Town of Weaverville
Planning Board
Regular Monthly Meeting
Tuesday, February 4, 2025, 6:00pm
Agenda

		Pg#	
1.	Call to Order ……..		Chair Kelley
2.	Adoption of Agenda …….		
3.	Approval of Minutes – 1/7/2025 Regular Meeting ……	2	Chair Kelley
4.	Downzoning Legislative Compliance ……	6	Planning Director Eller
5.	Multifamily Residential Density – Min. Lot Area, Setbacks	22	Planning Director Eller
7.	Adjournment		Chair Kelley

Planning Board - Jan. 07, 2025 Minutes

Tuesday, January 7, 2025 at 6:00 PM

The Planning Board held a regularly scheduled meeting in Council Chambers, Town Hall 30 S. Main Street, Weaverville, N.C.

1. Call to Order

Planning Board members Present: Chair Jane Kelley, Donna Mann Belt, Michael Sollazzo, and Jennifer Young, who voted as a regular member.

Absent: Mark Endries, Jonathan Brown- excused

Staff Present: Interim Town Manager Scottie Harris, Planning Director James Eller, Planner Graham Crawford, and Town Clerk Tamara Mercer.

2. Adoption of Agenda

Moved to adopt the agenda as presented.

Moved by: Michael Sollazzo

Aye Jane Kelley, Donna Mann Belt, Michael Sollazzo, and Jennifer Young

Carried unanimously. 4-0

3. Approval of Minutes December 3, 2024 Regular Meeting

Moved to adopt and approve the Planning Board meeting minutes of December 3, 2024 as presented.

Moved by: Michael Sollazzo

Aye Jane Kelley, Donna Mann Belt, Michael Sollazzo, and Jennifer Young

Carried unanimously. 4-0

4. Tree Conservation Regulations

Planning Director Eller reviewed the current regulations and the proposed Tree Conservation text amendments. The current goals of the Comprehensive Land Use Plan (CLUP), last updated in November 2023, call for the consideration of tree conservation regulations. The goal of considering the tree conservation regulation was also given number 2 (medium) priority within the CLUP giving staff the direction to accomplish or address the stated goal within 24 months.

Continuing on the previous month's conversation, additional information is being provided related to recently enacted conservation subdivision standards and large undeveloped or underutilized parcels within our municipal borders. Tree conservation regulations could be coupled with the recently enacted conservation subdivision standards and therefore propose that the lot threshold where conservation subdivision standards are applicable be lowered as shown in the attached proposed ordinance.

Mr. Eller provided a chart listing the possible effected lots as examples of underutilized parcels. He added the listed units are a theoretical maximum based solely upon the minimum lot area of the zoning district and the acreage present on the subject parcel. Other variables such as minimum lot width, minimum street frontage, setbacks, existing easements, road construction or topography have not been accounted for.

There was discussion regarding the regulations and current lots affected. Mr. Eller explained the standards for 25 lots and new parcels, and existing lots for 25 versus 20 lots. He noted the regulations in benchmark cities and towns by our municipal borders, and the Buncombe County regulations. Continued discussion regarding zoning districts, water and permitting, vested rights and permits, the watersheds and steep slopes, area topography, County standards and comparisons, large parcels, external growth versus internal lots and Mr. Eller expounded on allowances for density bonuses. These maybe considered voluntary, and these would be applicable to all subdivisions of 25 lots or more.

The Tree Board and the Tree Board's purview was discussed as well as 1/2-acre lot buffers for vegetation and trees. Chairman Kelley suggested this apply to 10 or more lots and to lower the threshold, to which there was general agreement to amend the regulation to include 10 lots and staff will draft the recommendations.

Moved that the tree conservation regulations is a high priority within the CLUP priorities and the Planning Board has found that these proposed code amendments are consistent with the Town's comprehensive land use plan, reasonable, and in the best interest of the public in that such amendments provide for regulations which encourage additional tree conservation measures and to amend the standards from 25 lots to 10 lots.

Moved by: Jennifer Young

Aye Jane Kelley, Donna Mann Belt, Michael Sollazzo, and Jennifer Young

Carried unanimously. 4-0

5. Parking Regulations

Planning Director Eller reviewed the Code Sec. 20-3501 and stated the goal of considering parking regulations will be given number 1 which is a high priority within the CLUP, thus giving staff the direction to accomplish or address the stated goal within 12 months.

He said the Board held conversations related to this goal in October and staff has updated the staff report and proposed ordinance revisions as a result of these discussions. Parking space reductions are being proposed for the enumerated uses: dwellings, multifamily, medical services, general retail, multi-tenant development, manufacturing, and warehousing and distribution. This would lower the requirements for dwellings from 2 spaces to 1.5. Examples given for hospital shift workers and employee requirement parking space requirements. Mr. Eller said it is easier to regulate dimensional space rather than people.

Deliberations included medical services, patient rooms and hospital beds, multi-tenant parking, gross square footage, and gross floor space, downtown requirements, and neighboring regulations, electric vehicle use and requirements, and commercial development.

Moved to approve the amended parking regulation ordinance as presented as the Planning Board found this to be reasonable and in the best interest of the public.

Moved by: Michael Sollazzo

Aye Jane Kelley, Donna Mann Belt, Michael Sollazzo, and Jennifer Young

Carried unanimously. 4-0

6. Setback Regulations

Planning Director Eller presented the proposed verbiage for setback regulations. He said goals of the Comprehensive Land Use Plan (CLUP), to be adopted in January 2025, call for the study and consideration of altered setback requirements for certain lots. The goal of considering these regulations is anticipated to be given a number 1 (high) priority within the CLUP giving staff the direction to accomplish or address the stated goal within 12 months.

Mr. Eller explained that the current regulations require that all setbacks are to be measured from the property line. This standard is typical but does not anticipate the scenario where a property line extends into or across a road and therefore, allowing construction closer to a road than would otherwise be allowed. Mr. Eller used an example of a parcel on Yost Street where a property line crosses into the roadway. And he explained setback calculations and measuring. This proposed verbiage addresses this example. The proposed draft language addresses and corrects the setback calculation. Setbacks would be measured from the parcel line nearest to the subject property.

