

# Legislative Development Decisions

REZONINGS AND TEXT AMENDMENTS IN NORTH CAROLINA  
ADAM LOVELADY | JIM JOYCE  
SPRING 2026



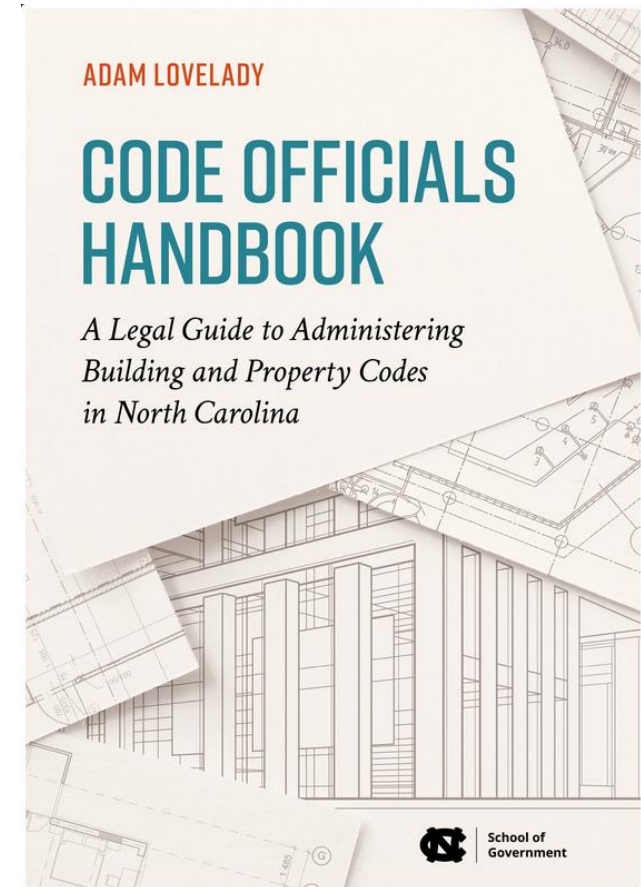
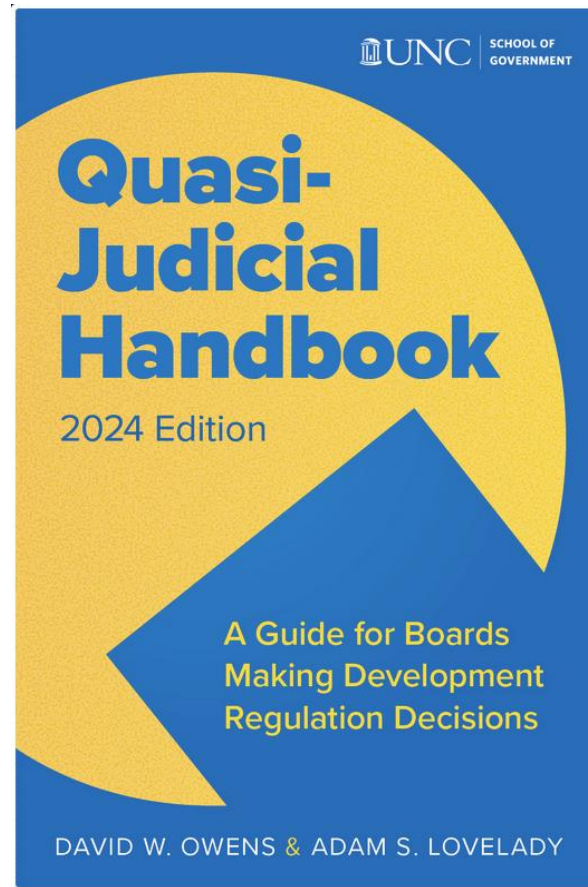
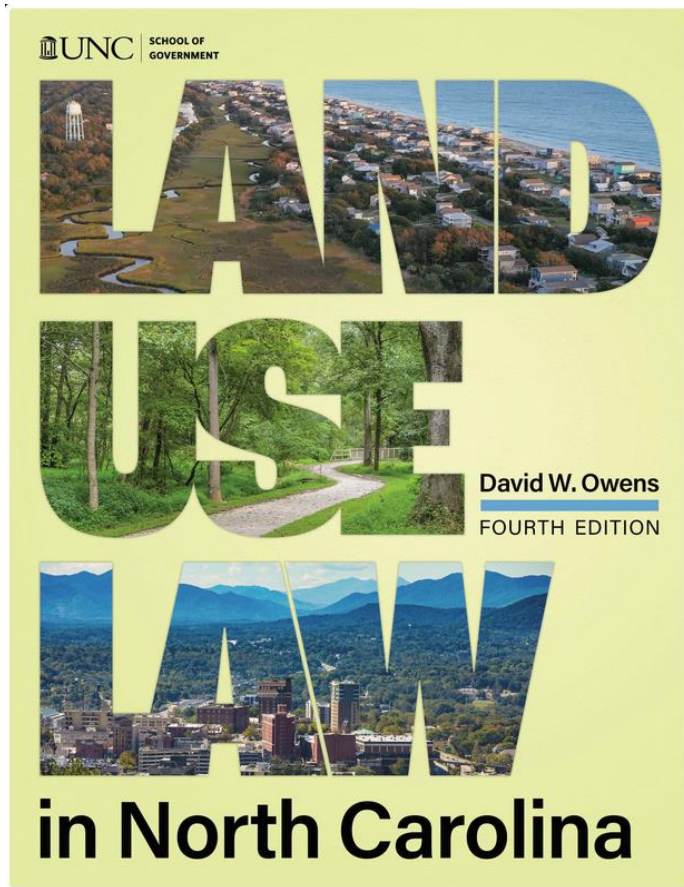
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# Print Publications





