



Legal and Legislative Update

North Carolina Planning Conference

Jim Joyce and Adam Lovelady

1

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2

Permitting Signs and Subdivisions Infrastructure Coastal Agricultural Local Legislation Building Code

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3

Permitting
Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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4

Permit Delivery

SESSION LAW 2024-45 (SB 607) SEC. 22.1

- New G.S. 143-162.6 (for state agencies), 153A-461 (for counties), and 160A-499.6 (for cities).
- No more requiring permittees to pick up permits in person BUT they can choose to do so if the agency allows it.
- Must send permits via US Mail, delivery service, or (if permittee consents in advance) by e-mail BUT can charge for cost of delivery.
- No change to permit application methods.
- Adopt a policy for permit delivery that is consistent with the statute by **September 1, 2024**.

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5

Security Fences

SESSION LAW 2024-45 (SB 607) SEC. 22.1

- Clarifies and expands last year’s battery powered security fence legislation
 - City or county cannot prohibit the use of a battery-charged fence in property zoned *exclusively* for nonresidential use AND cannot enforce current regulations that prohibit installing battery-charged fence on property zoned exclusively for nonresidential.

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6

Drone Traffic Control

SESSION LAW 2024-45 (SB 607) SEC. 23

- New Part 6 to Article 9 of Chapter 160D of the General Statutes (sections 160D-970 through -973), effective October 1, 2024.
- North Carolina nonprofits whose primary purpose is the promotion and growth of advanced air mobility technology can apply. Government must approve or deny within 30 days of receiving complete application
- No fee for application, installation, or use
- Can require applicant to evaluate collocation, provide collocation agreement (if feasible), construct within a reasonable time (but can't require less than 24 months)
- Can require applicant to remove system within 180 days of abandoning it. If they do not, remove it and get cost from applicant

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7

Permitting
Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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8

On-Premises Sign removal

SESSION LAW 2024-45 (SB 607) SEC. 23.1

- Adds a new G.S. 160D-912.1
 - "on-premises advertising" -- "A sign **visible from** any local or State road or highway that **advertises activities** conducted **on the property** ... or **advertises the sale or lease** of the property upon which it is located."
- May relocate or reconstruct
 - Comply with rules when constructed
 - No increase in "total advertising surface area"
 - Relocation / reconstruction begins within 24 months of removal

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9

On-Premises Sign removal

SESSION LAW 2024-45 (SB 607) SEC. 23.1

- If local government requires removal, of a lawfully-erected on-premises sign, must pay compensation equal to
 - (i) greater of FMV prior to removal OR diminution in value of property from removing sign PLUS
 - (ii) cost of a new conforming sign
 - Local government then owns the sign and is responsible for removing it.
- Applies to on-premises advertising signs **removed on or after October 1, 2021**. For signs removed between that date and July 9, 2024, relocation or reconstruction must begin by July 9, 2026.

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10

Tree Clearing for Billboards

SESSION LAW 2024-15 (HB 198)

- Session Law 2024-15 (H.B. 198) revises the statutes concerning tree cutting near billboards to allow more vegetative cutting and removal along NCDOT roads.

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11

Subdivision Performance Guarantees

S.L. 2024-49 (SB 166) SEC. 1.12

- Amends G.S. 160D-804.1 (authorizing subdivision performance guarantees) as follows
 - Must inspect improvements within 30 days of the developer request and advise if the improvements meet applicable standards
 - If there is a dispute about meeting applicable standards, the developer may obtain a certification under seal from a licensed professional engineer.
 - A local government must return or release a performance guarantee within 30 days of acknowledging completion or receipt of an engineer's certification.
 - Performance guarantees may not be required for maintenance of an improvement after completion.

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12

Subdivision -- Curb and Gutter Standards

S.L. 2024-49 (SB 166) SEC. 1.8

- Amends G.S. 160D-804 relating to subdivision standards, adding a new subsection (k).
- Developer can use NCDOT curb and gutter design standards for subdivision roads "adjacent to, and serving, dwellings subject to the North Carolina Residential Code" regardless of ordinance standards.

