

**Town of Weaverville
Planning Board
Regular Monthly Meeting
Tuesday, April 2, 2024, 6:00pm
Agenda**

	Pg#	
1.		Call to Order Chairman Pace
2.		Adoption of Agenda Chairman Pace
3.	2	Approval of Minutes – 3/7/2024 Regular Meeting Chairman Pace
4.	5	75 Cole Road Zoning Request Planning Director Eller
5.	17	Sign Regulations Attorney Jackson & Planning Director Eller
6.	32	Short Term Rentals Planning Director Eller
7.		Adjournment Chairman Pace

**Town of Weaverville
Planning Board
Thursday, March 7, 2024
Meeting Minutes**

The Planning Board of the Town of Weaverville met for a regularly scheduled monthly meeting at 6:00pm on Thursday, March 7, 2024.

Present: Chair Bob Pace, Vice Chair Jane Kelley and Board Members Mark Endries, Donna Mann Belt, and Stefanie Pupkiewicz Busch. Alternate members present Ryan Gagliardi and Michelle Rippon.

Staff Present: Town Manager Selena Coffey, Town Attorney Jennifer Jackson, Planning Director James Eller, Town Clerk Tamara Mercer and Land of Sky Regional Council Planner, Kayla DiCristina.

1. Call to order

Chairman Pace called the meeting to order at 6:00 p.m.

2. Adoption of Agenda

Without objection, Mr. Pace declared the agenda approved. Carried unanimously. 5-0.

3. Approval of the Regular Meeting Minutes February 6, 2024

Ms. Mann questioned the minutes; she said the topic regarding the density concerns in the Reems Creek area by majority consensus of Planning Board members were discussed in February. Mr. Gagliardi said this was stated in the February minutes on page 4 and addressed in the recommendation letter presented to Council and signed by Chairman Pace and was noted by Attorney Jackson.

Without objection Chairman Pace declared the meeting minutes approved as presented for February 6, 2024. Carried unanimously. 5-0.

4. STR (short-term rentals) Engagement Report and Presentation

Land of Sky Regional Council Planner, Kayla DiCristina

Ms. DiCristina provided the Land of Sky Regional Council presentation: 'Let's Talk about Short-term Rentals'. She reviewed the background of the topic and noted the Town began addressing the short-term rental question in 2023. Town Manager Coffey by authority of Town Council contracted Land of Sky Regional Council to facilitate these public input sessions. The goal was to identify community concerns and issues, and to be pro-active in planning.

She reviewed the timeline of the public engagement sessions with the community. The process, results and key takeaways, and highlights in the report analysis, such as population changes in

increase of population, age, child-dependency ratio, median value of homeownership, housing stock, income, and affordable housing. Ms. DiCristina explained the working age population composition and trend changes in age brackets and in the quantitative data.

Key Takeaways:

- Weaverville's population composition is aging.
- Housing affordability is a national issue compounded by local factors such as there are not enough housing units for the demand.
- It is unclear whether short-term rentals contribute to housing affordability, and housing stock. Portions of the community have preemptive concerns regarding short-term rentals.
- Short-term rental owners and operators who engage directly with neighbors and communities are viewed more positively.
- Short-term rentals have positive economic impact on Weaverville's local businesses. Tourism is a local economic driver.
- Community solutions may be effective in resolving STR issues.
- The Town cannot regulate land use based on ownership.

In response to Chairman Pace's question regarding the ACS (American Consumer Survey), Ms. DiCristina explained the five-year period for data collection in the major metropolitan areas, demographics, housing construction, etc., which provides evidence that we are losing the younger generations. She reviewed the increase in housing values and housing availability and affordability for the demographics and how it compares with rest of the nation. Housing values increased although western North Carolina has a greater demand for housing.

There was discussion of Weaverville as a tourist destination, implementing regulations, strategies as other municipalities are implementing regulations, table of uses in the code, and parking issues.

It was noted that the Short-term Rental Engagement report would be presented by Planner, Kayla DiCristina to the Town Council at the March 25th regular Town Council meeting.

Chairman Pace consulted Attorney Jackson and she said the Planning Board may take a preliminary vote or straw poll on whether the Board would like to see STRs regulated or if we prefer that STRs remain unregulated. This preliminary choice is between regulation or no regulation.

There was general consensus that in order to gauge the Planning Board members, the alternate members may participate in the straw poll.

Attorney Jackson clarified that the Code of Ordinances currently addresses parking, noise and nuisance abatement, and governs short-term rental uses and all zoning table of uses.

Ms. Rippon was concerned that Weaverville will become a haven for short-term rentals if other towns such as Woodfin has very restrictive regulations. In response to Chairman Pace's question, Mr. Eller said it appears Buncombe County is holding a public hearing on short-term rentals on April 22, 2024.

Manager Coffey said enforcement is the issue with regulations. She added that if a recommendation is to regulate short-term rentals, then it is appropriate to add enforcement.

Chairman Pace called the question as to those in favor of regulating short-term rentals. Vice Mayor Chair Kelley, Mr. Endries, Ms. Mann Belt, Ms. Pupkiewicz, and Ms. Rippon voted 'aye' and Chairman Pace, and Mr. Gagliardi voted 'nay'. 5-2 in favor of regulating short-term rentals.

Attorney Jackson stated Staff will present the Planning Board straw poll to Town Council at the March 25th meeting.

Manger Coffey stated the Town is in discussion with the Buncombe County Manager as they are using Granicus as a monitoring tool. The County has the same concerns regarding enforcement as the costs are challenging.

5. Other Business

Mr. Eller reviewed a request regarding annexation. He said the request was withdrawn for tonight, but staff anticipates the application brought before the Board for April.

There being no further business and without objection Chairman Pace requested adjournment.

*Without objection Mr. Endries moved to adjourn the meeting at 6:45 p.m. Carried Unanimously.
5-0*

ATTEST:

Tamara Mercer, Town Clerk

**TOWN OF WEAVERVILLE
PLANNING BOARD AGENDA ITEM**

MEETING DATE: April 2, 2024

SUBJECT: Zoning Map Amendment – +/-22 Acres at 75 Cole Road

PRESENTER: Planning Director

ATTACHMENTS: Zoning Map Amendment Application, Property Tax Map Showing Property to be Annexed, Voluntary Annexation Resolution, Staff Report, Resolution Regarding Development in Growth Areas

DESCRIPTION/SUMMARY OF REQUEST:

Roger Spittle has submitted a voluntary annexation petition seeking to have +/- 22 acres located at 75 Cole Road annexed into the Town of Weaverville. The purpose of the annexation appears to be to obtain Town services, including water, to support the development of 220 residential units that are proposed on the property.

The petitioners are requesting an initial zoning designation of R-12.

Town Council has sent the initial zoning request to the Planning Board for review and recommendation.

PLANNING BOARD ACTION REQUESTED:

A motion establishing a recommendation to Town Council on the initial zoning of R-12 for the property at 75 Cole Road based upon consistency with the Town's Comprehensive Land Use Plan and the reasonableness of the zoning request.