Moved to approve the setback regulations as presented as the Planning Board found this to be reasonable and in the best interest of the public.

Moved by: Donna Mann Belt

Aye Jane Kelley, Donna Mann Belt, Michael Sollazzo, and Jennifer Young

Carried unanimously. 4-0

7. Adjournment

7.1 There being no further business, and without objection, Chair Kelley adjourned the meeting at 6:31 p.m.

Town Clerk

TOWN OF WEAVERVILLE

PLANNING BOARD AGENDA ITEM

Date of Meeting: Tuesday, February 4, 2025

Subject: Limits on Down Zoning

Presenter: Planning Director

Attachments: Staff Report; "Limits on Down Zoning"

Description:

The current goals of the Comprehensive Land Use Plan (CLUP), last updated in January 2025, call for a continuous review of the zoning regulations to ensure statutory compliance and consistency with stated goals. Rather than having a rank, as many other priorities do, this goal can be found within the portion of the table reserved for legal compliance and accountability.

A portion of the Disaster Recovery Act of 2024 – Part III, Session Law 2024-57 (S.B. 382) significantly alters the authority for local governments to amend zoning ordinances and provides that local governments can no longer down zone properties without the owner's consent.

This change in state law will also require a zoning text amendment to ensure the continued legal compliance of our land use regulations.

Action Requested:

Staff is seeking a recommendation from the Board to Town Council on the proposed text amendment related to down zoning to ensure legal compliance with newly enacted state statute.

Staff Report: Down Zoning

Prepared January '25

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan, SB 382, "Limits on Down-Zoning"

Comprehensive Land Use Plan Stated Goal and Background Information

The current goals of the Comprehensive Land Use Plan (CLUP), last updated in January 2025, call for a continuous review of the zoning regulations to ensure statutory compliance and consistency with stated goals. Rather than having a rank, as many other priorities do, this goal can be found within the portion of the table reserved for legal compliance and accountability.

State Statute

A portion of the Disaster Recovery Act of 2024 – Part III, Session Law 2024-57 (S.B. 382) significantly alters the authority for local governments to amend zoning ordinances. This newly enacted language provides that local governments can no longer down zone properties without the owner's consent.

An article furnished by the University of North Carolina School of Government titled "Limits on Down Zoning" goes into great detail on how down zoning is defined and how the law is likely to treat down zoning initiated by the local government moving forward. This article has been provided in the agenda packet and can also be found at the following link.

https://canons.sog.unc.edu/2024/12/limits-on-down-zoning/

Furthermore, Section 3K.1.(c) establishes that the limits on down zoning are not only applicable upon adoption, but also retroactively to any downzoning adopted after June 14, 2024. Staff has conducted a review of all map and text amendments conducted during this time and believe that no additional zoning map or text amendments adopted during this time should be retroactively voided.

Of most concern in this regard are the sign regulations which were changed for legal compliance on June 24, 2024. Given that the dimensional requirements (height, bulk, size) were not changed, it is believed that this amendment would hold if challenged. An arduous thought exercise would be to consider if the Town had enacted regulations related to short term rentals during this time frame as in all likelihood they would need to be rescinded.

Zoning map amendments during this time were conducted in conjunction with voluntary annexation petitions. By definition, voluntary annexation petitions, and supporting documentation such as a zoning map amendment application, require the consent of the owner and should therefore, also be safe if challenged.

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan, SB 382, "Limits on Down-Zoning"

Proposed Modification of Existing Regulations for Local Government Initiated Down Zoning

Sec. 20-1507. Down-zoning.

No amendment to zoning regulations or a zoning map that down-zones property shall be ~~initiated nor is it enforceable~~ initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning amendment~~, unless the down-zoning amendment is initiated by the town~~. For purposes of this section, "down-zoning" means a zoning ordinance that affects the area of land in order of the following ways: (1) by decreasing the development density of the land to be less dense than was allowed under its previous usage; (2) by reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage; (3) by creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element.

UNC SCHOOL OF GOVERNMENT

Coates’ Canons NC Local Government Law

Limits on “Down-Zoning”

Published: 12/20/24

Author: Adam Lovelady

The North Carolina General Assembly amended state law to greatly restrict local government discretion to amend local zoning ordinances. The statutory provision, amended as part of the Disaster Recovery Act of 2024 – Part III, Session Law 2024-57 (S.B. 382), broadly defines “down-zoning” and provides that local governments cannot adopt a down-zoning without written consent from all impacted owners.

The precise interpretation and breath of impact of this law are not perfectly clear. There are many questions. One thing is clear: the law dramatically alters the authority for local governments to amend local zoning ordinances.

This blog seeks to decipher the meaning and scope of the new limits on down-zoning. The blog outlines the amended statutory language; it investigates the meaning and scope of “down-zoning” as defined by state law; and it identifies some of the ways that local zoning administration may be impacted by the new limits.

Property Rights and Ordinance Changes

State and local law has long addressed this question of fairness that is central to land use regulations: To what extent should new regulations apply to existing development? Vested rights allow a property owner to develop land pursuant to an approved development permit even if the regulations are changed after the permit is issued. The permit choice rule ensures that if a property owner has already applied for a development approval (but not yet received approval) and then the regulations are changed, the property owner can choose for the permit to be reviewed under the old rules or reviewed under the new rules. As for existing development, local ordinance provisions about nonconforming situations generally allow existing land uses and development to continue, even if new regulations would not allow that existing development if it was proposed as new

development. All of these rules—vested rights, permit choice, and nonconformity provisions—provide protection for property owners against regulatory changes that might otherwise limit planned and existing development.

Additionally, North Carolina law has limited down-zonings by third parties. The prior version of G.S. 160D-601(d) prevented an individual from requesting to reduce the development rights on their neighbor’s property without consent from the neighbor. The old law, though, maintained local government authority to make decisions about rezoning property and adjusting zoning standards. The local legislative body—the town council or county commission—had authority under prior law to make local legislation decisions to adjust rules according to local needs and priorities.