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13

Sidewalks in ETJ

S.L. 2024-49 (SB 166) SEC. 1.9

- Amends G.S. 160D-804(c)
- Applies to
 - Subdivisions of 20 lots or less
 - In a municipal extraterritorial jurisdiction
- For these subdivisions,
 - Municipal subdivision ordinance may not require sidewalks unless the city accepts long-term maintenance responsibilities by written agreement with NCDOT.
 - For such sidewalks required after January 1, 2020, a local government must coordinate with NCDOT to accept long-term maintenance responsibility.

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14

Permitting
Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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15

Stormwater

MAINTENANCE FUND REIMBURSEMENT [S.L. 2024-49 (SB 166) SEC. 4.1]

- S.L. 2023-108 sec 13
- NO collecting funds for maintenance of private stormwater facilities (G.S. 160D-925)
- Local governments must make funds available for maintenance, repair, replacement
- S.L. 2024-49 s 4.1
- Local government must "upon request of the owner ... immediately refund the monies to the owner of the stormwater control project..."

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16

Stormwater

BUILT UPON AREA [S.L. 2024-49 (SB 166) SEC. 4.48]

- New G.S. 143-214.7D reorganizes definition of "built-upon area" and its exemptions
- New exemption:
 - (6) Artificial turf, manufactured to allow water to drain through the backing of the turf, and installed according to the manufacturer's specifications over a pervious surface.
- Local governments must use this definition and may not enact or implement an ordinance that establishes a different definition of 'built-upon area' or impervious surface.

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17

Water and Sewer

CONDITIONS FOR RESIDENTIAL [S.L. 2024-45 (SB 607) SEC. 12 AND 2024-49 (SB 166)] SEC. 4.49

- New G.S. 162A-900
- Illegal requirements and conditions: Cannot require an applicant for water or sewer services for residential development to agree to a condition not otherwise authorized by law nor may an applicant offer to consent to such a condition. These include:
 - (1) Payment of taxes, impact fees or other fees, or contributions to any fund.
 - (2) Adherence to any restrictions related to land development or land use, including those in G.S. 160D-702(c) [minimum square footage for residential structures, parking space size, fire apparatus access roads].
 - (3) Adherence to any restrictions related to building design elements

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18

Water and Sewer

SCORING SYSTEMS [S.L. 2024-45 (SB 607) SEC. 12 AND 2024-49 (SB 166)] SEC. 4.49

- No scoring or preference system for allocating water and sewer service that:
 - (1) Includes consideration of building design elements, as defined in G.S. 160D-702(b).
 - (2) Sets a minimum square footage of any structures subject to the North Carolina Residential Code.
 - (3) Requires a parking space to be larger than 9 feet wide by 20 feet long unless the parking space is designated for handicap, parallel, or diagonal parking.
 - (4) Requires additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code.
- For more on the authority and limits for mandating water and sewer connections, see Kara Millonzi's blog post "[Mandating Water & Sewer Connections.](#)"

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19

On-Site Wastewater

2024-49 (SB 166)

- Misc. on-site wastewater changes:
 - Specify requirements for wastewater contractors and Authorized On-Site Wastewater Evaluators, and to establish the category of Private Compliance Inspectors (Sec. 4.4)
 - Authorize on-site wastewater system inspections by Private Compliance Inspectors (Sec. 4.5)
 - Liability for registered environmental health specialists (Sec. 4.7)
 - Water supply setbacks (Sec. 4.8)
 - Changes to statutory requirements and rules for on-site wastewater (Sec. 4.9 - 4.46)
 - S.L. 2024-1 (SB 508) also clarified language in S.L. 2023-90 regarding permitting and reporting requirements for on-site wastewater systems