**TOWN OF WEAVERVILLE APPLICATION FOR
A ZONING MAP OR TEXT AMENDMENT**

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee Based Upon Size of Property

OWNER/APPLICANT NAME:

APPLICATION DATE: 01-31-2024

PHONE NUMBER:

MAILING ADDRESS:

Application is made to the Town Council of Weaverville to amend:



The Zoning Map



The text of the Zoning Ordinance (Chapter 20 Planning and Development)

APPLICATION TO AMEND ZONING MAP

PROPERTY ADDRESS: 75 Cole Road

PIN: 9743-35-2359

LOT AREA (acres): 22.06

CURRENT ZONING DISTRICT: Buncombe County R-3 PROPOSED ZONING DISTRICT: R-12

APPLICATION IS NOT COMPLETE WITHOUT A BOUNDARY SURVEY DEPICITING:



Total acreage



Current owner(s) and date of survey



Property location relative to streets



North arrow



Existing easements, rights of way, or other restrictions on the property



Areas located within the floodplain



Adjoining property owners, addresses, and Buncombe County PINs

APPLICATION TO AMEND TEXT

SECTION(S) OF CHAPTER 20 TO AMEND:

PROPOSED CHANGE TO TEXT (attach additional documentation if necessary):

JUSTIFICATION OF PROPOSED AMENDMENT(S):

TOWN OF WEAVERVILLE APPLICATION FOR A ZONING MAP OR TEXT AMENDMENT

Planning and Zoning Department, 30 South Main Street, P.O. Box 338, Weaverville, NC28787
(828) 484-7002--- fax (828) 645-4776 --- jeller@weavervillenc.org
Application Fee Based Upon Size of Property

I certify that the above information is accurate and true and that I am the owner or a duly appointed agent of the owner.

DocuSigned by:

Roger Spittle

1/31/2024

SIGNATURE OF APPLICANT

DATE

It is the applicant's responsibility to obtain a copy of the Town of Weaverville Zoning Ordinance and to be fully aware of the regulations detailed therein.

Application fees are due at the time of submittal. Withdrawal of an application after the public hearing has been advertised will result in the forfeiture of the application fee.

REZONING FEE SCHEDULE:

< 1 acre	\$250.00
1-3 acres	\$500.00
4-9 acres	\$750.00
10 + acres	\$1,000.00

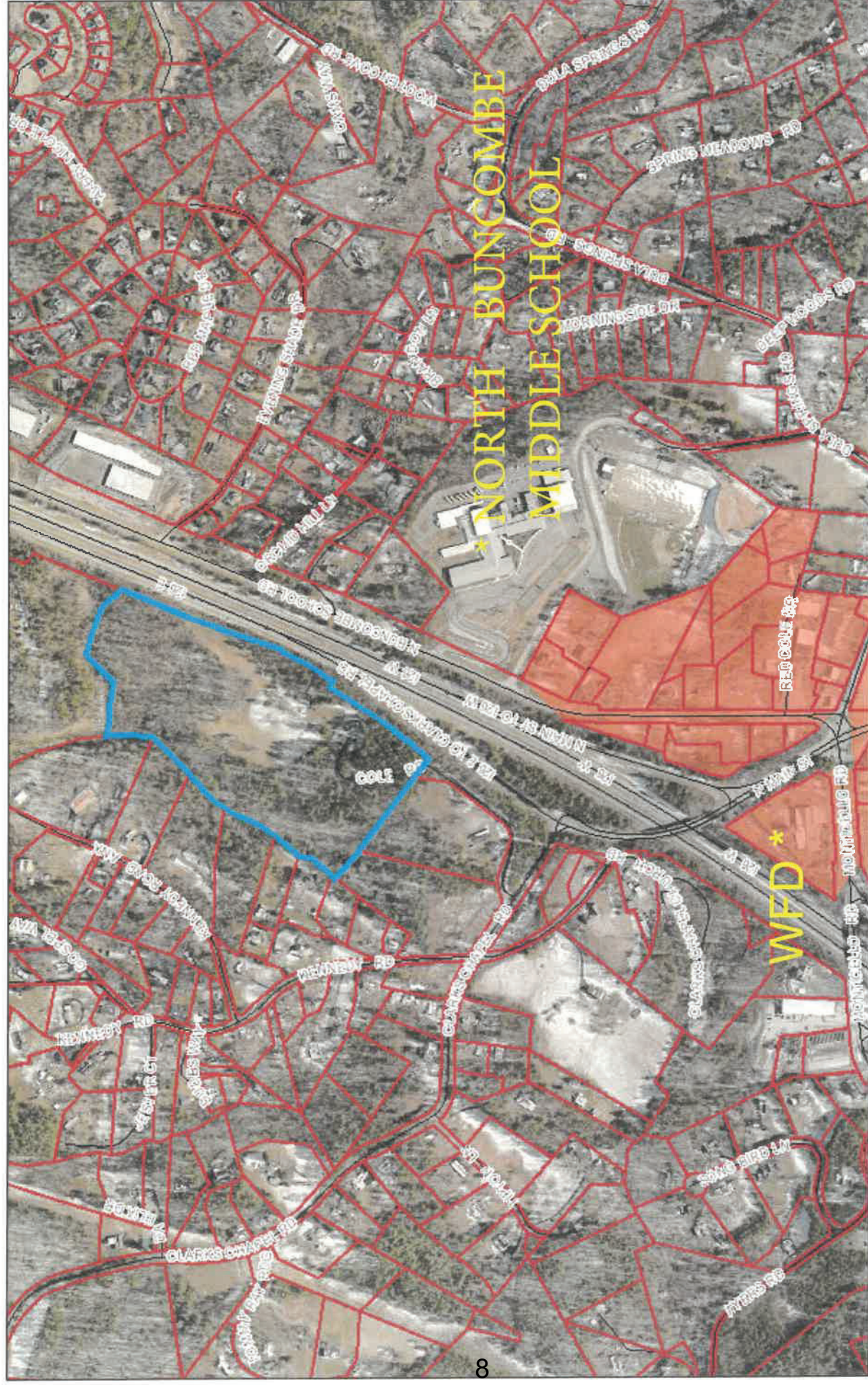
Text Amendment

Fees..... \$500.00

OFFICE USE ONLY

FEE: \$	DATE PAID:		CHECK		CASH
DATE OF INTIAL COUNCIL MEETING:		ACTION TAKEN:			
DATE OF PLANNING BOARD MEETING:		ACTION TAKEN:			
DATE OF PUBLIC HEARING & COUNCIL DECISION:		FINAL ACTION:			

75 Cole Road



January 17, 2024

**RESOLUTION CONCERNING VOLUNTARY ANNEXATION PETITION
SUBMITTED BY ROGER SPITTLE FOR 75 COLE ROAD
WEAVERVILLE ANNEXATION NO. 2024-3**

WHEREAS, a petition requesting annexation of that property located at 75 Cole Road and bearing Buncombe County Parcel Identification Number 9743-35-2359 was received from Roger Spittle; and

