer is more complicated than the question. Experts say it's unclear whether counties and municipalities in North Carolina can require a certain percentage of homes in a residential development to be sold or rented at prices affordable to people of modest means. While such requirements do result in construction of affordable housing where they exist, the number of units produced varies. Advocates of these "inclusionary zoning" rules say they should be only one of several strategies governments employ to help bring housing costs in line with workers' ability to pay.

Several local governments around the state, including Asheville, Black Mountain and Buncombe County, offer incentives to developers who agree to include affordable housing in their projects. The carrots these governments dangle include easing restrictions on the number of housing units per acre, reducing or waiving permit fees and speeding up the processing of applications for zoning approval.

Incentive-based approaches are clearly allowed under North Carolina law, says **James Joyce**, a professor at the University of North Carolina Chapel Hill's School of Government who co-authored a book on inclusionary zoning. But uncertainty exists over whether local governments in the state can whip out the stick and force developers to include affordable units.

"Depending on who you ask, you may get different answers in terms of how firm the [legal] ground is" authorizing such a requirement, Joyce says. "In general, it's not very firm."



Joyce's co-author, School of Government professor **Tyler Mulligan**, wrote in 2010 that the argument that governments can adopt mandatory inclusionary zoning is "plausible" but involves "some risk" of a judge disagreeing.

At least two North Carolina municipalities have already adopted mandatory inclusionary zoning. Chapel Hill says 10%-15% of housing units, depending on location, must be affordable for residential projects in which the units are to be sold. Davidson's ordinance requires 12.5% affordable units in both rental and owner-occupied projects. Some developers of projects subject to the rules have challenged them, but those suits were either settled or decided on other grounds, meaning state courts have yet to rule on whether the requirements are legal.

Brad Branham, Asheville's city attorney, says city officials "would love to have" the power to impose mandatory inclusionary zoning. But he doubts such rules would withstand a court challenge if the matter came to a final verdict and says most attorneys around North Carolina agree.

"I would be very reluctant to advise our City Council that we have authority to have inclusionary zoning," he said.

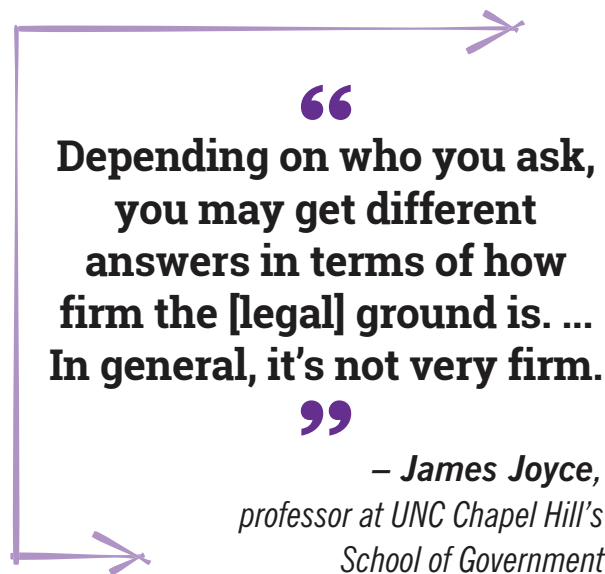
Unsuccessful attempts have been made at the state level to give local governments explicit inclusionary zoning authority. State Sen. **Julie Mayfield**, an Asheville Democrat and former City Council member, introduced such legislation, Senate Bill 426, in April 2021. As of February 2022, it had not moved out of the Senate Rules Committee, which is traditionally a holding pen for bills unlikely to get a hearing.

A study by the Grounded Solutions Network, a national organization of non-profits involved in affordable housing, found that inclusionary zoning does spur the production of affordable housing and has the potential to reduce population segregation by race and income. According to that data, local governments with inclusionary zoning require an average of 16% of units in each development above a certain size to be affordable.

But critics like the National Apartment Association, which advocates on behalf of the rental housing industry, say the number of units produced is relatively small and inclusionary zoning programs increase the cost of other units in a residential project.