New legislation goes much further: It prohibits local government-initiated down-zoning and it broadens the definition of down-zoning. Session Law 2024-57 (S.B. 382), Section 3K.1.(a), amends G.S. 160D-601(d) to reads as follows (strike-throughs show text that was cut and underlines show text added):

> (d) Down-Zoning. – No amendment to zoning regulations or a zoning map that down-zones property shall be ~~initiated nor is it enforceable~~ initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning ~~amendment, unless the down-zoning amendment is initiated by the local government.~~ amendment. For purposes of this section, “down-zoning” means a zoning ordinance that affects an area of land in one of the following ways:
>
> 1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
> 2. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
> 3. By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element.

It should be noted that there are media reports that the General Assembly may revisit this topic in a future legislative session. For now, though, it is law.

Applicability

Section 3K.1.(c) of the session law states that the limits on down-zoning are effective upon adoption and apply retroactively to any “down-zoning” adopted after June 14, 2024. Here’s the language:

> “This section is effective when it becomes law [December 11, 2024] and applies to local government ordinances adopted on or after that date and any local government ordinance enacting down-zoning of property during the 180 days prior to the date this section becomes effective [i.e., zoning amendments adopted after June 14, 2024]. Ordinances adopted in violation of this section shall be void and unenforceable.”

This retroactive application means that some previous local government zoning actions—including actions that property owners and developers have relied upon—may be unenforceable without written consent from all affected property owners.

“Down-Zoning” Defined Broadly

In land use law generally, “down-zoning” refers to rezoning a property to a new zoning district that is less intense or less dense than the prior district. Rezoning property from an industrial zoning district to a residential zoning district, for example, is a down-zoning. North Carolina law, however, defines down-zoning much more broadly.

To be clear, two of the three provisions discussed below were already in state law. But, those provisions are much more impactful now that they apply to local government-initiated amendments, not just third-party requests.

Let’s consider each of the three ways in which the state law would consider a zoning amendment to be a down-zoning.

DENSITY
“By decreasing the development density of the land to be less dense than was allowed under its previous usage.”

Under the new law, an amendment to the zoning text or map may not reduce the density of development unless the owner consents to it.

Zoning ordinances commonly regulate the density of residential units in each residential zoning district. Plainly a zoning ordinance amendment or rezoning that reduced the residential density would be prohibited under the new law unless the owner consented to the reduction. For example, a local government can no longer rezone a corridor or small area of properties from multifamily zoning to single family zoning without the consent of all the owners within the corridor or area. Beyond that, other regulatory provisions could be implicated. Setbacks, buffers, and open space requirements limit the amount of a lot that can be developed. Does increasing such requirements decrease the development density of the land? Potentially. If so, then changes to such development standards may be limited by the new law.

USES
“By reducing the permitted uses of the land that are specified in a zoning

ordinance or land development regulation to fewer uses than were allowed under its previous usage.”

Under the new law, an amendment to the zoning text or map may not reduce the permitted uses of the land unless the owner consents to it.

The phrasing of this provision suggests two different aspects of a zoning amendment that might trigger the down-zoning limits: *substantively* prohibiting a use that was previously allowed (“reducing the permitted uses”) and *numerically* reducing the number of uses allowed (“to fewer uses”). Moreover, this new law applies to text amendments *and* map amendments, so the two different aspects could come up through a text change to a use table or through a rezoning.

A common understanding of down-zoning would suggest that this provision should be interpreted to focus on the substantive uses allowed, but the language is not clear. Under the new law, is a zoning amendment a down-zoning when it prohibits a use that was previously allowed? Or is it a downzoning when the number of permitted uses is less than the number previously allowed (regardless of the substantive uses allowed)?

Here’s a simplified scenario to explore the potential implications. Consider a zoning ordinance use table that includes these districts and permitted uses.

R-1, Residential	**NC, Neighborhood Commercial**	**HC, Highway Commercial**
Single-family residential	Retail and restaurant	Gas station
Two-family residential	Multifamily residential	Truck stop
Bed and Breakfast	Religious assembly	Large format retail
Religious assembly	Gas station	
~~Short-term rental~~		
[Three-unit residential]		
[Four-unit residential]		

First, consider a text amendment. Suppose a local government is amending the zoning ordinance to

strike “short-term rental” from the permitted uses for R-1. Such an action would “reduc[e] the permitted uses,” so potentially that could not be “initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning amendment.” (Such consent would be nearly impossible across an entire jurisdiction.) Alternatively, suppose the text amendment struck “Short-term rental,” but added “Three-unit residential” and “Four-unit residential” as permitted uses. In this case, the text amendment would result in more permitted uses, not less. Under the statutory language, arguably that is not a down-zoning.

Next, consider how this plays out for a rezoning action. Imagine that the town is seeking to encourage commercial development along a highway corridor, so the town seeks to amend the zoning map so properties along the corridor are rezoned from the Neighborhood Commercial zoning district to the Highway Commercial zoning district. Such action would allow for more intense uses (commonly thought of as “up-zoning”), but fewer uses. Additionally, some of the uses permitted under Neighborhood Commercial would no longer be permitted. Substantively and numerically that would be a down-zoning under the law.

The phrasing of this provision raises two more questions worth exploring: What is included in “permitted uses”? And, what is meant by “previous usage”?

The phrase “permitted uses” raises questions. Surely principal land uses listed on the use table as allowed are permitted uses. What about uses allowed with special development standards? What about uses allowed by a special use permit? If a use is moved from “permitted” to “permitted by special use permit” is that a down-zoning? What about temporary uses or accessory uses? Are they permitted uses? It is not clear.

With regard to “previous usage,” the statute refers to “fewer uses than were allowed under its *previous usage*.” Is *previous usage* referring to how the property was actually used (it’s usage)? Or is that referring to the *previous regulation* or *previous district*? It is not clear.

NONCONFORMITIES

“By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot,

nonconforming structure, nonconforming improvement, or nonconforming site element.”

Under the new law, an amendment to the zoning text or map may not create nonconforming situations in non-residential zoning districts unless the owner consents to it.

A bit of context may be helpful. Most zoning ordinances allow for nonconforming situations to continue. So, when an ordinance is revised in a way that makes a current building, activity, or lot out-of-compliance, the property owner is allowed to continue that situation as a lawful nonconformity. In other words, the ordinance would not allow that building, activity, or lot if the property owner proposed it new, but since the situation was already there before the ordinance changed, the owner is allowed to continue.