WHEREAS, N.C. Gen. Stat. §§ 160A-31 and 160A-58.2 provide that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

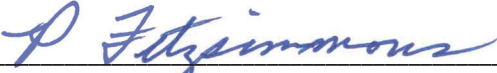
WHEREAS, the Town of Weaverville is also in receipt of an application for a zoning map amendment request for an R-12 zoning classification for the property to be annexed; and

WHEREAS, the Town Council of the Town of Weaverville deems it advisable to proceed in response to this request for annexation and initial zoning;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Weaverville that:

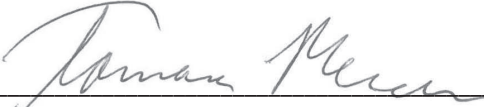
1. With the assistance of the Town Attorney, the Town Clerk is hereby directed to investigate the sufficiency of the above-reference petition and to certify to Town Council the result of her investigation; and
2. The Town Planner is directed to place the application for initial zoning of R-12 on the next regular meeting of the Weaverville Planning Board's so that the Board can review the requested zoning for consistency with the Town's Comprehensive Land Use Plan and forward a recommendation to Town Council prior to or at a public hearing that may subsequently be held on this matter.

THIS the 26th day of February, 2024.



PATRICK FITZSIMMONS, Mayor

ATTESTED BY:



TAMARA MERCER, Town Clerk

Preliminary Staff Report:
75 Cole Road
Zoning Map Amendment

Prepared March, 2024

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan; Town of Weaverville Fact Sheet; Resolution Concerning Growth Areas

Zoning Analysis

Town Council is set to consider a voluntary annexation of a parcel near the intersection of Cole Road and Clarks Chapel Road. This parcel at 75 Cole Road consists of approximately 22 acres as shown on the voluntary annexation petition and zoning map amendment application and an initial zoning of R-12 is desired. With the acreage present and the density permitted within the desired zoning district the Town may expect a maximum of 264 dwelling units in a multifamily configuration under these conditions.

Comprehensive Land Use Plan and Resolution Regarding Growth Areas Compliance

When considering compliance with the Town's Comprehensive Land Use Plan (CLUP), often the analysis begins with a consultation of the future land use map. This future land use map is adopted as a part of the CLUP to provide guidance for the categories of uses expected within the geographic areas of the Town and along Town borders. Here it is found that the property in question falls within growth area 4 and borders growth area 3 as shown in the CLUP and Growth Area Resolution.

Within this resolution certain land uses were identified as desirable for the I-26 Corridor area and commercial development (especially medical services such as healthcare facilities and medical offices, small general retail, restaurants and hotels) were specifically enumerated. Within the neighboring Ollie Weaver Road area the desirable land uses of single family residential development, duplexes, and commercial development (especially those supporting residential neighborhoods) were specifically enumerated.

Since multifamily residential development is not specifically enumerated in the resolution concerning growth areas, it may be appropriate for the Board to consider the intensity of the uses enumerated, such as healthcare facilities, restaurants and hotels, and consider an analysis of whether the intensity of these land uses is compatible.

The R-12 zoning district which is being requested will accommodate high density multifamily residential development at a density of twelve units per acre and mixed-use development which will accommodate both residential and commercial uses.

Preliminary Staff Report:
75 Cole Road
Zoning Map Amendment

Prepared March, 2024

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan; Town of Weaverville Fact Sheet; Resolution Concerning Growth Areas

Reasonableness of the Zoning Request

When conducting its review of proposed zoning map amendments, the planning board shall, as part of its plan consistency statement or separately, provide a statement analyzing the reasonableness of the proposed rezoning. Such analysis should consider, among other factors: (i) the size, physical conditions, and other attributes of the area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If the zoning map amendment qualifies as a large scale rezoning the analysis of reasonableness may address the overall rezoning.

Other Considerations

Sewer service will be a large contributing factor for the development of the I-26 Corridor area and Ollie Weaver Road area moving forward. Under current conditions, public sewer service largely does not exist in these areas.

In order to support the more intense specifically enumerated uses, such as healthcare facilities, restaurants and hotels, sewer service will be a necessity. For this proposed project to come to fruition, sewer service will be provided to the west side of I-26, offering a potential connection point for other properties in growth areas 3 and 4.

**TOWN OF WEAVERVILLE
AMENDED AND RESTATED RESOLUTION REGARDING
DEVELOPMENT WITHIN IDENTIFIED GROWTH AREAS**

WHEREAS, on December 13, 2022, Town Council adopted a resolution concerning identified growth areas, and, in a review of said resolution it was noted that the compatible uses within the growth areas did not include R-2, and that was an oversight;

WHEREAS, municipal growth through annexation is essential to sound urban development and continued economic stability in the Town of Weaverville; and

WHEREAS, managing growth by extending municipal services makes sense and annexation of properties ensures that new development is built to Town of Weaverville standards;

WHEREAS, influencing where and what commercial development occurs within the Weaverville area and providing balanced residential development is desirable to the Town of Weaverville;

WHEREAS, the Town of Weaverville would like to see growth that is well-designed and that complements the development that is already within the Town;

WHEREAS, the Town of Weaverville has identified certain properties along its municipal borders as having a high likelihood of development due to the presence of public water and sewer and has identified them as growth areas as described below;

WHEREAS, the Town wishes to indicate its willingness to consider the voluntary annexation of the properties included within these growth areas and to inform the public of the types of development that the Town believes is consistent with its Comprehensive Land Use Plan and reasonable when considering the surrounding area;

WHEREAS, Town Council now wishes to amend and restated such resolution;

NOW, THEREFORE, BE IT RESOLVED, the Weaverville Town Council hereby declares and resolves as follows:

1. The Town has identified the following growth areas which are now shown on the Town's GIS map, a copy of which is attached hereto:
 - a. Growth Area 1 – Gill Branch Valley Area
 - b. Growth Area 2 – Monticello Road West Area
 - c. Growth Area 3 – Ollie Weaver Road Area
 - d. Growth Area 4 – I-26 Corridor
 - e. Growth Area 5 – Reems Creek Road Area
2. The Town is likely to favorably consider voluntary annexation petitions received for the properties shown within these growth areas. It is noted, however, that some development, especially in Growth Area 3, may best proceed without annexation as the provision of municipal services may be difficult in certain locations and some areas may be ineligible for annexation

by the Town of Weaverville due to legal requirements regarding satellite annexation.