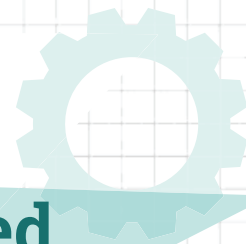
Laura Hudson, an Asheville architect and a former chair of the city's Planning and Zoning Commission, says it might be nice if the city could simply require that half or all of units in a development be affordable. But the reality, she says, is that such high ratios wouldn't work because a project would not offer a developer a reasonable rate of return. They would simply invest elsewhere.

"Without large infusions of capital [from government], that's just not possible," Hudson says. "The cost of construction now is bananas."



“
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In general, it's not very firm.**
”
– *James Joyce,*
professor at UNC Chapel Hill's
School of Government

On the records



Public documents can shed light on development issues

BY DANIEL WALTON
dwalton@mountainx.com

Development projects leave obvious marks on the world around them: earth moved, steel erected, asphalt laid. But every building that goes up in Western North Carolina also leaves a paper trail in local government archives that, as public property, residents have the legal right to inspect.

Many of these documents are available through public databases, such as Asheville's SimpliCity (avl.mx/b6o) or Buncombe County's public permits portal (avl.mx/avx). Other items, such as emails to elected leaders concerning a particular project, may not be accessible online but can be obtained by submitting a request to government officials.

According to North Carolina law, "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts or other documentary material" associated with "the transaction of public business" are public record unless specifically exempted.

Here are some tips for making public records requests, as well as where to ask for records from Buncombe County and each of its municipalities.

Ask (correctly) and ye shall receive

- * While the law requires public records to be provided "as promptly as possible" upon request, large or vague requests can take many months to fulfill. For a quick turnaround, it's best to limit the scope of a request. Asking for all emails sent between a developer and city planning staff in a given week, for example, will yield faster results than asking for all emails ever sent related to a project.
- * Governments are required to provide specific records that already exist, but they're not required to provide general information or create new records in response to a request. Asking for all multifamily construction permits approved in 2021 would thus be a valid request, but asking for the total amount of money spent on tax incentives for affordable housing would not be viable.
- * State law designates certain categories of development-related records as confidential. These include most personnel information about government staff, attorney-client communications and records concerning proposed economic development projects.
- * Governments must generally provide records in the form in which they're requested. However, they are not required to convert paper records to digital media.



* Fees for obtaining public records are generally limited to the actual cost of making a copy, such as the paper used in printing or a flash drive to store digital files. But state law does allow governments to levy a “special service charge” in cases involving “extensive use of information technology resources” — another reason to keep requests small when possible.

Where to look

- * Asheville — The city operates an online records requests portal at avl.mx/awp.
- * Buncombe County — County public records requests can be filed through an online form at avl.mx/awr.

- * Biltmore Forest — Contact Town Clerk **Laura Jacobs** at LJacobs@BiltmoreForest.org or 828-274-0824.
- * Black Mountain — Public records requests can be filed through an online form at avl.mx/awv.
- * Montreat — Complete the online form at avl.mx/awu.
- * Weaverville — File a request through the town’s general contact form at avl.mx/awx.
- * Woodfin — Complete the online form at avl.mx/aww.



Campaign finance

It’s no secret that many developers active in Western North Carolina are players in the political arena as well. Thanks to campaign finance laws, it’s also no secret who gives money to whom in support of bids for public office.

Financial reports detailing the donations politicians receive are generally required semiannually for years in which there is no primary or general election for the position the person holds or is seeking. During election years, quarterly reports are required. More frequent reports are required for large contributions given close to an election. All candidates for local elected office file these reports with the Buncombe County Board of Elections; those documents are accessible online at avl.mx/azf, though it typically takes several weeks after submission before they’re available.

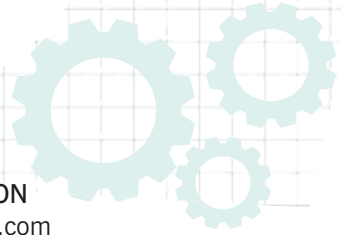
The N.C. State Board of Elections’ campaign finance website (avl.mx/azc) enables residents to look up documents for state-level offices, including the House of Representatives and Senate. Searches can capture all donations received by a candidate (avl.mx/azd) or all donations given by an individual (avl.mx/aze). Candidates for federal offices, such as the U.S. House or Senate, must file their reports through the Federal Election Commission (fec.gov/data). They’re not required to register with the N.C. State Board of Elections unless they want their own election committee to contribute money to other people’s campaigns for state or local offices.