# Online Resources



< Home | Who Can Challenge...  
**Coates' Canons**

NORTH CAROLINA LOCAL GOVERNMENT LAW BLOG

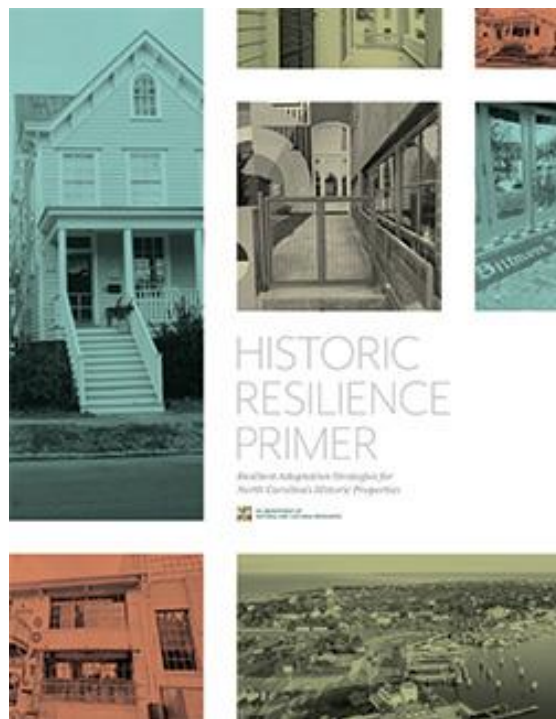
March 17, 2026



## Who Can Challenge Land Use Decisions? A Question of Standing

Jim Joyce

Victor would like to ask a court to overturn a recent rezoning decision in the Town of Fakesville. Katrina wants to challenge a recent special use permit decision in the same town. But can they do so? A key prerequisite of any challenge to a local government decision is standing – the capacity of a party to bring a lawsuit in court. Standing requires a sufficient connection to, or harm caused by, the challenged action. Without proper standing, neither Victor nor Katrina could “have their day” in court. As a pair of 2025 North Carolina Court of Appeals decisions remind us, Victor and Katrina face *different* standing requirements



## PlanNC Guidebook

A Practitioner's Guide to Preparing Streamlined Community Plans



UNC SCHOOL OF GOVERNMENT

# Meet Your Neighbor

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- Name and Jurisdiction?
- How long have you been involved?
- What is one question you have for today?

## Outline

- 1. Development Rules**
- 2. Land Use Planning**
- 3. Rezoning Considerations**
- 4. Rezoning Procedures**