3. The following is valued, and as proposed development is considered on these properties, the Town would like to see an emphasis on:
 - a. Great streets and gathering places, where the pedestrian is prioritized;
 - b. Connections between adjoining developments and to gathering places;
 - c. Walkability through the installation of sidewalks, greenways, and other multi-modal trails, especially those that will connect to the existing or planned pedestrian network within Weaverville;
 - d. Preservation of natural spaces for public use;
 - e. Establishment of open spaces that provides recreational opportunities in the form of greenways, playing fields and/or playgrounds;
 - f. Protection of streams and creeks;
 - g. Preservation of mature trees and planting of street trees;
 - h. Landscape buffering and screening to protect views;
 - i. Reduction of stormwater runoff which threatens our water quality;
 - j. Energy conservation measures, such as EV charging stations and solar;
 - k. Inclusion of commercial uses that support compatible development.
4. Consistent with Town Council's prior discussions and consensus, the following uses of land are found to be compatible with the Town's adopted Comprehensive Land Use Plan and its Future Land Use Map, and may be desirable within **Growth Area 1 [Gill Branch Valley Area]**:
 - a. mixed use development;
 - b. single family residential development;
 - c. duplexes;
 - d. townhouses;
 - e. multifamily development;
 - f. commercial development (especially those supporting residential neighborhoods such as small general retail, restaurants, professional services).

These uses are most consistent with the following zoning districts: R-1, R-2, R-3, R-12, C-2, and conditional district zoning.

5. Consistent with Town Council's prior discussions and consensus, the following uses of land are found to be compatible with the Town's adopted Comprehensive Land Use Plan and Future Land Use Map, and may be desirable within **Growth Area 2 [Monticello Road West Area]**:
 - a. mixed use development;
 - b. single family residential development;
 - c. duplexes;
 - d. townhouses;

- e. commercial development (especially those supporting residential neighborhoods such as small general retail, restaurants, professional services).

These uses are consistent with the following zoning districts: R-1, R-2, R-3, C-2, and conditional district zoning.

- 6. The following uses of land are found to be compatible with the Town's adopted Comprehensive Land Use Plan and its Future Land Use Map, and may be desirable within **Growth Area 3 [Ollie Weaver Road Area]:**

- a. single family residential development;
- b. duplexes;
- c. commercial development (especially those supporting residential neighborhoods).

These uses are consistent with the following zoning districts: R-1, R-2, R-3, C-2, and conditional district zoning.

- 7. The following uses of land are found to be compatible with the Town's adopted Comprehensive Land Use Plan and its Future Land Use Map, and may be desirable within **Growth Area 4 [I-26 Corridor]:**

- a. commercial development (especially medical services such as healthcare facilities and medical offices, small general retail, restaurants, hotels).

These uses are most consistent with the following zoning districts: C-2, and conditional district zoning.

- 8. The following uses of land are found to be compatible with the Town's adopted Comprehensive Land Use Plan and its Future Land Use Map, and may be desirable within **Growth Area 5 [Reems Creek Road Area]:**

- a. mixed use development;
- b. single family residential development;
- c. duplexes;
- d. townhouses;
- e. multifamily development;
- f. commercial development (especially those supporting residential neighborhoods such as small general retail, restaurants, professional services).

These uses are most consistent with the following zoning districts: R-1, R-2, R-3, R-12, C-2, and conditional district zoning.

- 9. The Town is willing to support compatible development within these growth areas by considering approval of public water requests for such development if current or anticipated capacity is available and such approval is in the best interest of the Town and/or its water system.

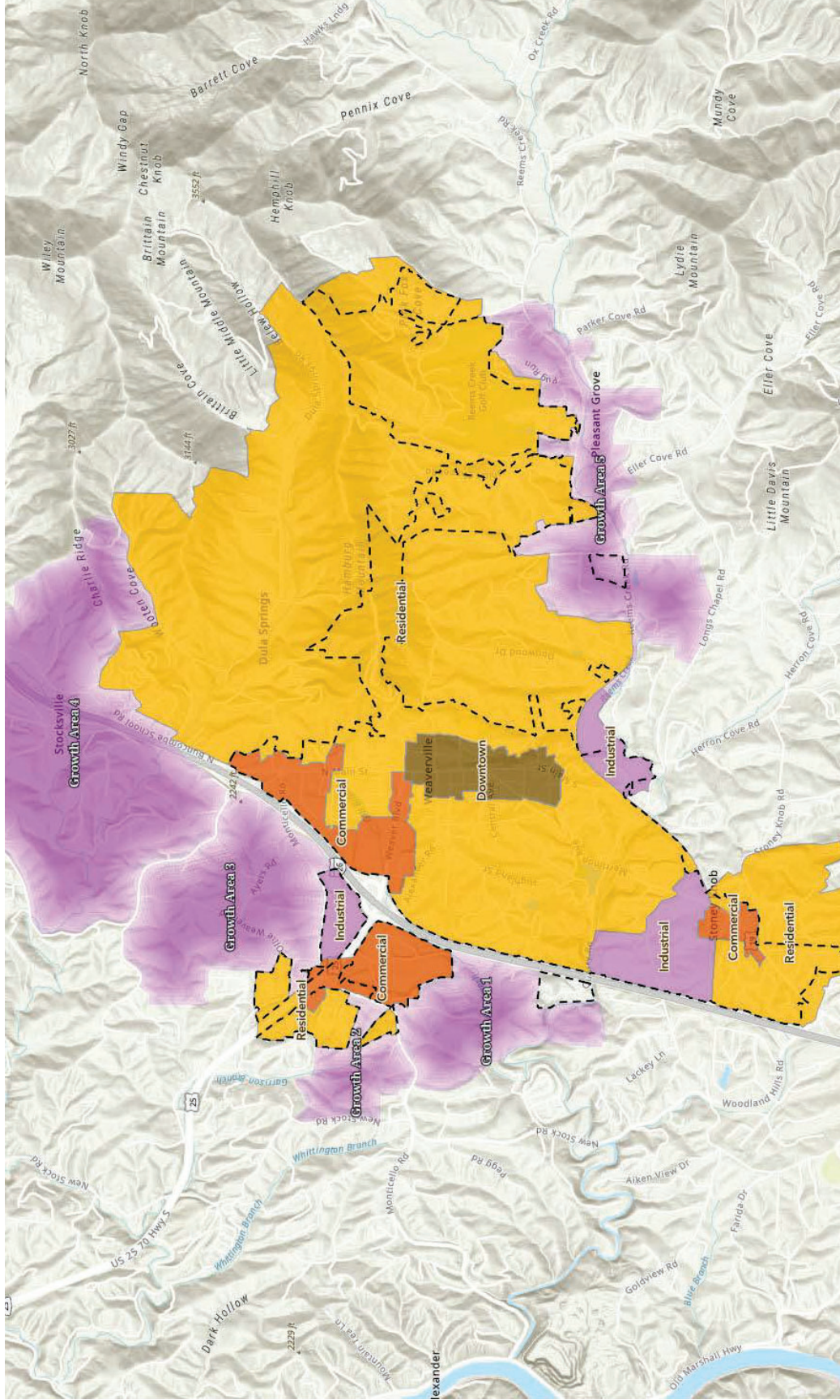
10. Town Council's recommended procedure for approvals is for property owners to present voluntary annexation petitions either prior to or simultaneously with a water request and zoning request. Some deviations from this recommendation are anticipated in situations where a property is ineligible for municipal annexation or where provision of municipal services will prove difficult.
11. Nothing herein is binding on the Town of Weaverville and the review and approval of all annexation petitions, land use applications, and water extension or commitment requests will be made in Town Council's discretion following procedures as required by North Carolina law and local ordinance.