There is no general state law requirement for nonconforming provisions, but local zoning ordinances typically include them. Commonly an ordinance will require that a nonconforming use cannot be expanded or intensified, and that if the use is ceased for a period of time (12 months, for example) the owner loses status as a lawful nonconformity and must come into compliance with the new rules.

There are circumstances when a local government requires immediate compliance rather than alllowing a situation to continue as a lawful nonconformity. These typically arise for public health and safety reasons. For example, consider if a town ordinance did not address camping and the owner of a vacant lot near downtown began hosting dozens of individuals sleeping in tents. The town might adopt requirements to address sanitation and crowding, and the ordinance might require property owner compliance right away. In other words, the use would not continue as a lawful nonconformity.

The new legislation against down-zoning clouds the rules for nonconforming provisions and situations. Outside of residential zoning districts, a zoning amendment cannot create any type of nonconformity. That plainly prohibits the common approach of allowing situations to continue as a lawful nonconformity. Interestingly, the law leaves open the possibility of requiring immediate compliance.

As discussed more below under Amending Development Standards, this provision on nonconformities will greatly impact local government updates to an array development standards like parking, setbacks, landscaping, signage, and more.

What about vacant land? In some cases new development standards might apply to vacant land without triggering a “down-zoning.” In order to create a nonconformity, there must be development that becomes nonconforming. For vacant land, though, new rules may not create a nonconformity so it might not amount to a down-zoning under the law.

What about old nonconformities? It appears that nonconformities existing prior to June 14, 2024, will continue unaffected by the new law. Local nonconforming provisions will still apply to those situations.

Implications for Local Zoning

So, what does this broad definition of down-zoning mean for local zoning ordinances? Here are some topics and considerations.

Rezonings Requested by Property Owners

A standard rezoning—where the property owner requests for property to change from one zoning district to another—will be unaffected, generally, by the new law because the property owner will be inclined to consent to the change. A local government will want to obtain written consent to the rezoning, especially if it falls within the broad definition of “down-zoning.” An application for rezoning might be implied consent to the change, but local governments would be wise to obtain clear, written consent to the down-zoning.

Conditional zoning already requires consent from the property owner. Given that the new legislation greatly limits authority for generalized amendments and updates to zoning, local governments may be inclined to shift rezonings toward conditional rezoning to ensure consent and to address standards for development.

Addressing New Uses

North Carolina is home to creative folks. They come up with all kinds of new, entrepreneurial uses for property. Additionally, industries are constantly evolving and seeking new ways to operate. Zoning ordinances cannot address any and all future land uses. They must be amended from time to time. Recent examples are food trucks, solar farms, backyard chicken coops, short-term rentals, crypto-mining operations, and vape shops. As new uses arise, local governments must determine if current ordinance provisions address the use sufficiently or if new regulations are needed.

The rule against down-zoning will complicate the process of addressing new uses. Ordinance amendments addressing new uses commonly restrict uses and add development standards. Such actions likely will be down-zonings.

Amending Development Standards

Zoning ordinances have a wide range of development standards: parking requirements, vegetative buffering, setbacks, height limits, and more. The limits on down-zoning will complicate the process of amending development standards. Amendments to these development standards may amount to a “down-zoning” under the new law if the new development standard limits development density on any property *or* creates a nonconformity on property in non-residential zoning districts.

Going forward, local governments may consider re-characterizing how rules apply so that rules are not creating nonconformities in non-residential districts: in other words, making new ordinance rules only apply to development occurring after the effective date of the ordinance. So, for example, new parking rules do not apply to existing development, but do apply to applications for new development. Such action would not be “creating any type of nonconformity on land not in a residential zoning district.” Existing development conforms with the rules applicable at the time of that existing development. And new development must conform with the new rules.

While such an approach may avoid the terminology “nonconformity,” it is accomplishing similar ends to typical nonconforming provisions, so it may still run afoul of the new law. Additionally, it may prove difficult for local governments to keep track of which development standards apply to new developments and which apply to old development.

Changes in Jurisdiction

Jurisdictional boundaries change commonly: the general assembly might de-annex property from a town, a town might extend (or relinquish) extraterritorial jurisdiction, or a new survey might correct a county boundary. Regardless of the reason for the change, whenever property changes jurisdiction the local government receiving the property must take action to apply zoning rules to the property. My colleague, Jim Joyce, has written on this topic in the blog, What Happens When Property Changes Jurisdiction? Essentially, the local government must go through a rezoning process to amend the zoning map and apply the zoning regulations to the new property.

The limits on down-zoning will complicate the process of applying zoning after a change in jurisdiction. Without consent from the owner, an action to apply zoning to property that is newly

added to the jurisdiction cannot reduce density or reduce uses, and for nonresidential districts, the action cannot create nonconformities. In cases of voluntary annexation, this may be a nonissue (the owner is requesting the new jurisdiction and presumably will provide written consent to the down-zoning), but in many other cases of changed jurisdiction, the owner may oppose the jurisdictional change and/or oppose the new zoning.

New Ordinances and New Maps

Local governments commonly adopt updated or overhauled zoning ordinances and unified development ordinances. Along with that, they commonly adopt wholly new zoning maps to align the zoning map with the new ordinance and districts.

The limits on down-zoning will complicate the process. Given the broad definition of “down-zoning,” ordinance updates and adoption of new maps will surely be impacted. Consent from every owner is impractical and unlikely. A local government potentially could allow for parallel zoning regulations (whereby the old rules are still available, but an owner could opt into the new rules), but such a system is unwieldy.

Even short of a comprehensive re-write or map update, any general changes to a zoning ordinance or map will be challenging. Imagine a new highway corridor district or gateway district overlay. Even if only one property was more restricted by the change, the law would require “written consent of all property owners whose property is the subject of the down-zoning amendment.”

Incorporating Maps by Reference

G.S. 160D-105 authorizes local governments to “incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies.” As part of that, a local ordinance may be “automatically amended to remain consistent with changes in the officially promulgated State or federal maps.” The limits on down-zoning likely will conflict with such automatic updates since maps with altered boundaries are likely to impose use and density limits as well as create nonconformities.