# Development Rules

**Types of Development Regulations**

**Types of Decisions**

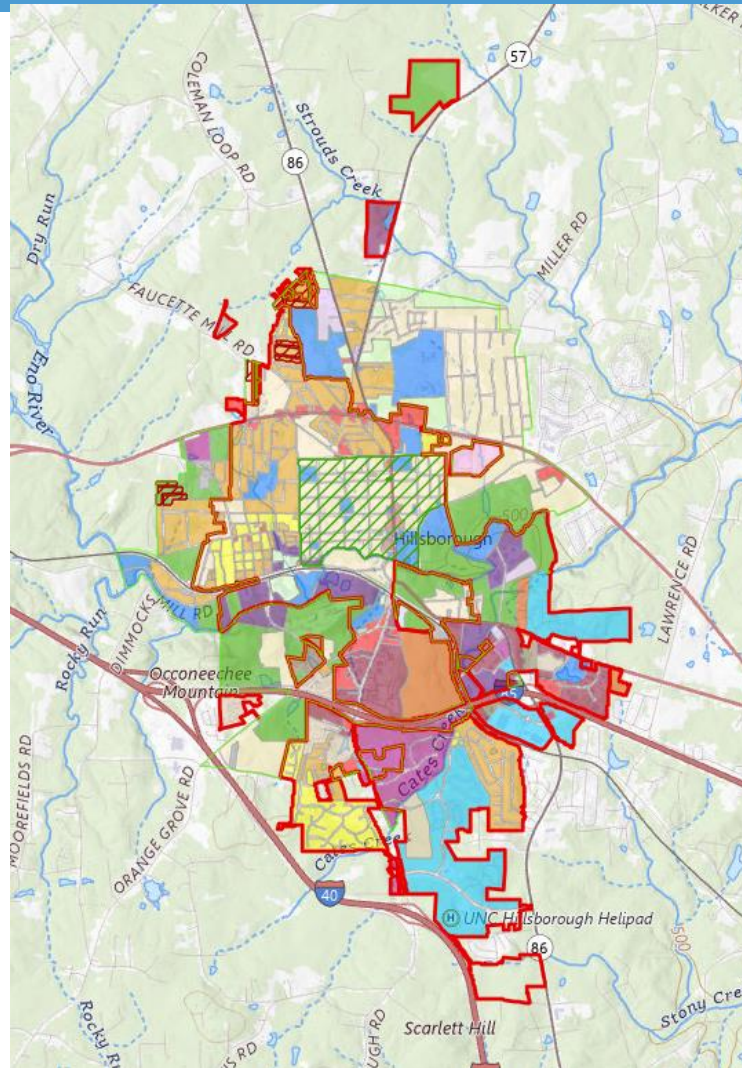
**Conditional Zoning**





Lumley Rd, Design Incredible, Durham Concrete, Cedar Grove Dr, Appling Way, Shagbark Dr, Scuppernon Ln, Galax Ln, Pageford Dr, Implus, Ironclad Security Systems, Amazon driver lounge, Amazon Fulfillment Center RDU5, TW Alexander Dr, PowerSecure, LabCorp, Roche Rd

# Zoning



## Zoning

- ALN Assisted Living Neighborhood
- AR Agricultural Residential
- ARU Adaptive Reuse
- BP Business Park
- CC Central Commercial
- CCSU Central Commercial Special Use
- EDD Economic Development District
- ESU Entranceway Special Use
- GC General Commercial
- GI General Industrial
- HIC High Intensity Commercial
- LI Light Industrial
- LO Limited Office
- MF Multi-Family
- MFSU Multi-Family Special Use
- MHP Mobile Home Park
- NB Neighborhood Business
- NBSU / NB-CZ
- OI Office Institutional
- PW Upper Eno Protected Watershed
- PWCA Upper Eno Protected Watershed, Critical Area
- R10 Residential 10,000 sf min
- R15 Residential 15,000 sf min



# Table of Permitted Uses

5.1.7 TABLE: USE TABLE FOR RESIDENTIAL DISTRICTS

P = Permitted by Right	SUP = Permitted with a Special Use Permit
Adult Day Care	
Adult Use	
Artisan Studio	
Bank & Financial Institution	
Bar	
Bed and Breakfast Facility	
Botanical Garden & Arboretum	
Building/Trade Contractor's office	
Cemetery	S
Child Day Care	
Church, Place of worship	S
Detention Facility	
Dwelling: Accessory	
Dwelling: Attached (1-4 units)	
Dwelling: Attached (5-19 units)	
Dwelling: Attached (20+ units)	S
Dwelling: Mobile Home A	
Dwelling: Mobile Home B	
Dwelling: Mobile Home C	
Dwelling: Single-family	
Electronic Gaming Operation	
Event Center	
Extended Care Facility	
Family Care Home	
Family Child Care Home	
Farm, Bona fide	
Farmer's Market	
Flex Space	

Hillsborough Unified Development Ordinance

5.1.7 TABLE: USE TABLE FOR RESIDENTIAL DISTRICTS

P = Permitted by Right

Hillsborough Unified Development Ordinance

5.1.8 TABLE: USE TABLE FOR NON-RESIDENTIAL DISTRICTS

P = Permitted by Right	SUP = Permitted with a Special Use Permit						PA = Permitted as accessory use					* = Refer to 5.2.47		
	LO	NB	OI	CC	GC	HIC	ARU	BP	EDD	LI	GI	ESU	NBSU	SDSU
School: Art & Music			P	P	P	P	P	P	P			SUP	SUP	SUP
School: Dance, Martial Arts			P	P	P	P	P	P	P	P		SUP	SUP	SUP
School: Elementary, Middle & Secondary			SUP				SUP	SUP	P*			SUP		SUP
School: Higher Education			SUP				SUP							
School: Vocational								P	P	P	P	SUP		
Storage & Warehousing: Inside building, excluding explosives & hazardous wastes					P	P	P	P	P	P	P	SUP		
Storage & Warehousing: Outside								P	P	P	P			
Storage & Warehousing: Self										P	P			
Telecommunication Tower	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP	SUP

School: Art & Music  
School: Dance, Martial Arts

Dwelling: Mobile Home B  
Dwelling: Mobile Home C  
Dwelling: Single-family  
Electronic Gaming Operation  
Event Center  
Extended Care Facility  
Family Care Home  
Family Child Care Home  
Farm, Bona fide  
Farmer's Market

Junked or Wrecked Motor Vehicles  
Kennels, Boarding  
Library  
Manufacturing Complex  
Meeting Facility  
Microbrewery  
Mobile Home Park  
Motor Vehicle Fuel Station  
Motor Vehicle Maintenance, & Service  
Motor Vehicle Repair  
Motor Vehicle Sales & Rentals  
Office operations  
Offices and professional services