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20

Crimes Against Infrastructure

S.L. 2024-45 (SB 607)

- Increases G.S. 14-159.1's penalties for knowingly and willfully contaminating a public water system, injuring a public water system or wastewater treatment system, and makes these punishable as a Class C felony, as well as adding a private right of action for injured parties;
- Modifies G.S. 62-323 to convert willful injury to property of a public utility from a Class 1 misdemeanor to a Class C felony and adds a private right of action for injured parties;
- Creates a new G.S. 14-150.3 to establish civil and criminal penalties (again a private right of action and a Class C felony) for knowingly and willfully damaging a manufacturing facility; and
- Adds claims for violations of the above to the list of exemptions in G.S. 1D-27 from the cap on punitive damages.
- Effective December 1, 2024, and applies to offenses committed on or after that date.

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21

C-PACE

S.L. 2024-44 (SB 802)

- Authorizes a statewide Commercial Property Assessed Capital Expenditure (C-PACE) program that local governments may join.
- C-PACE program allows owners of commercial property to obtain low-cost, long-term financing (secured by an assessment or lien on the property) for certain improvements such as energy efficiency, water conservation, renewable energy, and resilience.
- The new statutes, G.S. 160A-239.11 et seq., provide for a statewide administrator to consult with stakeholders, provide form documentation, and establish an application and review process. Local governments are authorized to participate through a prescribed process and resolution. The statutes set forth details on immunity and foreclosure, assessments and liens, scope of financing, and more.

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22

Permitting
Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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23

Coastal Areas

S.L. 2024-45 (SB 607)

- Multiple provisions in SB 607 related to coastal matters, all effective on the first day of a month 60 days after Secretary certifies NOAA approval to the Revisor of Statutes.
- Piers (sec. 15.1 and 15.2): No CAMA permit required for rebuilding of docks, piers, and walkways that are damaged or destroyed by natural causes. Instead, inspection department must notify DEQ DCM of the replacement of a dock, pier, catwalk, or walkway that has been replaced within 60 days of inspection.
- Aquaculture exemption (sec. 16.1): exempts floating structures used primarily for aquaculture and associated with an active shellfish cultivation lease from the definition of "development" that triggers CAMA permitting requirements.

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24

Coastal Areas

S.L. 2024-45 (SB 607)

- Vegetation lines related to groin projects (sec. 16): Coastal Resources Commission must revise its rules to allow a local government that has a permit to construct a terminal groin to set a measurement line of the first line of stable and natural vegetation to be covered by a dune building and beach planting project.
- Replacement of oceanfront erosion control structures (sec. 16.1A):
 - Allows a terminal groin where the ocean converges with Frying Pan Shoals and allows for a seventh terminal groin permit to be issued.
 - New rules for replacing geotextile sand tubes originally permitted before 1995 with rock erosion control structures.

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25

Permitting
Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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26

Agricultural Uses

S.L. 2024-32 (S355)

- Horse boarding an agricultural use: Section 1 adds "the boarding of horses" to other horse-related agricultural uses in the definition of "agriculture" in G.S. 106-581.1, which also applies to the zoning exemption in G.S. 160D-903. Also adds "the rearing, feeding, training, caring, boarding, and managing of horses" to operations that qualify for a right to farm defense to nuisance actions under G.S. 106-701 and to the list of agricultural activities to which sedimentation and erosion control regulations do not apply. Became law on July 3, 2024.
- Right-to-farm defense for compost facilities: Section 5.3 adds Type I compost facilities to the list of agricultural operations that can claim a right-to-farm defense against a nuisance action under G.S. 106-701. This provision applies to actions filed on or after July 3, 2024.
- No beehive regulation in municipal ETJ: Section 12 of the law amends G.S. 106-645(b), which previously explicitly allowed beehives to be regulated in areas of extraterritorial jurisdiction. Now those regs only apply in city limits.