Compliance with Federal and State requirements

Local governments implement a range of state and federal requirements through zoning and related development regulations. The limit on down-zoning will complicate the process of implementing such requirements.

The National Flood Insurance Program requires that local governments must adopt minimum standards for flood damage prevention in order to participate in the program and for property owners to have access to federal flood insurance. The state Water Supply Watershed Program requires development regulations at the local level to protect drinking water supplies for North Carolina communities. When the standards are revised or the maps are updated, local governments must take action to update local ordinances accordingly. Such action could amount to a down-zoning, and the local government may be caught between the federal or state requirement and adhering to the limits on down-zoning.

What about related development ordinances? What about floodplain regulations?

The language of G.S. 160D-601(d) is focused on zoning (“No amendment to *zoning* regulations or a *zoning* map . . .”). The heading of the subsection (“Down-Zoning”) suggests this is about zoning. And “down-zoning” is defined to be “a zoning ordinance that affects an areas of land . . . .” Other provisions of Article 6 of Chapter 160D also distinguish between zoning and other development regulations. G.S. 160D-604 requires planning board review for *zoning amendments* and allows planning board review for amendments to other *development regulations*. With all of that, it seems that the limitation on “down-zoning” applies only to zoning ordinances, not other development regulations.

There is some statutory language and some practical implications that suggest that the limit may apply more broadly. Section 160D-601 itself is titled “Procedure for adopting, amending, or repealing *development regulations*.” Moreover, subsection (d)(2) refers to permitted land uses “that are specified in a zoning ordinance *or land development regulation.*” So perhaps the limit on down-zoning applies further than the zoning ordinance.

Floodplain regulations are a particularly tricky topic here. Floodplain regulations are authorized separately from zoning (G.S. 143-215.51 through -215.61 and G.S. 160D-923). Floodplain regulations, however, are zoning-like—maps identify different regulatory districts and land uses and development densities are regulated in those districts. Floodplain regulations commonly are incorporated into zoning regulations or are very closely related to the zoning ordinance. A floodplain ordinance that is adopted as part of a zoning ordinance would be subject to the limitations on down-zoning. For a floodplain ordinance that is adopted as stand-alone development

regulation, perhaps the down-zoning limitations of G.S. 160D-601(d) do not apply. Even then, the floodplain ordinance is establishing districts and regulating land uses, so it may be viewed as zoning anyway.

Presuming that the limits on down-zoning do apply to floodplain regulations, that could create significant problems for compliance with the National Flood Insurance Program (NFIP). As noted above, NFIP regulations require that local governments adopt certain minimum regulations for flood damage prevention and those regulations must align with the federal floodplain mapping. If a local government failed to maintain an adequate ordinance or adopt current maps, residents may lose access to federal flood insurance. For more on floodplain rules, check out these FAQs.

Conclusion

G.S. 160D-601(d), as amended, sets a new, broader definition of “down-zoning” and greatly limits local government authority to amend zoning ordinances and maps without property owner consent. Many questions remain about the precise meaning of the law, the breadth of the implications, and whether the General Assembly may revisit the legislation.

In the meantime, here is a simple list of questions for evaluating “down-zonings.”

> Is it a “down-zoning”?
>
> - Is the change an amendment to the zoning text or map?
>   - If yes, continue to next question. If no, evaluate if the amendment is effectively a zoning amendment (like in the case of floodplain ordinances).
> - Does the text or map amendment reduce development density?
>   - If yes, it’s a “down-zoning” (jump down to next section). If no, continue to next question.
> - Does the text or map amendment limit a use that was previously permitted and/or reduce the number of uses allowed? (Reminder: There is ambiguity as to whether this is substantive, numeric, or both.)
>   - If yes, it’s a “down-zoning” (jump down to next section). If no, continue to next question.
> - Does the text or map amendment affect property in a nonresidential zoning district?

    - If yes, continue to next question. If no, it likely is not a “down-zoning.”
- For text or map amendments affecting nonresidential zoning districts, does the text or map amendment create a nonconforming situation?
    - If yes, it’s a “down-zoning” (jump down to next section). If no, it likely is not a “down-zoning.”

f it is a “down-zoning”:

- Can the local government get written consent from all affected property owners?
    - If yes, then the amendment may proceed with proper written consent. If no, then the amendment cannot be initiated, enacted, or enforced.

TOWN OF WEAVERVILLE

PLANNING BOARD AGENDA ITEM

Date of Meeting: Tuesday, February 4, 2025

Subject: Multifamily Residential Density – Min. Lot Area, Setbacks

Presenter: Planning Director

Attachments: Staff Report

Description:

Staff has encountered a scenario where several of the goals of the comprehensive land use plan may be woven together to address the issue at hand. In short, we have a blind spot in our ordinances as it relates to the ownership of individual units, and the application of minimum lot area and setbacks within multifamily residential developments.

The current goals of the Comprehensive Land Use Plan (CLUP), last updated in January 2025, call for the determination on how to regulate condominiums (minimum lot area, setbacks within multifamily projects) which was given a number 1 priority, an ongoing review of zoning regulations which was given a number 2 priority, and the continued analysis of ways to provide standards regulations in order to reserve the use of conditional zoning which was given a number 3 priority.

Action Requested:

Staff is seeking a recommendation from the Board to Town Council on the proposed text amendment related multifamily residential density.

Town of Weaverville, North Carolina

Staff Report: Technical Change, Table of Dimensional Requirements

Prepared January, 2025

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan

Comprehensive Land Use Plan Stated Goal and Background Information

Staff has encountered a scenario where several of the goals of the comprehensive land use plan may be woven together to address the issue at hand. In short, we have a blind spot in our ordinances as it relates to the ownership of individual units, and the application of minimum lot area and setbacks within multifamily residential developments.