Personal service business	P						P			P			P			P									
	ARU	BP	EDD	LI	GI	ESU	NBSU	SDSU	ARU	BP	EDD	LI	GI	ESU	NBSU	SDSU	ARU	BP	EDD	LI	GI	ESU	NBSU	SDSU	
Petroleum Products (storage & distribution)														SUP											
Pharmacy, Convenience																									
Pharmacy, Retail																									
Postal and Parcel Delivery Services																									
Processing Facility														SUP	SUP	SUP									
Public Safety Services																									
Public Utilities																									
Recreational Facilities																									
Research Facility																									
Research Facility, Intense														SUP	SUP	P	P								
Restaurant																									
Restaurant, Convenience																									
Retail sales/rentals of goods with outside display/storage of merchandise																									
Retail sales/rentals of goods within wholly enclosed structure																									

# Development Standards

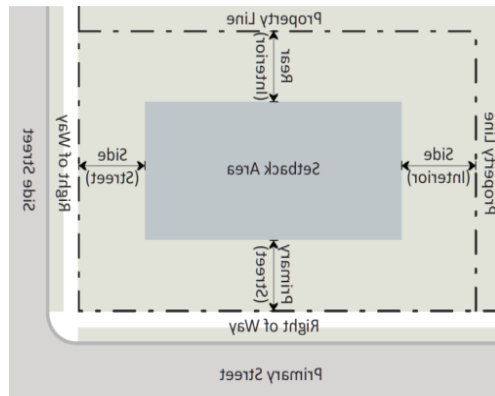
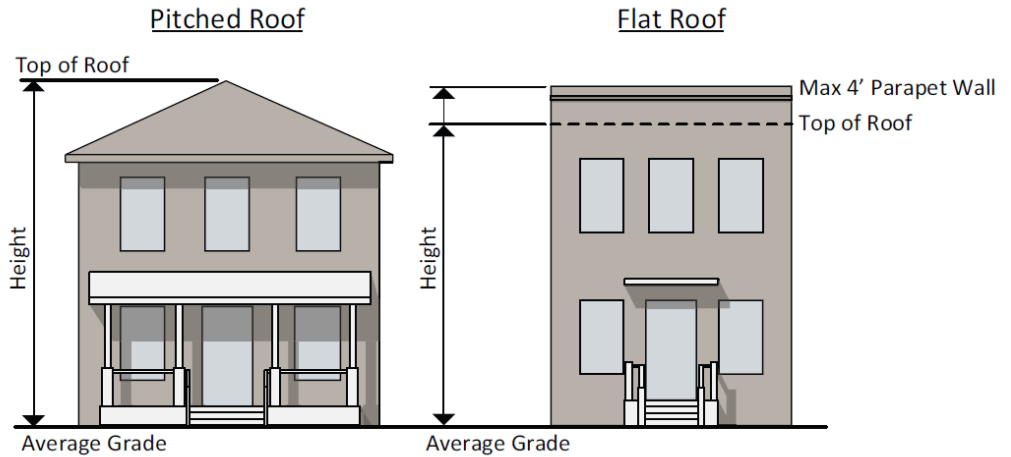
6.10.3.12 Lot areas not covered with paving, parking, buildings, or walkways shall be landscaped. The preferred surface is grass outside of planting beds although reasonable use of mulch and other materials will be considered.

Figure 6-5: Landscaping (Parking Lot)



- 1 Curbs, wheel stops, or other appropriate means prevent interference between parking spaces and travel lanes, walkways, or other private property.
- 2 Parking facilities shall be separated from a structure, exclusive of paved pedestrian entranceways or loading areas by an area of at least 3 feet in width.
- 3 Parking spaces shall contain a minimum area of 180 square feet with a minimum width of 9 feet.
- 4 Landscape islands of sufficient size to accommodate at least one shade tree shall separate parking spaces from adjacent drive aisles.

Section 6: Development Standards | 6-25



# Land Subdivision

**Note:**  
This plat forms part of the Master Declaration recorded in Book 2610, Page 821 and part of the Homeowner Association documents with covenants and restrictions recorded in Book 2610, Page 822 on 10/19/2005.

The undersigned, being the duly elected President of the Brookberry Farms Single Family Homeowners Association, Inc. and having been duly authorized by the Association's Board of Directors, hereby signs this plat, this 10th day of May, 2006.

Brookberry Farms Single Family Homeowners Association, Inc.  
By: James M. McChesney II, President

**PLANNING DEPARTMENT/REVIEW OFFICER**  
FINAL SUBDIVISION PLAN APPROVAL

This is to certify that this plat meets the recording requirements of the United Development Ordinance Subdivision Regulations for Winston-Salem, Forsyth County, North Carolina.

David B. Boyles, Review Officer of which this certification is affixed meets all statutory requirements for recording.