Reports generally include the name, address, profession and employer of anyone making a donation of more than \$50. Donations of \$50 or less are reported anonymously as “aggregated individual contributions.”

Changing **THE RULES**

How to participate in the political process

BY DANIEL WALTON
dwalton@mountainx.com



The bulk of this guide has described how the decision-making process for development proposals currently works. Neighborhood residents and developers alike must abide by those rules as they debate projects and negotiate changes they'd like to see.

To go beyond those guidelines, however, the rules themselves have to change. And while the power to make that happen is in the hands of elected officials, the power to decide who those officials are lies with Western North Carolina's voters.

As of press time, candidate filing had been postponed until Thursday, Feb. 24, and other information pertaining to the 2022 elections was in flux due to ongoing legal challenges. Among other changes, primaries have been pushed back from Tuesday, March 8, to Tuesday, May 17. Decisions concerning early voting dates, sites and times for the general election in November also haven't yet been finalized. Look for the *Xpress* voter guides closer to these elections for more up-to-date information. In the meantime, here's some general guidance for local voters.

Find your sample ballot

To find sample ballots and check voter registration status, visit the N.C. State Board of Elections voter search website at avl.mx/6nq.

Users must enter their full name and voter status. After searching, the system will display a list of matching names. Selecting your name takes you to a page with sample ballots, the address of your primary or Election Day polling place and your representatives' jurisdictions. If you've voted absentee, this page also shows the status of your ballot.

If your name does not show up, you aren't registered to vote in North Carolina. If you believe this is an error, contact your county board of elections as soon as possible.

Each county board of elections also has sample ballots available on its website. Voters are encouraged to fill one out in advance to minimize the time spent in a polling place.

Vote by mail

If you'd like to vote by mail, request an absentee ballot through the N.C. State Board of Elections' online portal (avl.mx/8ii) or by filling out and submitting an absentee ballot request form (avl.mx/aw6). All forms must be returned to the corresponding county board of elections by 5 p.m. on the Tuesday before Election Day; request forms can be mailed, emailed, faxed or brought to the county election office in person by the voter or a near relative.

When your ballot arrives, follow the enclosed directions. You must mark the ballot in the presence of a witness, who must sign the absentee ballot envelope upon completion.

The completed absentee ballot can be mailed back to the county board of elections (you will need your own postage stamp) or delivered to any early voting site

or the county board of elections. Absentee ballots can be delivered by the voter or a near relative, but they must be dropped off by 5 p.m. on Election Day. Mailed ballots must be postmarked by Election Day and arrive at the local board of elections by 5 p.m. on Nov. 11.

Absentee voters can sign up for text or email updates on the status of their ballot through BallotTrax (avl.mx/8il), run through the N.C. State Board of Elections.

Absentee request forms in Spanish can be found at avl.mx/aw6.

Do I need to bring my ID?

As of press time, voters aren't required to show a photo ID, according to the N.C. State Board of Elections. A September 2021 order by a North Carolina superior court permanently blocked the state's photo ID requirement, which was approved in a statewide referendum in 2018, from taking effect without action by a higher court. A procedural case pertaining to the law is currently on the U.S. Supreme Court's docket, but legal wrangling about the photo ID requirement itself seems likely to continue for quite a while.

However, people registering to vote at a one-stop early voting site must provide one of the following: a North Carolina driver's license or an identity card from the N.C. Division of Motor Vehicles; a current bank statement, paycheck or utility bill showing the voter's name and address; a student photo ID plus a school document showing the student's address; or any other government-issued photo ID or document showing the voter's name and current address.

Voter guides beyond Buncombe County

Xpress plans to publish both primary and general election voter guides for all municipal races within Buncombe County, as well as elections involving candidates who are seeking to represent the county in the state legislature. The following nonpartisan voter guides offer information and candidate profiles for state and national races:

- * Vote411.org, a bilingual voter guide sponsored by the League of Women Voters, can be personalized to match your sample ballot.
- * Democracy North Carolina's NCVoter.org offers a comprehensive guide to state races in both English and Spanish.
- * NCVoterGuide.org, a service of Common Cause North Carolina, presents each candidate's responses to questions grouped by issue.