- Excerpt from recent technical review committee report*: Because these lots are to be platted and sold, the subdivision of the property is required and the table of dimensional requirements for the R-3 district must be adhered to. Even if by accident, all other townhome projects have been for rent, meaning individual lots did not have to be created and a reset back to the original minimum lot area did not have to occur. The density in units per acre is met, but the minimum lot area and setbacks for each unit/property is not met. This being said, preliminary plans for a subdivision of this nature cannot be administratively approved by our Planning Board.*

The current goals of the Comprehensive Land Use Plan (CLUP), last updated in January 2025, call for the determination on how to regulate condominiums (minimum lot area, setbacks within multifamily projects) which was given a number 1 priority, an ongoing review of zoning regulations which was given a number 2 priority, and the continued analysis of ways to provide standards regulations in order to reserve the use of conditional zoning which was given a number 3 priority.

Additionally, legal compliance with statutory standards which prohibit the regulation of property ownership could be considered. Even if by accident, our land use regulations encourage single ownership of multifamily residential projects which produce individual dwelling units for rent rather than sale. Under current regulations, the same project which offers individual dwelling units for sale will experience additional approvals (subdivision regulations which cannot be administratively adhered to, therefore requiring conditional zoning) which would not be applicable to for rent projects. This appears to be an unintended violation of the case law which prohibits ownership from determining regulations or subjecting similar projects to substantially different approval processes based on ownership.

Subjecting similar projects, and in this case identical uses, to differing approvals based upon their ownership should be addressed and it has been the practice of staff to bring forth technical changes when such necessary revisions to the zoning ordinance should be considered.

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan

Approval Process for Similar Projects and Identical Uses – Illustrated

PROJECT 1
RENTED

PROJECT 2
OWNED

	Rented	Owned
Approval Process	Permitted with standards. Subdivision ordinance not applicable as the property does not need to be subdivided to create individual lots or units for sale. Administrative zoning approval at staff level based upon objective standards of the ordinance.	Conditional zoning required as the administrative minimum subdivision standards cannot be met. Then the property is subdivided based upon the site-specific development plan incorporated with the conditional district. Then administrative zoning approval at staff level based upon the standards of the conditional district ordinance and plan.

Existing Table of Dimensional Requirements

Sec. 20-3206. Table of dimensional requirements.

Zoning District	R-1	R-2	R-3	R-12	C-1	C-2	I-1	MHO[11]
Minimum Lot Area (sq. Ft.)	10,000[2,7]	7,500[1, 2,3,4,7]	5,445[1,2,3,4,7]	7,500[4,7, 8]	0	0	0	5,445[1,2,3,4,7]
Minimum Lot Width(ft.)	100	75	75	75	0	50	0	75
Minimum Front Yard (ft.)	30	30	30	30	0	0	0	30
Major Thoroughfare	30	30	30	30[5]	0	60	35[5]	30
Minor Thoroughfare	30	30	30	30[5]	0	25[5]	35[5]	30
With Parking in Front	-	-	-	-	-	60	-	-
Without Parking in Front	-	-	-	-	-	40	-	-

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan

Minimum Side Yard (ft.) Abutting Residential District	10	10^6	10^6	10^6	0	30	40	10^6
Minimum Side Yard (ft.) Abutting Commercial or Industrial District	10	10^6	10^6	10^6	0	0	40	10^6
Minimum Rear Yard (ft.) Abutting Residential District	10	10^6	10^6	10^6	0	30	40	10^6
Minimum Rear Yard (ft.) Abutting Commercial or Industrial District	10	10^6	10^6	10^6	0	0	40	10^6
Height Limit (ft.)	35	35	35	45 and no more than 3 stories	Note 10	75	75	18
Buffer if Abutting a Residential District (ft.)	0	0	0	20	Note 9	20	20	0

The following notes apply to the Table of Dimensional Requirements set out above:

See sections on dwelling setbacks (Code section 20-3208(h) and (i)), nonconforming lots (Code section 20-1602); and right-of-way (Code section 20-3208(b)).

Additional Notes corresponding to the table:

1. 10,000 square feet if no public sewerage is available.
2. 20,000 square feet if neither public water or sewerage is available.
3. 5,000 additional square feet for each additional dwelling unit when public water and/or sewer is available, but in no event may density exceed 8 units per acre.
4. 10,000 additional square feet for each additional dwelling unit when public water and/or sewer is not available.
5. 40 feet if property directly across the right-of-way is zoned residential.
6. 15 feet for duplexes; 25 feet for all other multi-family dwelling units.
7. Additional square footage may be required by the authority having jurisdiction over private water and/or sewerage systems located on individual lots.
8. 3,280 additional square feet for each additional dwelling unit when public water and/or sewer is available, but in no event may density exceed 12 units per acre.
9. Where a lot in the C-1 district abuts a residential district, either directly or across a street (on the side of the C-1 lot), and any use is hereafter established on the C-1 lot by the construction

of a new building thereon or by the enlargement of an existing building on the C-1 lot which enlargement exceeds by 25 percent the floor area of the existing building, such building and such lot shall be screened from the lot in the residential district by a vegetative screen on the side of the building or lot facing the residential lot shall require screening. Exceptions to this buffering requirement in C-1 are as follows:

(a) These provisions shall not apply to any lot which is used for a use which would be permitted in the adjacent residentially zoned district.
(b) The vegetative screen required shall be omitted along the street where the C-1 lot fronts.
(c) The board of adjustment shall have the authority to alter or eliminate the required vegetative screen where the lot requiring the vegetative screen and the adjacent lot zoned residential are in single ownership or upon receipt of a notarized statement waiving or modifying the screening provisions of this section, between the owner of the lot requiring the vegetative screen and the owner of the adjacent lot zoned residential. Any such agreements shall be attached to the application for zoning permit and retained by the town.

10. In the C-1 district, every building or structure hereafter erected or structurally altered to exceed 35 feet in height, shall, above such 35-foot height, be set back from the front line of the property on which the building or structure is located on the ratio of one set back foot for each two-foot rise above such 35-foot height. In no case shall the height be greater than 57 feet (which would require a setback of 11 feet).

Where more than one-half of the street frontage in a particular street block is zoned residential and the remaining frontage on the same side of that street block is zoned C-1, the height regulations for the residential district shall apply to the lots zoned for commercial uses on that side of the street block.

11. The dimensional standards for the MHO district only apply to manufactured homes. To the extent that a dimensional requirement for a manufactured home in the MHO district is inconsistent with the corresponding dimensional requirement of the underlying use district, the more restrictive dimensional requirement shall apply to that manufacture home.