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27

Agricultural Uses

S.L. 2024-32 (S355)

- **GIS disclaimer:** Section 13 adds G.S. 153A-463 (for counties) and G.S. 160A-499.8 (for cities) to require GIS tools offered to the public to include a disclaimer that the tool is provided without warranty and customers should consult primary sources to confirm the accuracy of any data provided. The disclaimer needs to be displayed as of January 1, 2025.
- **Bona fide farm stormwater fee exemption:** Section 14 modifies G.S. 153A-277 and G.S. 160A-314 to prohibit cities and counties from imposing stormwater utility fees on any property used for bona fide farm purposes. Unlike the zoning exemption in G.S. 160D-903, this fee exemption applies everywhere in county and municipal jurisdiction, including within city limits. It applies to fees levied on or after July 3, 2024.
- **Great Trails State Day:** the third Saturday in October of each year, beginning in 2024, will be North Carolina Great Trails State Day. Look forward to the first Great Trails State Day this October 19.

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28

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Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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29

Local Legislation

BOUNDARY CHANGES: S.L. 2024-20 (HB909) AND S.L. 2024-21 (HB 911/SB 770)

- **Deannexations** of property from the Town of Fuquay-Varina, City of Kannapolis, Town of Summerfield, City of Washington, Town of Andrews, City of Asheville, City of Boiling Spring Lakes, and Town of Newport.
- **Annexations** of property into the City of High Point, Town of Mount Gilead, and Town of Edenton.
- **Repeal of extraterritorial jurisdiction** authority for the City of Kings Mountain and the City of Southport.

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30

Local Legislation

OTHER AUTHORITY CHANGES

- Rail transportation corridor authority (S.L. 2024-45 sec 19.4): Catawba County, together with two or more of Burke, Caldwell, and Lincoln counties, should consider whether to create a rail transportation corridor authority to manage the rail corridor(s) in their communities.
- Repeal of Dare County affordable housing allocation of funds in S.L. 2022-74 and zoning exemption in S.L. 2023-134 (S.L. 2024-1 sec. 24.1)
- Other various and sundry modifications of authority, including occupancy tax, vacant positions, ABC funds, and several others, for the Town of Beaufort, City of Hendersonville, Town of Northwest, Beaufort County, Currituck County, Town of Woodfin, Pender County, McDowell County, Town of Stanley, the City of Concord, and Wake County (S.L. 2024-20 and 2024-21).

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31

Permitting
Signs and Subdivisions
Infrastructure
Coastal
Agricultural
Local Legislation
Building Code

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32

Building Code Changes

SESSION LAW 2024-49 (SB166)

- New composition for Building Code Council
- New Permit Technician Certification
- Rules of Model Homes
- Local fire code must comply with Residential Code
- Technical Code Changes

• State Building Code not published in NC Admin Code (Session Law 2024-45 (SB 607))

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33

Local Government Review of Seals of Design

SESSION LAW 2024-49 (SB166)

- new statute, G.S. 160D-111 to specify that

"[a]dministrative staff, Code-enforcement officials, or other local government personnel charged with reviewing plans required by this Chapter shall not make administrative decisions on the scope of work covered by architect or engineer seals of designs affixed to work."

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34

Building Code Changes: Fees

SESSION LAW 2024-49 (SB166)

- Inspections fees must support inspections department
 - Clarifies 160D-402
 - aligns with the reporting requirements under G.S. 159-33.1(a) and G.S. 160D-1102(c)
 - Open question about zoning and subdivision fees
- New Permit Technician Certification

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35

Building Code Changes: Residential Plan Review

SESSION LAW 2024-49 (SB166)

- If local gov performs Residential Plan Review, must perform concurrently with other permit reviews
- Initial review within 20 business days of submission
- 10% refund for each business day after 20

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36

Building Code Changes: Enforcement

SESSION LAW 2024-49 (SB166)

- Inspectors may not require an affidavit of code compliance in lieu of conducting required inspections
- Limit on Rights of Entry: “Administrative staff are prohibited from requiring unrestricted written consent from a permit applicant to enter any premises or areas not open to the public as a condition to accepting an application for, or the issuance of, development approvals.”