ADOPTED this the 23rd day of October, 2023.


TAMARA MERCER, Town Clerk


PATRICK FITZSIMMONS, Mayor





FUTURE LAND USE MAP WITH GROWTH AREAS

TOWN OF WEAVERVILLE
PLANNING BOARD AGENDA ITEM

Date of Meeting: Tuesday, April 2, 2024

Subject: Legal Compliance of Sign Regulations

Presenter: Planning Director / Town Attorney

Attachments: Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert, and
On-Premises and Off-Premises Signs: An Update from the U.S.
Supreme Court

Description:

The current goals of the Comprehensive Land Use Plan (CLUP), last updated in November 2023, call for the “review of sign regulations for legal compliance and policy objectives” with a priority of 1 (highest) priority within the CLUP. Goals given a 1 priority carry an expectation of being addressed within one year.

A couple court cases, *City of Austin v. Reagan National Advertising of Austin, LLC* and *Reed v. Town of Gilbert*, have caused jurisdictions across the country to examine their sign ordinances for regulations that have now been deemed illegal or unconstitutional. Staff is aware of some regulations which must be deleted or amended and has begun the work of identifying required text amendments to ensure legal compliance and presentation to the Planning Board for review, comment, and recommendation to Town Council.

Action Requested:

No action is requested at this time. It is anticipated that the Board will be presented with proposed text amendments related to sign regulations at their regular May meeting.

<https://canons.sog.unc.edu/2015/07/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>



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Coates' Canons NC Local Government Law

Sign Litigation: A Brief Analysis of Reed v. Town of Gilbert

Published: 07/21/15

Author Name: Adam Lovelady

Temporary yard signs are springing up all around town. Town council wants to reduce the clutter, but also wants to respect the free speech rights of the community. Council is considering new rules that will allow *campaign signs* during election season, *event signs* within a day of the event, and *ideological signs* anytime. It seems like a reasonable balance—allowing the signs but limiting them to a relevant time-frame. Can the town's regulations distinguish among signs this way?

A recent U.S. Supreme Court decision says no. Such distinctions are unconstitutional content-based regulation of speech.

To be clear, every sign ordinance distinguishes among signs. Ordinances commonly distinguish between locations (commercial property, residential property, public property, etc.), between types of signs (free-standing, wall signs, electronic signs, etc.), and between messages on the signs (commercial, safety, political, etc.). Reasonable distinctions concerning *location* and *types* of signs remain permissible.

The *Reed* decision, though, clearly invalidated some distinctions based on the message content of signs, and it will require adjustments to many local ordinances and some state statutes. The decision, with its four separate concurring opinions, also left open several legal questions.

This blog considers the decision of *Reed v. Town of Gilbert*, 576 U.S. ____ (2015), and its impact on local sign ordinances.

Context of Free Speech Caselaw

In thinking about the *Reed* decision it is helpful to recall a few key points about Constitutional protections of free speech and local government sign regulation. This area of the law is complex—far beyond the scope and space of this blog—but some context is helpful in understanding the impact of the new decision.

Content-Neutral Sign Regulations. Some sign regulations concern the form and nature of the sign, not the content of the message. These regulations—called *reasonable time, place, or manner restrictions*—include regulation of sign size, number, maintenance, moving parts, and portability, among other

<https://canons.sog.unc.edu/2015/07/sign-litigation-a-brief-analysis-of-reed-v-town-of-gilbert/>

things. These regulations are allowed, provided they are “[1] justified without reference to the content of the regulated speech, [2] that they are narrowly tailored to serve a significant governmental interest, and [3] that they leave open ample alternative channels for communication of the information” (*Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 2753, 105 L. Ed. 2d 661 (1989)). Over the years the courts have allowed a variety of content-neutral sign regulations.

Content-Based Sign Regulations. Some sign regulations, however, restrict the content of the message. The Supreme Court requires that content-based regulation of noncommercial signs must meet strict scrutiny. As phrased in the *Reed* majority opinion, a regulation is content-based if the rule “applies to a particular [sign] because of the topics discussed or the idea or message expressed” (slip op., at 6). The strict scrutiny standard demands that the local government must show that the regulation is (i) designed to serve a *compelling* governmental interest and (ii) *narrowly tailored* to achieve that interest. That is a steep hill to climb, and in practice few, if any, regulations survive strict scrutiny review.

It is worth noting that commercial speech is subject to yet another test—a version of intermediate scrutiny outlined in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987). That test is described in David Owens’ blog on [Offensive Signs](#), and as discussed below, the impact of the *Reed* decision on the *Central Hudson* test is unclear.

Case Summary

The Town of Gilbert, Arizona, had a sign code requiring permits for signs, but outlining a variety of exemptions. The *Reed* decision focused on the exemptions for three types of signs: Political Signs, Temporary Directional Signs, and Ideological Signs. Under the local code, Political Signs were signs designed to influence the outcome of an election; they could be up to 32 square feet and displayed during political season. Temporary Directional Signs were defined to include signs that direct the public to a church or other qualifying event; they could be up to six square feet and could be displayed 12 hours before and 1 hour after the qualifying event. Ideological signs were defined to be signs that communicate a noncommercial message that didn’t fit into some other category; they could be up to 20 square feet.

A local church—after being cited for violation of the rules for Temporary Directional Signs—challenged the sign code as abridging their freedom of speech. The Town argued (and the lower courts found) that its regulations were content-neutral. The distinctions among types of signs, they said, were

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based on objective factors not the expressive content of the sign. The distinctions did not favor nor censor a particular viewpoint or philosophy. And, the justification for the regulation was unrelated to the content of the sign.

Justice Thomas, writing for the Court, disagreed. He found that the distinctions were plainly content-based and thus subject to strict scrutiny. The distinctions—between Political Signs, Temporary Directional Signs, and Ideological Signs—“depende[ed] entirely on the communicative content of the sign” (slip op., at 7). “Regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints with that subject matter” (12). And, “an innocuous justification cannot transform a facially content-based law into one that is content neutral” (9).

In its failed attempt to meet the strict scrutiny standard, the Town offered two governmental interests to support its distinctions: aesthetic appeal and traffic safety. Even if these were considered compelling governmental interests (which the Court assumed without ruling), the Town’s distinctions were not narrowly tailored. Justice Kagan noted in her own opinion (concurring in the judgment only) that the Town’s distinctions did “not pass strict scrutiny, or intermediate scrutiny, or even the laugh test” (slip op., at 6, Kagan, J., concurring in judgment).

Impact of Local Ordinances

So what does this decision mean for local ordinances? In the end, some distinctions among signs clearly are allowed and will withstand judicial review. Some code provisions, though, must be revised. And then, there are the open questions.