Approved: David B. Boyles  
Director of Planning/Review Officer  
this 14th day of May 2006  
Forsyth County, North Carolina

I, David B. Boyles, certify that this plat was drawn under my supervision from an actual survey made under my supervision (detailed description recorded in Book 2610, Page 821); that the boundaries not surveyed are clearly indicated as drawn from information found in Book 2610, Page 821; that the ratio of precision as calculated is 1:10,000+; that this plat was prepared in accordance with C.S. 47-30 as amended, witness my original signature, registration number and seal this 10th day of May, A.D. 2006.

David B. Boyles  
Professional Seal  
SEAL  
L-3135  
DAVID B. BOYLES  
LAND SURVEYOR

Registration No.: L-3135 N.C.

that this plat creates a subdivision of land within a county or municipality that has an ordinance that regulates parcels of land.

**Flood Certification**  
I have examined the Flood Insurance Rate Map for Forsyth County North Carolina, Community Panel Number 3767002511 & 2708700222 in dated 10-20-1998, and hereby certify that this property is not located in a special flood hazard area as determined by the Federal Emergency Management Agency. (See Map)

FORSYTH COUNTY REGISTER OF DEEDS  
PLAT REGISTRATION

Filed for registration at 11:25 AM on the 14th day of May, 2006 and recorded in Plat Book 50, Page 58, 2006  
Filing Fee Paid \_\_\_\_\_ Clerk of Court, Register of Deeds

By \_\_\_\_\_ Assistant/Deputy

**LEGEND**

- EIP EXISTING IRON PIN
- IPS IRON PIN SET (60 R)
- CM CONCRETE MONUMENT
- PT CALCULATED POINT
- UTILITY POLE
- LIGHT POLE
- OO — OVERHEAD UTILITY
- G — FENCE LINE
- GAS LINE
- UNDERGROUND TELEVISION
- SANITARY MANHOLE
- SIGHT TRIANGLE
- XXXX TAX PIN NUMBER
- XXXX ADDRESS
- WM WATER METER
- WV WATER VALVE
- BDC BACK OF CURB
- EOP EDGE OF PAVEMENT
- R/W RIGHT-OF-WAY
- N/F NOW OR FORMERLY
- CGF COMBINED GRID FACTOR
- PSDE PRIVATE STORM DRAINAGE
- CC CONTROL CORNER
- GCA GENERAL COMMON AREA

**NOTES:**

1. Deed Reference(s) - Deed
2. Map Reference(s) - Plat
3. Tax Block No. - 4620
4. Current Owner - Brookberry Farms
5. All bearings are NC Grid
6. All distances are shown
7. Grid distance = Horizontal
8. Areas have been determined by computation.
9. Iron pins (60 R) are found or set at all plat corners.
10. This property may be subject to various restrictions, easements, covenants and restrictions.
11. The North Carolina Grid derived by static differ 4700 Receivers and GPS Service.
12. Current Zoning - MU-S
13. 35'x35' & 10'x70' Site
14. General Common Area

General Common Area:  
GCA 3: 12,095 sq. ft.

**LINE TABLE**

LINE	LENGTH	BEARING
L1	62.25	S85°38'54"W
L2	52.95	N62°42'17"E
L3	55.46	N49°21'52"E
L4	43.08	N49°23'52"E
L5	51.45	S83°10'01"E
L6	17.02	S83°10'01"E
L7	15.31	S76°36'50"E
L8	33.00	S55°38'24"W
L9	68.56	S42°14'50"E
L10	67.72	S40°34'50"E
L11	32.18	N32°56'32"E
L12	42.35	N32°53'00"E
L13	50.17	S67°52'50"W

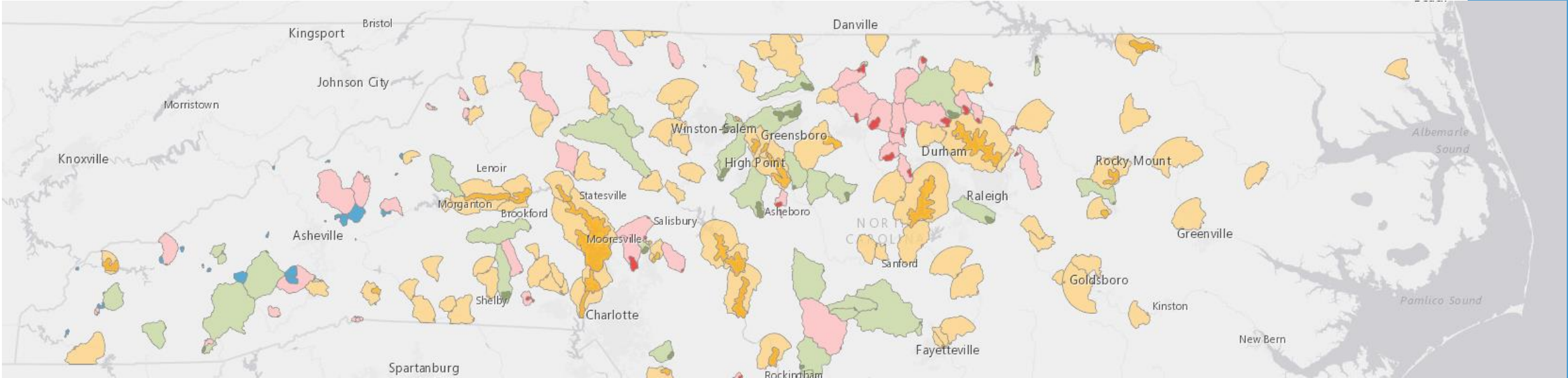
**Final Plat for Brookberry Farm Single Family Homes Phase I Map 1 (Page 1 of 5)**  
City of Winston-Salem  
Winston Township  
Forsyth County,  
North Carolina