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37

Building Code Changes: Enforcement

SESSION LAW 2024-49 (SB166)

- Limits on withholding CO; can’t withhold for following
 - (1) Landscaping around dwellings subject to the North Carolina Residential Code within individual lots.
 - (2) Landscaping within common areas within a subdivision development.
 - (3) Street lighting fixtures within common areas of a subdivision development.
- developer must submit to the local government “a signed affidavit detailing the reasons why the required site improvements are not complete, the expected date of completion and compliance, and a statement promising to complete the required site improvements.”

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38

Hurricane Helene Recovery

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39

School of Government Resources

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Sheetz v. County of El Dorado (SCOTUS)
 Arter v. Orange County (NC SC)
 MR Entertainment v. Asheville (NC COA)
 SAS Assocs 1, LLC v. Chesapeake (4th Cir.)
 Askew v. City of Kinston (NC SC)

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43

Nollan and Dolan Background

- "Essential nexus" between condition and government's land use interest
- "Rough proportionality" between condition and impact of the development
- *Koontz* extended to cash exactions
- *Anderson Creek* applied North Carolina constitutional protections (extended to impact fees and resolve legislative question)

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44

Sheetz v. County of El Dorado, California

601 U. S. 267 (2024)

- Proposed to build prefab house on his property
- General Plan called for traffic impact fee of \$23,420
- Narrow Question: Is an exaction subject to *Nollan* and *Dolan* if it was imposed through a legislative process?
- SCOTUS: Unanimous YES!

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45

Sheetz v. County of El Dorado, California

601 U. S. 267 (2024)

- One Lingering Question:
"whether a permit condition imposed on a class imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development."
- Not answered, but concurrences point different directions

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46

Sheetz v. County of El Dorado (SCOTUS)
Arter v. Orange County (NC SC)
MR Entertainment v. Asheville (NC COA)
SAS Assocs 1, LLC v. Chesapeake (4th Cir.)
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47

Arter v. Orange County

229A23 NC SUPREME COURT

"Local governments have a responsibility to enact clear, unambiguous zoning rules. The increasing complexity of many local zoning ordinances can make that a difficult task. Zoning ordinances often contain pages upon pages of indices, headings, text, tables, and illustrative figures, all cross-referencing each other. Ensuring that this thicket of rules is free from ambiguity and internal inconsistency is a daunting task."

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48

Arter v. Orange County

229A23 NC SUPREME COURT

“zoning laws ‘are in derogation of common law rights,’ they ‘cannot be construed to include or exclude by implication that which is not clearly their express terms.’”

“when there are ‘well-founded doubts’ about the proper meaning of a zoning law—that is to say, an ambiguity—courts must choose the reasonable interpretation that favors ‘the free use of property.’”

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49

Arter v. Orange County

229A23 NC SUPREME COURT

- Developer proposed to build subdivision on rural property; access road would run beside neighbor’s horse farm
- Zoning ordinance text:
“Land use buffers will be required based on the zoning district of the proposed use and the zoning district of the adjacent uses.”