The Court was unanimous in judgment: The particular provisions of the Town of Gilbert’s sign code violate Constitutional protections for free speech. The Court was fractured, though, in the opinions, making it harder to discern the full scope of the decision. Justice Thomas offered the majority opinion of the court with five justices joining. Justice Alito offered a concurring opinion to further clarify the

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impact of Justice Thomas' opinion. He was joined by Justices Kennedy and Sotomayor. Three justices concurred in judgment only, and they offered two separate opinions to outline their legal reasoning and their concerns with the majority's reasoning.

So we have a split court. Three joined the majority only; three joined the majority, but also joined an explanatory concurrence; and three disagreed with the majority's legal reasoning. This three-three-three split, unfortunately, causes even more head-scratching for an already complex topic.

Content-Based Distinctions. In thinking about your sign ordinance, ask this: Does this regulation apply to a particular sign because of the non-commercial content on the sign? If yes, the regulation must meet strict scrutiny under *Reed*. The government must show that the regulation is designed to serve a *compelling* governmental interest and *narrowly tailored* to achieve that interest.

If your ordinance distinguishes among noncommercial sign types—political v. ideological v. religious—those distinctions are unconstitutional and must be changed.

Justice Thomas did offer some content-based regulations that may survive strict scrutiny if they are narrowly tailored to address public safety. These include warning signs for hazards on private property, signs directing traffic, or street numbers associated with private houses.

Content-Neutral Distinctions. The several opinions of the court outline some valid distinctions for regulation. In his majority opinion, Justice Thomas noted that local governments still have “ample content-neutral options available to resolve problems with safety and aesthetics” (slip op., at 16). These include regulation of, among other things,

- size
- building materials
- lighting
- moving parts
- portability

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Moreover, “on public property the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner” (slip op., at 16). A local ordinance or state statute can prohibit all signs in the public right-of-way. But, if signs are allowed, the regulations must not distinguish based on the content of the message. Regulations that allow some, but not all, noncommercial signs run afoul of the *Reed* decision.

For example, NCGS § 136-32 allows for “political signs” (as narrowly defined) in the public right-of-way of state highways during election season. That statute and similar ordinances will need to be revised to either, prohibit all signs in the right-of-way, or allow compliant signs with any noncommercial message in the right-of-way during election season.

Justice Alito, in his concurring opinion, provided further explanation (although not an exhaustive list) of what distinctions may be valid, content-neutral distinctions. He included:

- Size (including different sizes for different types of signs)
- Location, including distinguishing between freestanding signs and attached signs
- Distinguishing between lighted and unlighted
- Distinguishing between fixed message and electronic signs
- Distinguishing between signs on public property and signs on private property
- Distinguishing between signs on commercial property and signs on residential property
- Restricting the total number of signs allowed per mile of roadway
- Distinguishing between on-premises and off-premises signs*
- And time restrictions on signs advertising a one-time event*

* These last examples—distinguishing between on-premises/off-premises and restricting signs for one-time events—seem to conflict with the majority opinion in *Reed*. Here, we get back to the issue of the fractured court and multiple opinions (discussed below).

Open Questions

Content-ish Regulations

Justice Alito’s concurrence (discussed above) listed many regulatory distinctions that are clearly authorized. He listed two distinctions that do not clearly square with the reasoning of the majority opinion. But, if you consider the three justices concurring with Alito plus the three justices concurring

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in judgment only, there are six justices that took the question of content neutrality with more practical consideration than Justice Thomas' hard line. Thus, Alito's opinion may in fact hold the greatest weight of this case. Only time will tell—time and more litigation.

First, Justice Alito listed signs for one-time events. This seems to be precisely what the majority stuck down in this case. It is unclear how a local regulation could structure such regulation without relying on the content of the message itself. But the inclusion on Justice Alito's list points to some room for defining signs based on function.

And second, Justice Alito listed the distinction between on-premises and off-premises signs. The enforcement officer must read the sign in order to determine if a sign is off-premises or on-premises. As such, these would seem to be facially content-based and subject to strict scrutiny. But, prior Supreme Court caselaw has upheld the on-premise/off-premise distinction and that precedent is not overruled by the majority opinion.

Commercial and Noncommercial Speech. In past decisions the Supreme Court has treated commercial speech to slightly less protection than noncommercial speech. Commercial speech regulation needs to meet a version of intermediate scrutiny, not the strict scrutiny applied to regulation of non-commercial speech (*See, generally, Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1987)).

Arguably, the *Reed* decision opened the door to challenge a sign ordinance that distinguishes between commercial and noncommercial speech. Justice Alito's concurring opinion noted that distinguishing based on the *type of property*—commercial or residential—would be valid. Regulating based on the *content of the sign*—commercial or noncommercial—arguably is undermined by the *Reed* decision. Notably, though, the majority in *Reed* did not overrule its prior decisions. The *Reed* decision was focused on the Town code's distinctions among types of noncommercial speech. Presumably the long-held standards for regulation of commercial speech still apply.

Conclusion

In the wake of *Reed*, some things are clear. Governments still have an array content-neutral regulations to apply to signs. But, content-based distinctions such as the ones in the Town of Gilbert's code must survive strict scrutiny to stand. Because of mix of opinions from the Court, there are several open questions. We will not know the full scope and meaning of *Reed v. Town of Gilbert* until the federal courts begin to apply this decision to other sign litigation.

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Coates' Canons NC Local Government Law

On-Premises and Off-Premises Signs: An Update from the U.S. Supreme Court

Published: 09/01/22

Author Name: Adam Lovelady

Can a sign ordinance distinguish between on-premises and off-premises signs? The answer is yes according to U.S. Supreme Court's decision in *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022). This blog outlines the case and some lessons for moving forward.

The Austin Ordinance

Like many local sign codes, the City of Austin, Texas, sign code defined "off-premise sign" to mean "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site." The ordinance prohibited new off-premises signs but allowed existing off-premises signs to continue as lawful nonconformities. The ordinance allowed owners of on-premises signs to convert those signs to digital signs but prohibited digitization of off-premises signs.

Sign companies challenged the on-premises/off-premises distinction as content-based and unconstitutional under the rubric of *Reed v. Gilbert*, 576 U. S. 155 (2015).

Implications from *Reed*

Sign regulations may be desirable for traffic safety, community aesthetics, and otherwise, but sign regulations burden speech and are subject to constitutional review to ensure the regulations do not violate the First Amendment protections of free speech. Under the First Amendment caselaw, content

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neutral regulations (regulating the size, location, height, and other characteristics of signs) are subject to intermediate scrutiny. Regulations of commercial speech are similarly subject to intermediate scrutiny. Intermediate scrutiny demands that the regulation advance a substantial governmental interest and be no more restrictive than necessary to further that interest. Content-based regulations (regulating the message on the sign) are subject to strict scrutiny, the highest level of judicial review. Under strict scrutiny, a regulation is presumed to violate the First Amendment right to free speech unless it is narrowly tailored to serve a compelling state interest.