Having trouble?

Call the N.C. State Board of Elections at 919-814-0700, Buncombe County Election Services at 828-250-4200 or the nonprofit Election Protection hotline at 866-687-8683.



Terms of the trade

A glossary of development lingo

BY DANIEL WALTON
dwalton@mountainx.com

Attending a government meeting where development issues are on the table can sometimes feel like visiting a foreign country. The metal detectors one must pass to enter Asheville City Hall or Buncombe County's Board of Commissioners meeting room are reminiscent of airport security. Public comment comes with strict rules of etiquette different from those of normal American conversation.

And when lawyers, planners and elected officials get into the weeds of jargon and legal minutiae, it can seem like they're no longer speaking English.

While a full accounting of that language would take more pages than this guide contains, here's a list of some of the most commonly encountered — and commonly confused — terms that come up in development discussions. More definitions are available through the city of Asheville's Unified Development Ordinance ([avl.mx/b6l](#)), Buncombe County's Land Development and Subdivision Ordinance ([avl.mx/ast](#)) and North Carolina's Chapter 160D local planning and development regulations ([avl.mx/asu](#)).

Accessory dwelling unit: A separate and complete space for occupancy by one family, containing toilets, sleeping rooms and a kitchen, that is located on the same lot as a single-family dwelling or business.

Administrative decision: Any choice made in the enforcement of development regulations involving the determination of facts and application of objective standards, mostly handled by government staff.

Affordable housing: Any residential units provided for people earning at or below 80% of the area median income for a given jurisdiction (currently \$42,100 for an individual or \$60,100 for a family of four in Asheville).

Annexation: The incorporation of land into an existing municipality. North Carolina law prevents cities from adding new property without the approval of voters who would be annexed.

Appurtenance: An accessory added to a main structure or land, such as a stone wall.

Buffer: A planted area, sometimes combined with fences or walls, meant to separate two areas or land uses.

Central business district: The major commercial downtown center of a community, with boundaries set by the municipality.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict.



Complete streets: Streets designed to safely accommodate all modes of travel, including walking, biking, driving and public transit.

Comprehensive plan: The official public planning document adopted by a government as a long-range advisory guide addressing the community's general, social, economic and physical development.

Conditional use: A specific type of activity on a property that, because of its potential impacts on the surrounding area, require individual consideration to ensure appropriateness at a particular location and protection of the public welfare.

Conditional use permit: A special allowance given to a property for a conditional use after a public hearing; approval of a permit does not change the property's zoning.

Conditional zoning: A legislative change to a property's land use rules incorporating site-specific regulations.

Deed restriction: A legal limitation on the use of a property as outlined in real estate records.

Density: The number of dwelling units per acre of land.

Development: The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site or demolition of any structure; the excavation, grading, filling, clearing or alteration of land; the subdivision of land; and the initiation or substantial change in the use of land or intensity of use.

Easement: A grant of property rights, such as permission to build a greenway, given by a property owner to another person or entity.

Extraterritorial jurisdiction: The area within 1 mile of a city's limits that can be regulated according to that city's development rules. Asheville and Weaverville have been stripped of this area by the N.C. General Assembly.

Frontage: The length of a building or lot that runs parallel to a public street or alley.

Gentrification: The process of neighborhood redevelopment accompanied by a shift in demographics and the displacement of longtime residents.

Hardship: A practical difficulty in carrying out the requirements of a government's development regulations. Unless specifically noted, financial difficulties alone do not constitute a hardship.

Highest and best use: The activity on a property that will bring the greatest profit to its owners.

Impervious surface: A roof or paved area through which water cannot penetrate, creating the need for drainage facilities to handle increased storm runoff.

Inclusionary zoning: A locally adopted requirement that a specific percentage of housing units in a project remain affordable for a certain length of time, the legality of which is disputed in North Carolina.

Infill development: New construction or changes to existing properties in established urban areas that are currently vacant or being used for another purpose.

Level of service: A scale measuring the amount of vehicle traffic a road or intersection can accommodate, ranging from A (relatively free flow) or F (unsatisfactory stop-and-go conditions).