Phone: (704) 376-7777  
Fax: (704) 376-2448  
223 North Graham St.  
Charlotte, NC 28202

# Infrastructure Standards



# Environmental Regulations



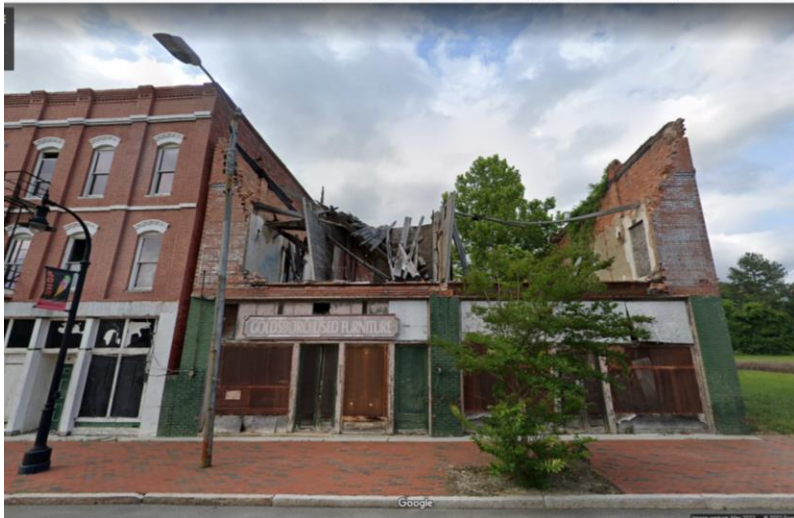
# Building Codes

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- Technical codes for building safety
- Adopted by the state
- Enforced at the local level