Potential Texts Amendments

Though staff will be advocating for one particular text amendment (adding an additional footnote to the table of dimension requirements which reference additional standards applicable to multifamily development; or amending existing footnotes; or an exemption from the subdivision ordinance) to address the issue, it is prudent to present all options for consideration. Other options include:

- Converting multifamily projects back to special use permits. Unlikely to come to fruition, this would exempt projects from the subdivision ordinance and alleviate the problem encountered. In this route, projects would be heard by the Board of Adjustment and subject to quasi-judicial standards and procedure.
- Continued use of conditional districts. A goal of the comprehensive land use plan notes the desire to reserve conditional zoning for unique projects. This project should not be considered unique in that multifamily residential has become the most common form of residential development experienced over the last several years. As this type of development is common (absent the issue of ownership previously described), this would potentially expose the town to being overrun with conditional district requests where a text amendment would provide standard regulations.
- An additional revision of the conservation subdivision standards. In a likely upcoming revision to the conservation subdivision standards, the threshold for such development would drop from 25 lots to 10. These standards speak to structure placement but not necessarily lot standard reduction. This would not address smaller multifamily projects, or the conversion of an existing for rent project to a for sale project.
- The abolishment of minimum lot area. Also unlikely to come to fruition, other ordinances use dwelling unit per acre as the density standard rather than minimum lot area. In other words, you are capped at a certain density and the property owner can configure the lots and/or units however they see fit provided the density of the parent parcel is not exceeded.

- Leaving us with an additional footnote on the table of dimensional requirements or the revision of existing footnotes. This, in staff's estimation, is the cleanest way to move forward. It would be appliable to existing and future development and would subject similar projects and uses, regardless of ownership, to similar development approval. It would also allow for the reduction of minimum lot area and setbacks for individual lots within multifamily residential projects while applying a density standard to the project based upon the underlying zoning district and apply setback to the exterior of the property rather than each individual lot and/or unit. Lastly, an exemption from the subdivision ordinance could be a viable option.

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan

Proposed Text Amendment

Sec. 20-3206. Table of dimensional requirements.

Zoning District	R-1	R-2	R-3	R-12	C-1	C-2	I-1	MHO[11]
Minimum Lot Area (sq. Ft.)	10,000[2,7]	7,500[1, 2,3,4,7,12]	5,445[1,2,3,4, 7, 12]	7,500[4,7, 8,12]	0	0	0	5,445[1,2,3,4,7]
Minimum Lot Width(ft.)	100	75[12]	75[12]	75[12]	0	50	0	75
Minimum Front Yard (ft.)	30	30[12]	30[12]	30[12]	0	0	0	30
Major Thoroughfare	30	30	30	30[5]	0	60	35[5]	30
Minor Thoroughfare	30	30	30	30[5]	0	25[5]	35[5]	30
With Parking in Front	-	-	-	-	-	60	-	-
Without Parking in Front	-	-	-	-	-	40	-	-
Minimum Side Yard (ft.) Abutting Residential District	10	10[6, 12]	10[6, 12]	10[6, 12]	0	30	40	10[6]
Minimum Side Yard (ft.) Abutting Commercial or Industrial District	10	10[6]	10[6]	10[6]	0	0	40	10[6]
Minimum Rear Yard (ft.) Abutting Residential District	10	10[6, 12]	10[6, 12]	10[6, 12]	0	30	40	10[6]
Minimum Rear Yard (ft.) Abutting Commercial or Industrial District	10	10[6]	10[6]	10[6]	0	0	40	10[6]
Height Limit (ft.)	35	35	35	45 and no more than 3 stories	Note 10	75	75	18
Buffer if Abutting a Residential District (ft.)	0	0	0	20	Note 9	20	20	0

The following notes apply to the Table of Dimensional Requirements set out above:

See sections on dwelling setbacks (Code section 20-3208(h) and (i)), nonconforming lots (Code section 20-1602); and right-of-way (Code section 20-3208(b)).

Additional Notes corresponding to the table:

1. 10,000 square feet if no public sewerage is available.
2. 20,000 square feet if neither public water or sewerage is available.

3. 5,000 additional square feet for each additional dwelling unit when public water and/or sewer is available, but in no event may density exceed 8 units per acre.
4. 10,000 additional square feet for each additional dwelling unit when public water and/or sewer is not available.
5. 40 feet if property directly across the right-of-way is zoned residential.
6. 15 feet for duplexes; 25 feet for all other multi-family dwelling units.
7. Additional square footage may be required by the authority having jurisdiction over private water and/or sewerage systems located on individual lots.
8. 3,280 additional square feet for each additional dwelling unit when public water and/or sewer is available, but in no event may density exceed 12 units per acre.
9. Where a lot in the C-1 district abuts a residential district, either directly or across a street (on the side of the C-1 lot), and any use is hereafter established on the C-1 lot by the construction of a new building thereon or by the enlargement of an existing building on the C-1 lot which enlargement exceeds by 25 percent the floor area of the existing building, such building and such lot shall be screened from the lot in the residential district by a vegetative screen on the side of the building or lot facing the residential lot shall require screening. Exceptions to this buffering requirement in C-1 are as follows:

(a) These provisions shall not apply to any lot which is used for a use which would be permitted in the adjacent residentially zoned district.
(b) The vegetative screen required shall be omitted along the street where the C-1 lot fronts.
(c) The board of adjustment shall have the authority to alter or eliminate the required vegetative screen where the lot requiring the vegetative screen and the adjacent lot zoned residential are in single ownership or upon receipt of a notarized statement waiving or modifying the screening provisions of this section, between the owner of the lot requiring the vegetative screen and the owner of the adjacent lot zoned residential. Any such agreements shall be attached to the application for zoning permit and retained by the town.

10. In the C-1 district, every building or structure hereafter erected or structurally altered to exceed 35 feet in height, shall, above such 35-foot height, be set back from the front line of the property on which the building or structure is located on the ratio of one set back foot for each two-foot rise above such 35-foot height. In no case shall the height be greater than 57 feet (which would require a setback of 11 feet).