Light industrial use: Activity involving the assembly, packaging, processing, production and manufacturing of goods conducted wholly within an enclosed building and without external effects such as smoke, odor or noise.

Legislative decision: The adoption, amendment or repeal of a development regulation made by a governing body, including the rezoning of property, based on public opinion and the best interest of the community.

Lot: A tract or piece of land with fixed boundaries as designated on a plot or survey map.

Major subdivision: In Buncombe County, a proposed splitting of land that will result in 11 or more lots.

Minor subdivision: In Buncombe County, a proposed splitting of land that will result in four to 10 lots.

Mixed-use development: A project that combines multiple activities in one or more structures on the same property, such as residential units above offices and a retail storefront.

New Urbanism: A design philosophy intended to create a strong sense of community by incorporating features of traditional small towns or urban neighborhoods, such as compact commercial areas with active, walkable streets.

NIMBY: An acronym for “not in my backyard,” often used to characterize opponents of development projects.

Nonconforming use: An activity in a building that existed prior to the adoption of a development rule that would otherwise forbid the activity.

Open space: An area that is intended to provide light and air and is designed for either environmental, scenic or recreational purposes. This does not include parking lots or other surfaces intended for vehicles.

Overlay district: A type of zoning that applies supplemental or replacement rules to those of an area with another zoning.

Permitted use: Any activity explicitly allowed by a property’s zoning.

Quality of life: The degree to which individuals perceive themselves as able to function physically, emotionally and socially, as influenced by all aspects of a community.

Quasi-judicial decision: Any choice made in the enforcement of development regulations that involves both the finding of facts and discretion in applying the rules.

Regulatory taking: The result of a development rule becoming so restrictive that it has the same effect as the physical appropriation of land, such as zoning private property as a public park without the owner’s consent.

Residential: Land designated by a government plan or zoning regulations for buildings consisting only of dwelling units.

Rezoning: An amendment to the map or text of an ordinance to change the nature, density or intensity of uses allowed on certain property.

Right of way: An area or strip of land dedicated for use as a street, crosswalk, electrical line, water main or other special purpose.



Road diet: A reduction in vehicle lanes on a street meant to improve safety and access for other modes of travel, such as walking and bicycling.

Setback: The required minimum distance between a building and its closest property line.

Smart growth: A theory of community design with 10 principles, as defined by the U.S. Environmental Protection Agency: (1) mix land uses; (2) take advantage of compact building design; (3) create a range of housing opportunities and choices; (4) create walkable neighborhoods; (5) foster distinctive, attractive communities with a strong sense of place; (6) preserve open space, farmland, natural beauty and critical environmental areas; (7) strengthen and direct development toward existing communities; (8) provide a variety of transportation choices; (9) make development decisions predictable, fair and cost effective; (10) encourage community and stakeholder collaboration in development decisions.

Special subdivision: In Buncombe County, a proposed splitting of land that will result in three or fewer lots.

Special use: Any activity permitted by an underlying zoning district that must undergo an additional level of review due to potential community impacts.

Spot zoning: Allowing the use of land in a way that is detrimental or incompatible with uses of its surrounding area, especially to favor a particular landowner.

Sprawl: The spreading of a city and its suburbs over rural land at the fringe of an urban area, often linked to negative health and environmental impacts.

Streetscape: The scene as may be observed along a public street composed of natural and man-made components, including buildings, paving, planting, street furnishings and miscellaneous structures.

Strip development: Commercial and higher-density residential development located adjacent to major streets, characterized by shallow depth, street-oriented layout and multiple vehicle access points.

Subdivision: Any split of a property into two or more lots or sites for sale or building development, including all divisions involving a new street or change to existing streets.

Substantial improvement: Any repair, reconstruction, rehabilitation, addition or other change to a structure equal to or greater than 50% of the structure's fair market value before construction.

Sustainable development: As defined by the United Nations, a pattern of land use "that meets the needs of the present without compromising the ability of future generations to meet their own needs."

Universal design: The practice of constructing spaces and buildings to be usable by everyone, including people with disabilities.

Variance: An exception to development regulations given to a specific person or business that allows construction in a way that would otherwise be prohibited.

Viewshed: The area that can be seen from a defined observation point.

Zoning: The division of a jurisdiction by legislative regulations into areas that specify allowable land uses and size restrictions for buildings.