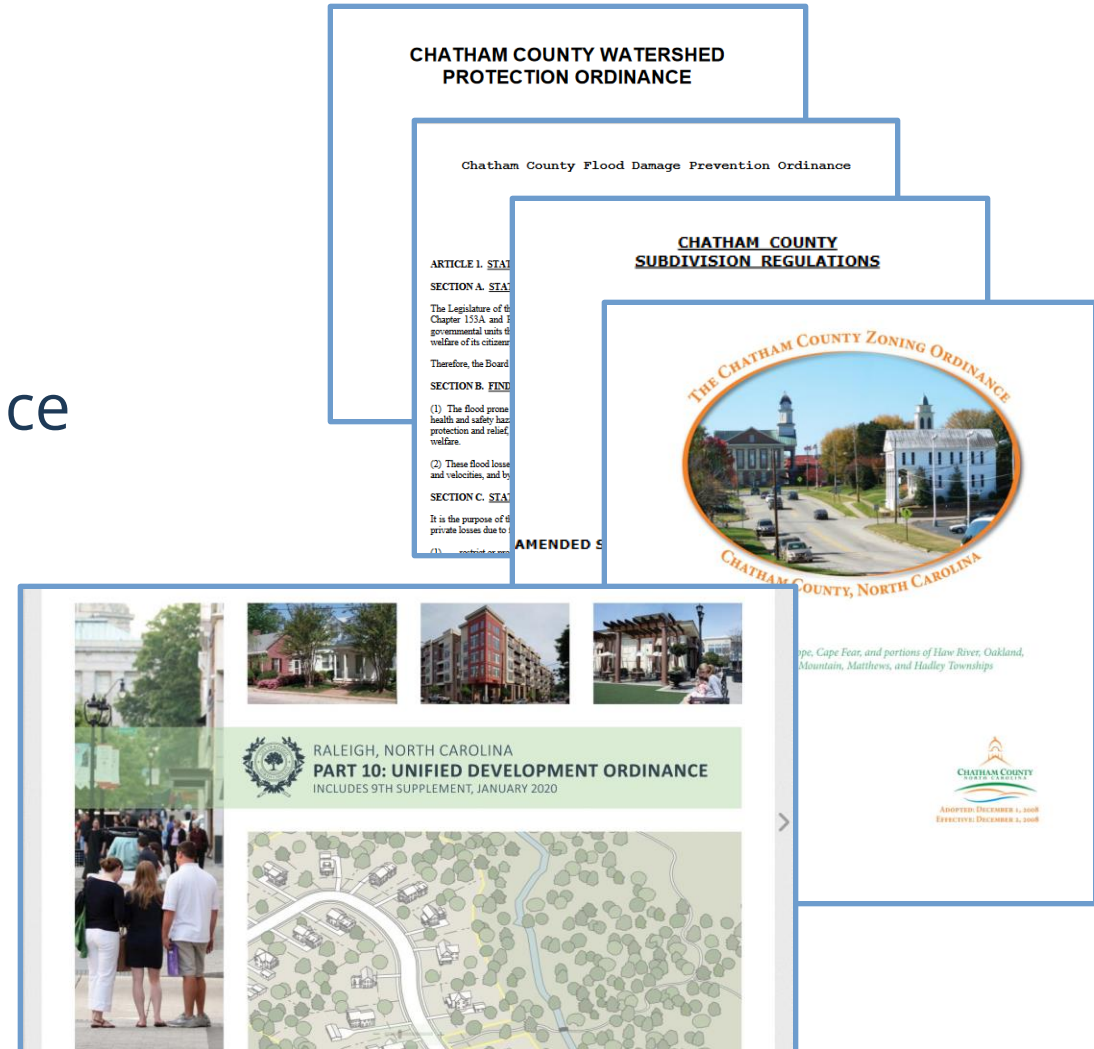


# Code Enforcement



# Development Regulations

- Land Use Zoning
- Land Subdivision
- Manufactured Home Ordinance
- Stormwater Ordinance
- Flood Damage Prevention Ordinance
- Sign Ordinance
- Adult Business Ordinance
- Historic Preservation
- Minimum Housing Code
- Commercial Maintenance Code





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# Types of Decisions



# Administrative Decisions

(Clear Objective Standards, Very Little Discretion)

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- Staff decision-maker (typically)
- No hearing (typically)
- Minimal public notice and public input

## EXAMPLES

- Zoning Notice of Violation
- Basic Zoning Permit
- Building Permit
  
- Site Plan Approval (typically)
- Subdivision Plat Approval (typically)



# Quasi-Judicial

(Discretionary Standards Needing Evidence)

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- Notice to neighbors
- Formal evidentiary hearing (sworn testimony)
- Decision must be by a board
- Decision must be based on evidence in the record
- Modest public engagement

## EXAMPLES

- Variance
- Special Use Permit
- Appeal of Administrative Decision
- Certificate of Appropriateness (Historic Preservation)



# Legislative Decisions

(setting the rules and policies)

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- Planning Board Review
- Notice of Hearing
- Legislative Hearing
- Broad public notice and public engagement
- Broad discretion in decision-making

## EXAMPLES

- Zoning Ordinance Amendment
- Zoning Map Amendment (Rezoning)
- Conditional Zoning Approval
- Development Agreement





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# Conditional Zoning

# “Conditional Zoning” and “Conditional Districts”

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- “Conditional zoning. – A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.” (160D-102(7))
- “Conditional districts, in which site plans or individualized development conditions are imposed.” (160D-703)



## Only at Owner's Request (160D-703)

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- Property may be placed in a conditional district only in response to a petition by all owners of the property to be included.

## Consent to Conditions (160D-703)

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- “Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations.”



# Substance of Conditions (160D-703)

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- “Conditions and site-specific standards imposed in a conditional district shall be limited to those that address:
  - the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501,
  - or the impacts reasonably expected to be generated by the development or use of the site.”



## Broad Authority (160D-703)

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“Unless consented to by the petitioner in writing, in the exercise of the authority granted by this section, a local government may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.”





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## Outline

- 1. Development Rules**
- 2. Land Use Planning**
- 3. Rezoning Considerations**
- 4. Rezoning Procedures**