Where more than one-half of the street frontage in a particular street block is zoned residential and the remaining frontage on the same side of that street block is zoned C-1, the height regulations for the residential district shall apply to the lots zoned for commercial uses on that side of the street block.

11. The dimensional standards for the MHO district only apply to manufactured homes. To the extent that a dimensional requirement for a manufactured home in the MHO district is

inconsistent with the corresponding dimensional requirement of the underlying use district, the more restrictive dimensional requirement shall apply to that manufacture home.

12. For multifamily residential projects as defined herein, the dimensional requirements for projects which are meant for the offer of individual dwelling units or lots for sale rather than rent, the additional standards described at Sec. 20-3324. Dwelling – Multifamily (d) shall apply.

Sec. 20-3324. Dwelling – Multifamily (more than 4 units/building).

(a) Street lighting requirements made necessary by article VI of this part III are fully applicable to the use of Dwelling – Multifamily (more than four units/building) as defined in Code section 20-1202 except that such requirements are hereby modified to provide the following:

(1) All lighting on the property shall be mounted on posts no more than 16 feet tall.

(2) Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.

(3) The exterior lighting plan shall be subject to review and approval by the town's zoning administrator prior to installation.

(b) All containment devices for trash and recyclables (including but not limited to compactors, dumpsters, roll-out bins, and areas for storing cardboard) shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

(1) All containment areas shall be enclosed to contain windblown litter.

(2) Enclosures shall be at least as high as the highest point of the compactor or dumpster.

(3) Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall, or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.

(4) Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access.

(5) Enclosures shall contain gates to allow for access and security.

(6) Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.

(7) Enclosures shall be landscaped in accordance with article IV of this part III.

(c) Maximum number of units per building – No more than 24 units per building are permitted.

Sources: Town of Weaverville Code of Ordinances; Comprehensive Land Use Plan

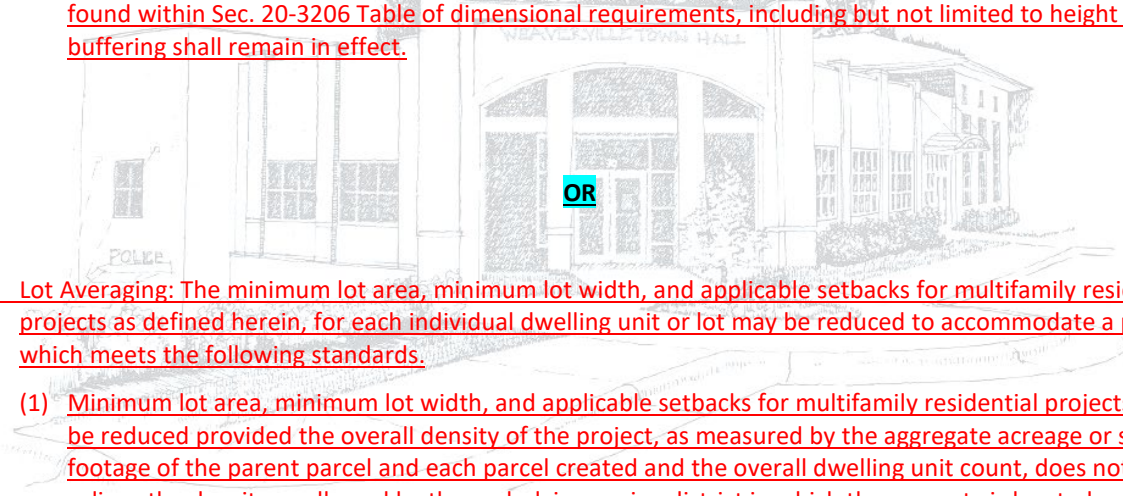
(d) For multifamily residential projects as defined herein, certain dimensional requirements found at Sec. 20-3206 Table of dimensional requirements, for projects which are meant for the offer of individual dwelling units or lots for sale rather than rent, the additional standards for dimensional requirements contained in this subparagraph are applicable.

(1) Minimum lot area for each individual dwelling unit or lot may be reduced to O provided the overall density of the project does not eclipse the density as allowed by the underlying zoning district in which the property is located and the aggregate acreage or square footage of the parent parcel and each parcel created.

(2) Minimum lot width may be reduced to accommodate the project provided the overall density of the project does not eclipse the density as allowed by the underlying zoning district in which the property is located.

(3) Front, side and rear yard setbacks for each individual dwelling unit or lot may be reduced to O provided the generally applicable setbacks required by the underlying zoning district are made applicable to the exterior property lines of the parent parcel.

(4) Other dimensional requirements not specifically enumerated in this section, but generally applicable and found within Sec. 20-3206 Table of dimensional requirements, including but not limited to height and buffering shall remain in effect.



OR

(d) Lot Averaging: The minimum lot area, minimum lot width, and applicable setbacks for multifamily residential projects as defined herein, for each individual dwelling unit or lot may be reduced to accommodate a project which meets the following standards.

(1) Minimum lot area, minimum lot width, and applicable setbacks for multifamily residential projects may be reduced provided the overall density of the project, as measured by the aggregate acreage or square footage of the parent parcel and each parcel created and the overall dwelling unit count, does not eclipse the density as allowed by the underlying zoning district in which the property is located.

(2) Other generally applicable dimensional standards including but not limited to height and buffering remain in effect.

OR

Sec. 20-2103. Applicability.

Subdivision regulations shall be applicable to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future), and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to any regulations authorized by this chapter:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in its subdivision regulations.

(2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets, or for utility easements for water, sewer or other purposes.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the town as set forth in the zoning ordinance or herein.

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under G.S. Chapter 29.

(6) Special use permits and conditional districts which have been approved in accordance with the provisions of this chapter, and development agreements established pursuit to Article 10 of G.S. Chapter 160D. (also could go here)

(7) The division of land pursuant to an order of a court of the general court of justice.

(8) The division of land for cemetery lots or burial plots.

(9) The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved, providing said division does not cause either property to be in violation of any town ordinance.

(10) Multifamily residential projects as defined herein, where the density does not exceed the overall dwelling unit count allowed by the underlying zoning district in which the property is located and the applicable setbacks of the underlying zoning district are applied to the exterior of the parent parcel.