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2021 North Carolina Legislation Related to Planning and Development Regulation

Adam Lovelady and Jim Joyce

CONTENTS

Checklist for Local Government Actions ... 2	Agricultural Uses—The Farm Bill (S.L. 2021-78) ... 12
Comprehensive and Land Use Planning ... 3	Protection of Water Supply Watersheds and Coastal Areas ... 13
Zoning and Development Regulations ... 3	Redevelopment in Water Supply Watershed (S.L. 2021-164) ... 13
Decriminalizing Ordinance Enforcement (S.L. 2021-138) ... 3	Coastal Area Management (S.L. 2021-158) ... 13
Land Use Clarifications (S.L. 2021-168) ... 6	Erosion and Sedimentation Control ... 14
Chapter 160D Technical Corrections (S.L. 2021-88) ... 6	Plan Requirements and Single-Family Development Rules (S.L. 2021-121) ... 14
Remote Meetings (S.L. 2021-35) ... 6	Erosion and Sedimentation Fee Changes (S.L. 2021-180) ... 15
Manufactured Housing (S.L. 2021-117) ... 7	Local Stormwater ... 15
Affordable Housing ... 7	Stormwater Infrastructure Fund (S.L. 2021-180) ... 15
No Harmony Standard (S.L. 2021-180) ... 7	Stormwater Regulation (S.L. 2021-158) ... 16
Winston-Salem Local Legislation (S.L. 2021-44) ... 8	Building and Housing Code Enforcement ... 17
Signs ... 8	Building Code Changes, Part 1 (S.L. 2021-121) ... 17
NCDOT Rules (S.L. 2021-117) ... 8	Building Code Changes, Part 2 (S.L. 2021-183) ... 18
Sign Relocation (S.L. 2021-180) ... 9	Reinspection Fees (S.L. 2021-121) ... 18
Fees and Exactions ... 9	Building Plan and Permit Modifications (S.L. 2021-192) ... 19
System Development Fees (S.L. 2021-76) ... 9	Other Notable Legislative Proposals ... 20
Utilities for Schools, Including Charter Schools (S.L. 2021-180) ... 10	Missing Middle Housing (H.B. 401/S.B. 349) ... 20
Infrastructure ... 10	Limits on Exactions (H.B. 821) ... 20
Acceptance and Measurement of Streets (S.L. 2021-121, Sections 3 and 9) ... 10	Short-Term Rentals (H.B. 829) ... 20
Broadband and Small Cell Wireless Infrastructure (Budget Bill, S.L. 2021-180) ... 10	Conditions on Affordable Housing (H.B. 712) ... 21
	Tree Protection (H.B. 496) ... 21

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

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

Checklist for Local Government Actions

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

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

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

Comprehensive and Land Use Planning

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

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

Zoning and Development Regulations

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

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

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

1. See S.L. 2021-121, § 5; S.L. 2021-180, § 12.10A.

2. G.S. 160D-501(c).

3. For more discussion of the plan requirement, see Adam Lovelady, *Comprehensive Plans and Land Use Plans Required for Zoning*, COATES’ CANONS, NC LOC. GOV’T. L., UNC SCH. OF GOV’T BLOG (Aug. 19, 2021), <https://canons.sog.unc.edu/2021/08/comprehensive-plans-and-land-use-plans-required-for-zoning/>. For guidance on the planning process, see ADAM LOVELADY ET AL., *PLANNC GUIDEBOOK: A PRACTITIONER’S GUIDE TO PREPARING STREAMLINED COMMUNITY PLANS* (2021), <https://www.sog.unc.edu/publications/books/plannc-guidebook-practitioners-guide-preparing-streamlined-community-plans>.

4. See Frayda Bluestein, *Legislature Decriminalizes Local Ordinances*, COATES’ CANONS, NC LOC. GOV’T. L., UNC SCH. OF GOV’T BLOG (Oct. 7, 2021), <https://canons.sog.unc.edu/2021/10/legislature-decriminalizes-local-ordinances/>.