The *Reed v. Town of Gilbert* decision, which was a few years prior to the *Austin* case, had significant impacts on the rules for free speech and the practical application to local sign ordinances. Prior to *Reed* many ordinances treated different categories of signs differently. So, for example, the Town of Gilbert regulations treated campaign signs differently than temporary event signs. *Reed* held that such a distinction is a content-based regulation subject to strict scrutiny. The Court found that the town's code was not narrowly tailored and struck it down as unconstitutional.

The *Reed* decision made some things very clear: A local sign code may not give preference to some noncommercial messages over other noncommercial messages. But, as outlined in [this blog](#), the *Reed* decision left some questions open: May a sign code still distinguish between commercial and noncommercial signs, or is that a content-based distinction subject to strict scrutiny? What about distinguishing between on-premises and off-premises signs? If a zoning officer has to read the sign to apply the rule, does that mean the rule is automatically content-based?

Since the *Reed* decision those questions have been working their way through the courts. In *Austin v. Reagan National*, the federal Fifth Circuit Court of Appeals ruled that Austin's distinction between on-premises and off-premises signs was a content-based regulation subject to strict scrutiny under *Reed*. The city appealed to the U.S. Supreme Court.

Decision of the Court in *City of Austin*

The Supreme Court distinguished the regulations in *Reed* from the regulations in *Austin*. Writing the majority opinion, Justice Sotomayor emphasized that the Town of Gilbert ordinance at issue in *Reed* singled out particular topics for different treatment. Ideological signs were treated more favorably than political signs which, in turn, were treated more favorably than directional signs for religious and charitable events. The Austin ordinance, in contrast, distinguished based on location—a content-neutral

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informs the sign's relative location. The on-/off-premises distinction is therefore similar to ordinary

[content neutral] time, place, or manner restrictions." As such, the Austin ordinance was not subject to strict scrutiny in the way that the Gilbert ordinance was.

The Court offered examples of permissible, content-neutral restrictions on speech that require some evaluation of the speech. Prior Supreme Court speech and sign cases have permitted the on-/off-premises distinctions and commercial/noncommercial distinctions, including *Suffolk Outdoor Advertising Co. v. Hulse*, 439 U.S. 808 (1978), *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N. Y.*, 447 U. S. 557 (1980), *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981), and *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984). The Court directly states that "*Reed* did not purport to cast doubt on these cases." Moreover, *Reed* did not "cast doubt on the Nation's history of regulating off-premises signs."

Responding to arguments by the sign company and the dissenting opinion, the majority opinion gives some clarity and contours to the scope of the *Reed* decision. The sign company asked the Court to read *Reed* such that if an ordinance defines speech by its function or purpose, the ordinance is automatically content-based. The *Reed* decision included language that "[s]ome facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose." The sign company argued that that language should extend to this case, automatically subjecting the Austin ordinance to strict scrutiny. The majority responds that such a reading of the *function or purpose* language stretches *Reed* too far and would contravene prior precedent. As clarified by the majority in *Austin*, under the *Reed* decision, "[A] regulation of speech cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a 'function or purpose' proxy that achieves the same result. That does not mean that any classification that considers function or purpose is always content based." Even though it is not subject to the nearly impossible burden of strict scrutiny for content-based restrictions, Austin's ordinance must still meet intermediate scrutiny. "If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction, for instance, that restriction may be content based. Moreover, to survive intermediate scrutiny, a restriction on speech or expression must be narrowly tailored to serve a significant governmental interest." (citations and quotations omitted). The Court remanded the case for the lower courts to resolve if the ordinance met intermediate scrutiny.

While the justices were 6-3 to uphold the Austin sign ordinance, there were differing opinions. Justice Breyer joined the majority but offered a concurring opinion to highlight his view that the *Reed* decision was wrong. Justice Alito concurred in the judgment but dissented in part arguing the Court of Appeals

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failed to apply the proper test for the claim that the sign code was unconstitutional on its face. Justice Thomas, who authored the majority opinion in *Reed*, dissented from the decision in *Austin*. Justice Thomas, joined by Justices Gorsuch and Barrett, would have found the on-/off-premises distinction unconstitutional under *Reed*.

Implications Going Forward

So what does this mean going forward? Here are some key questions and answers.

Can a sign code distinguish signs based on the content of the sign's message? Generally, no. This was made clear in *Reed* and is reaffirmed in *Austin*: “[I]t is regulations that discriminate based on ‘the topic discussed or the idea or message expressed’ that are content based.” (citing *Reed*, 576 U. S., at 171) Such regulations are subject to strict scrutiny. A local sign ordinance cannot give preference to political signs over other noncommercial signs. A local zoning ordinance cannot permit American flags but prohibit other noncommercial flags. Such content-based restrictions would not meet the high standard of strict scrutiny, and likely would be struck down as unconstitutional.

To be sure, local ordinances may still impose an array of content-*neutral* regulations on signs and other speech. Reasonable limits on the size, number, and location of signs are permissible. Similarly, reasonable limits on the size, number, and location of flags are permissible. These are constitutional, content-neutral regulations of the time, manner, and place of the speech, not regulations of the content of the speech.

So, if the enforcement officer must read the sign to apply the code, is the code automatically content-based? No. The *Austin* decision allows that some ordinance distinctions may necessitate that the officer read the sign. Such distinctions are not automatically subject to strict scrutiny. But be mindful. The Court draws a clear line between the rules at issue in *Reed* and the rules at issue in *Austin*:

“Unlike the regulations at issue in *Reed*, the City’s off-premises distinction requires an examination of speech only in service of drawing neutral, location-based lines. It is agnostic as to content. Thus, absent a content-based purpose or justification, the City’s distinction is content neutral and does not warrant the application of strict scrutiny.”

Can the sign code distinguish between on-premises and off-premises signs? Generally, yes. This is the heart of the dispute in the *Austin* case. The Supreme Court affirms that *Austin*’s distinction between on-premises and off-premises signs is not a content-based regulation. While the regulation is based to an

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extent on the message of the sign, “[t]he message on the sign matters only to the extent that it informs the sign’s relative location.” The regulation is content-neutral—a common time, place, or manner regulation—subject to intermediate scrutiny.

Can the sign code distinguish commercial messages from noncommercial messages? Generally, yes. The *Austin* case did not directly present the question of commercial/noncommercial distinctions, but the discussion of the case clarifies the *Reed* decision in a way that limits the impact on prior precedent. *Reed* did not explicitly overrule prior precedent, but the breadth of the language in the opinion left open arguments that a commercial/noncommercial distinction might be treated as content-based and subject to strict scrutiny. In *Austin*, the majority opinion cites precedent affirming the commercial/noncommercial distinction (*Central Hudson* and *Metromedia*) and clearly states that “*Reed* did not purport to cast doubt on these cases.” While the commercial/noncommercial distinction might not be subject to strict scrutiny, it is still a regulation of speech and must meet intermediate scrutiny.

One Final Note

While we are talking about signs, let me emphasize another important lesson from a state court case: Local governments must clean up contradictory ordinance sections and take care with terminology in sign regulations and all land use regulations.