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50

	ZONING OR USE OF ADJACENT PROPERTIES												
	RB, AR, R1	R-2, R-3	R-4, R-5	R-6, R-13	HP-CD	ORM, NC-2, LC-1	CC-3, GC-4, EC-5	EI, I-1, I-2, I-3, PID	INTERSTATE HIGHWAY	ARTERIAL STREET	COLLECTOR STREET	ACTIVE FARM/ AGRICULTURE	
Zoning or Use of Subject Property	RB, AR, R1	-	A	A	B	F	E	F	F	F	E	B	B
	R-2 & R-3	A	-	A	B	F	D	F	F	F	D	B	B
	R-4 & R-5	A	A	-	B	F	C	E	F	F	C	B	B
	R-6 & R-13	B	B	B	-	F	B	D	D	F	C	B	B
	HP-CD	F	F	F	F	-	F	F	F	F	F	F	F
	ORM, NC-2, LC-1	E	D	C	B	F	-	-	-	F	B	B	D
	CC-3, GC-4, EC-5	F	F	E	D	F	-	-	-	F	B	B	D
	EI, I-1, I-2, I-3, PID	F	F	E	E	F	-	-	-	F	B	B	D
	AS, ASE-CD	D	A	A	A	F	A	A	A	F	B	B	B

Note: MPD-CD, R-CD, and NR-CD buffers to be determined at time of approval.

UN Note: MPD-CD, R-CD, and NR-CD buffers to be determined at time of approval.

51

Arter v. Orange County

229A23 NC SUPREME COURT

Interpretive Rules Matter

"Headings and illustrations contained herein are provided for convenience and reference only and do not define or limit the scope of any provision of this Ordinance. In case of any difference of meaning or implication between the text of this Ordinance and any heading, drawing, table, figure, or illustration, the text controls."

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52

Sheetz v. County of El Dorado (SCOTUS)
Arter v. Orange County (NC SC)
MR Entertainment v. Asheville (NC COA)
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53

MR Entertainment v. The City of Asheville

COA23-1109

- Ordinance prohibits signs on vehicles parked to display the sign
- NOV, email that it's resolved, no re-inspection, no appeal
- 2 years pass, NOV and lawyer letter claiming continuing violation (driving the truck around town)
- Appeal

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54

MR Entertainment v. The City of Asheville

COA23-1109

- Takeaways/ Court Holdings
 - Ordinance Precision Matters: Ordinance is about parked vehicles, not driving on the road
 - Follow Procedures: NOV provided option to cure and reinspection
 - Email from owner was sufficient; city did not re-inspect
 - Document, Document, Document: City has burden to prove continuing violation

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55

Sheetz v. County of El Dorado (SCOTUS)
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56

SAS Assocs. 1, LLC v. City Council for City of Chesapeake, Virginia

91 F.4TH 715 (4TH CIR. 2024)

- 90 acre rezoning request
- Support at planning commission (comp plan, level-of-service standards, surrounding community)
- Public hearing: neighbor opposition (flooding and traffic)
- City council denied, citing flooding and traffic
- Developer challenged on Equal Protection grounds

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57

SAS Assocs. 1, LLC v. City Council for City of Chesapeake, Virginia

91 F.4TH 715 (4TH CIR. 2024)

- Need evidence that disparate impact was intentionally selected to bring adverse effect to that group or individual, such as
 - Evidence decisionmaker harbored ill will toward group or individual
 - Evidence of a pattern of historical discrimination intended to disadvantage
 - Statements to show discriminatory purpose
- Comments about traffic and flooding are valid public concerns (it's a political question)
- Comparison properties were ineffective
- Fed Court reluctance

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58

Sheetz v. County of El Dorado (SCOTUS)
 Arter v. Orange County (NC SC)
 MR Entertainment v. Asheville (NC COA)
 SAS Assocs 1, LLC v. Chesapeake (4th Cir.)
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59

Askew v. City of Kinston

55A23 NC SUPREME COURT

- City of Kinston increased efforts to condemn and demolish dilapidated structures
- City condemned and demolished properties owned by the plaintiffs
- Plaintiffs failed to exhaust administrative remedies (complete appeals)
- Plaintiffs brought constitutional challenge alleging racial discrimination in the condemnation scheme (*Corum* suit—common law Constitutional remedy)
 - Lower courts ruled for city (plaintiffs failed to exhaust admin. remedies)
- Supreme Court:
 - Allowed *Corum* suit to proceed and remanded for further review

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60



61