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

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

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

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

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

A more difficult interpretation concerns local environmental regulations authorized in Chapter 160D with cross-reference to other chapters of the General Statutes. Whether they fall under the new general decriminalization statute likely depends on the details of the particular ordinance and its adoption: Was it authorized and adopted under Chapter 160D or under the separate authority? Consider this example: G.S. 160D-922 authorizes local governments to

“enact *and enforce* erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes. . . .” In turn, G.S. 113-64 specifically authorizes criminal penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

Remote Meetings (S.L. 2021-35)

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

that adhering to the statutory procedures gives a presumption that the meeting complies with applicable open meetings laws.⁵ The rules for remote meetings apply only when there is a declared state of emergency.⁶

Manufactured Housing (S.L. 2021-117)

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

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

Affordable Housing

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

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

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

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

5. For more on this legislation, see Frayda Bluestein, *Clarification of Rules for Remote Meetings Under State Level State of Emergency: No More Waiting 24 Hours After Public Hearings!*, COATES' CANONS, NC LOC. GOV'T. L., UNC SCH. OF GOV'T BLOG (June 18, 2021), <https://canons.sog.unc.edu/clarification-of-rules-for-remote-meetings-under-state-level-state-of-emergency-no-more-waiting-24-hours-after-public-hearings/>.

6. Frayda Bluestein provides important reminders about the rules that apply to remote meetings when there is no declared state of emergency. See Frayda Bluestein, *Public Meetings After the Lifting of the State-Level State of Emergency*, COATES' CANONS, NC LOC. GOV'T. L., UNC SCH. OF GOV'T BLOG (July 6, 2021), <https://canons.sog.unc.edu/public-meetings-after-the-lifting-of-the-state-level-state-of-emergency/>.

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

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

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

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

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

Signs

NCDOT Rules (S.L. 2021-117)

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

Sign Relocation (S.L. 2021-180)

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

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

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

Requirements for relocation. The requirements are as follows:

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

Fees and Exactions**System Development Fees (S.L. 2021-76)**

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

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

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

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

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

Infrastructure

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

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

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

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

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

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

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

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

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

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

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

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

attachment rate or fee for the city's public enterprise, or (3) rates for use of or attachment to city utility poles that the city owns or controls. This fee authority limitation sunsets at the end of 2024.

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

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

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

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

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

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

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

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

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

Protection of Water Supply Watersheds and Coastal Areas

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

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

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

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

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

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

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

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

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

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

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

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

Erosion and Sedimentation Control

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

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

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

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

Other limitations apply as well: Local erosion control programs cannot require periodic self-inspections or rain gauge installation on individual residential lots where less than one acre on each lot is being disturbed. For land-disturbing activity on more than one residential lot, the entity responsible for the activity can submit a single erosion control plan for all of the

disturbed lots or may submit erosion control measures for each lot. This subsection of the act also prohibits requiring a silt fence or other erosion control measure, or requiring a silt fence to be wire-backed, where it would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract. Section 5(c) applies to erosion control plans submitted for review and approval on or after October 1, 2021.

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

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

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

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

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

Local Stormwater

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

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

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

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

Stormwater Regulation (S.L. 2021-158)

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

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

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

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

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

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

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

surface and ground water resources to the extent known by the Department, other withdrawals, permitted minimum instream flow requirements and evident needs, and pertinent information contained in local water supply plans and water shortage response plans.”

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

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

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

Building and Housing Code Enforcement

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

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

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

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

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

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

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

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

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

Reinspection Fees (S.L. 2021-121)

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

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

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

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

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

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

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

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

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

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

Other Notable Legislative Proposals

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

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

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

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

Limits on Exactions (H.B. 821)

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

Unless otherwise provided by local act, local governments have no authority under this Chapter to do any of the following:

- (1) Impose impact fees for development.
- (2) Condition a development approval on the existence of a community benefits agreement. The term “community benefits agreement” means a development-specific arrangement between a developer and persons affected by the development that details the development’s contributions to the persons affected or ensures support for the development by the persons affected.
- (3) Require a developer to provide funds for affordable housing or construct, set aside, or designate one or more dwellings or developments as affordable housing.
- (4) Require a completed traffic impact analysis prior to a development approval.
- (5) Require a developer to construct a greenway.

Short-Term Rentals (H.B. 829)

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

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

Conditions on Affordable Housing (H.B. 712)

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

Tree Protection (H.B. 496)

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