In *Visible Props., LLC v. the Village of Clemmons*, case no. COA21-398 (N.C. App. August 2, 2022), the North Carolina Court of Appeals resolved a dispute between a sign company and a local government. The sign company proposed a digital billboard. The local sign ordinance had four different sections with seemingly contradictory provisions about whether a billboard was allowed on the property. Given the ambiguity, the court interpreted the ordinance in favor of the free use of land and permitted the billboard.

Moreover, the court rejected that town’s argument that a billboard with digital changeable copy was a “moving and flashing sign” or an “electronic message board.” Neither of those terms were defined and the court applied dictionary definitions to determine that the proposed billboard was permitted because it was not moving or flashing and was not a message board.

Ordinance drafters—of sign ordinances and all ordinances—must take care to avoid contradictory provisions and use clear, defined terminology. As noted in *Visible Properties*, “zoning regulations are not intended to be a system of murky, ambiguous rules where the permitted uses of property ultimately

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TOWN OF WEAVERVILLE
PLANNING BOARD AGENDA ITEM

Date of Meeting: Tuesday, April 2, 2024
Subject: Short-Term Rentals
Presenter: Planning Director
Attachments: Definitions Related to Short Term Rentals, Presentation Slide from June, 2023

Description:

During last month's meeting the Board conducted a straw poll on the regulation of short-term rentals and requested additional guidance from Town Council on the issue. During their March 25 meeting, Town Council also indicated a willingness to pursue the regulation of short-term rentals and provided some preliminary thoughts on such regulation. Those thoughts included:

- Buncombe County is also on a similar pace for considering the regulation of short-term rentals. Jurisdictions should consider similar regulation for uniformity in the region.
- Distinguishing between rental configurations such as homestays or whole home rentals.
- Community solutions should be encouraged.
- Address property owners who live on the property vs. those who live elsewhere.
- Consider regulations where property owners are limited to one short-term rental property.
- Consider regulating whole home rentals only.

Support for stringent regulation, such as amortization of existing short-term rentals, was not voiced.

Action Requested:

In order to progress the proposed regulation of short-term rentals, staff is proposing that specific definitions related to short-term rentals be considered. Through certain litigation it has been determined that in order to regulate short-term rentals, the use must be specifically defined and regulated outside the normally defined uses typically contained in land use regulations such as single-family dwelling, boarding house, bed-and-breakfast, hotel and others.

Chapel Hill

6.27.3 *Definitions.* For the purpose of this Section 6.27, the following are defined terms:

Primary residence: A dwelling unit, a single-family dwelling unit with accessory apartment, or a dwelling unit with an attached duplex unit owned by the same property owner, in which the host resides a majority of the year (183 days per year or 50 percent or more of the time).

Short-term rental (STR): the rental of a dwelling unit that is rented in whole or in part for fewer than thirty (30) consecutive days for a fee or other valuable consideration, or a lodging unit contained in a building that primarily contains dwelling units. A building that contains more lodging units than dwelling units, and at least three (3) lodging units, shall be considered a Tourist Home or Hotel or motel as defined in Appendix A.

Short-term rental (STR), dedicated: A residential dwelling unit(s) located on a property not used as a primary residence in which the dwelling unit is rented in whole or in part for fewer than thirty (30) consecutive days for a fee or other valuable consideration, or a lodging unit contained in a building that primarily contains dwelling units.

Short-term rental (STR), host: see definition for STR operator.

Short-term rental (STR) hosting platform: A public platform that allows an operator to advertise a residential dwelling unit for use as a short-term rental and facilitates the booking transaction between the operator and the guest.

STR Designated Local Responsible Party: The local contact responsible for responding to emergency complaints or issues stemming from the use of the dwelling unit as a short-term rental.

Short-term rental (STR) operator: A property owner or authorized agent advertising, managing, and/or facilitating the use of the property as a primary residence STR or dedicated STR.

Short-term rental (STR), primary residence: A primary residence rented in whole or in part for fewer than thirty (30) consecutive days for a fee or other valuable consideration.

Short-term rental (STR) property owner: The owner of record of the short-term rental property as recorded in the Orange County Register of Deeds. The property owner maybe an individual or individuals or any form of business entity recognized by the State of North Carolina. If the property owner is a form of business entity, it shall maintain current registration with the North Carolina Secretary of State.

Short-term rental (STR) permit: The zoning compliance permit issued by the town to property owners or designated agents to certify that a residential dwelling unit or accessory structure may be used as a primary residence STR or dedicated STR.

Asheville

Homestay means a lodging use that occurs within a private, resident occupied dwelling unit, and where up to two guest rooms are provided to transients for compensation for periods less than 30 days and where the use is subordinate and incidental to the main residential use of the building. A homestay may or may not have a separate kitchen, bathroom and/or entrance. A homestay is considered a "lodging" use under this UDO.

Short-term vacation rental means a dwelling unit with up to six guest rooms that is used and/or advertised through an online platform, or other media, for transient occupancy for a period of less than one month. A short-term vacation rental is considered a "Lodging" use under this UDO.

Buncombe County (PROPOSED)

Short-term rental means a detached single dwelling unit with a heated gross floor area not to exceed 4,000 square feet, which is rented for a period of at least two nights and for no greater than 30 days to tenants, including but not limited to tourists, visitors, vacationers, or similar transients. Short-term rentals which are adjacent to each other, either on the same lot or on separate lots, and under common ownership or management shall be considered a common development. A development consisting of more than ten (10) short-term rental units shall be considered a hotel or motel for the purposes of this ordinance.

Woodfin

Homestay means a lodging use that occurs within a resident-occupied single-family dwelling wherein space in the home is rented to transients for compensation for a period of less than one month, and where the use is incidental and subordinate to the primary residential use of the property. A homestay may or may not have a separate kitchen, bathroom and/or entrance.

Short-term rental (STR) means a lodging use that occurs within a single dwelling unit containing a maximum of three bedrooms that is rented to transients for compensation for a period of less than one month.

Brevard

Short-term rental: A private residential property that is rented, either in whole, or part, for periods of less than 30 days for compensation. The following activities shall not be considered as a Short-Term Rental use for the purposes of this ordinance:

- A. Dwelling units rented, in whole or in part, where a permanent resident lives on-site on the property. This shall include attached or detached accessory dwelling units where the operator lives elsewhere on the property.
- B. Incidental residential vacation rentals, defined to mean no more than two such rentals in any calendar year where the total number of nights rented does not exceed 14.
- C. Rentals of property in any permitted hotel, motel, inn, rooming or boarding house, or bed and breakfast establishment.



Next Steps

1. Consider **forming a work group** to understand the current STR environment & impact in Weaverville objectively.
2. Consider **conducting public engagement** through community meetings, a survey, or focus groups to gather feedback on STR impacts in the community, both positive and negative.
3. Consider **developing STR regulations**, utilizing the questions asked in this presentation, that are contextual to Weaverville.
4. Consider **implementing and evaluating** the impact of these regulations.