# Land Use Planning

**Types of Plans**

**Comprehensive Plans and Land Use Plans**

**Planning Board Basics**



# Comprehensive Plan

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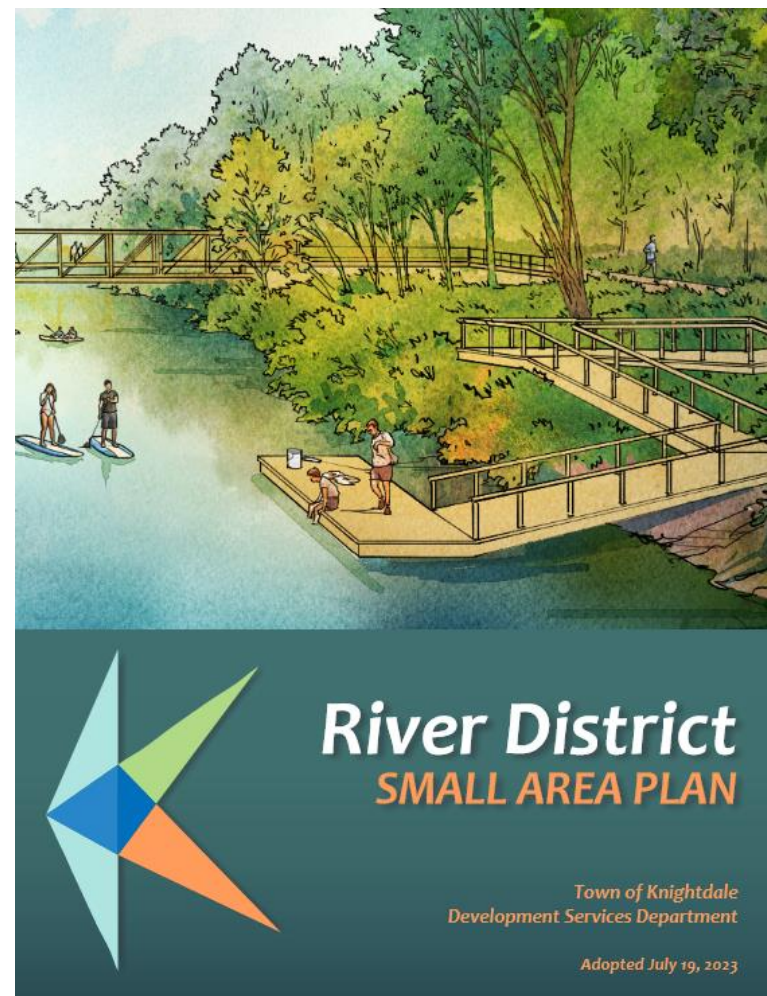
- Traditional focus of local land use planning
- Long range view (10 to 20 years)
- Integrated view of issues (land use, transportation, housing, economic development, environment, etc.)
- May be streamlined into *land use plan*





# Specialized Plans

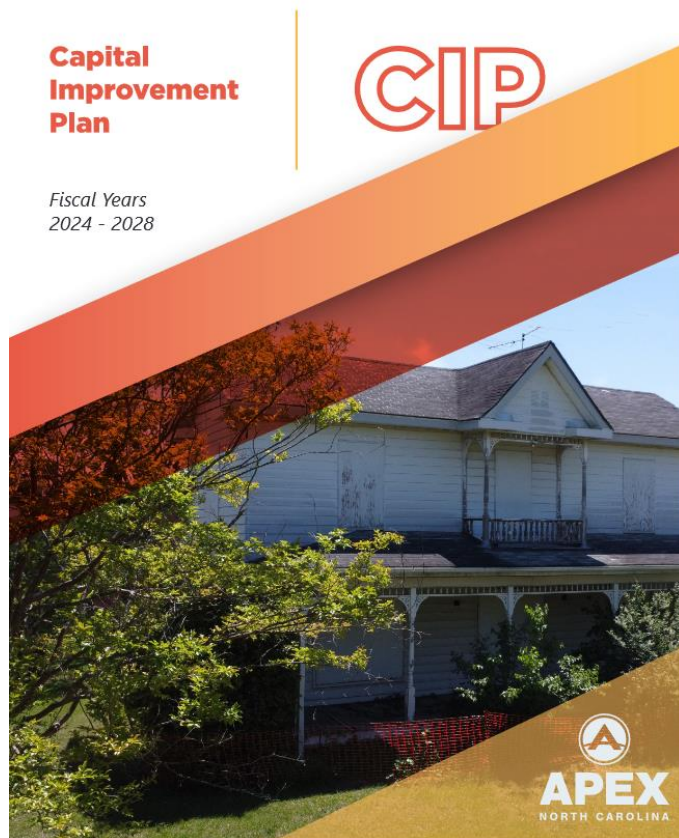
- Neighborhood Plans
- Small Area Plans
- Corridor Plans
- Historic District Plans
- Watershed Plans





# Functional Plans

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- Transportation plans
- Public utility plans
- Recreation and open space plans
- Capital improvement plans and budgets



# Strategic Planning

- Focuses on a few critical issues
- Emphasizes action (particularly useful for spending decisions)
- Works best for issues like economic development, housing, and education involving a number of players
- Focuses on steps to be taken, who will take them, and how much it will cost





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# Comprehensive and Land Use Planning

# Land Use Planning Requirement

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Article 5.

Planning.

**§ 160D-501. Plans.**

(a) Requirements for Zoning. – As a condition of adopting and applying zoning regulations under this Chapter, a local government shall adopt and reasonably maintain a comprehensive plan or land-use plan.



# Land Use Planning (160D, Article 5)

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- “A comprehensive plan sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction.”
- “A land-use plan uses text and maps to designate the future use or reuse of land.”
- Both are “intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.”



## Plan Process (160D-501)

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- “shall include opportunities for citizen engagement in plan preparation and adoption”
- “Plans shall be adopted by the governing board with the advice and consultation of the planning board.”
- “legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601.”
- “shall adopt *and reasonably maintain*”



## Plan Effect (160D-501)

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- “Plans adopted under this Chapter . . .”
  - “shall be advisory in nature without independent regulatory effect.”
  - “do not expand, diminish, or alter the scope of authority for development regulations adopted under this Chapter.”
- “Plans adopted under this Chapter shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations as required by G.S. 160D-604 and G.S. 160D-605.



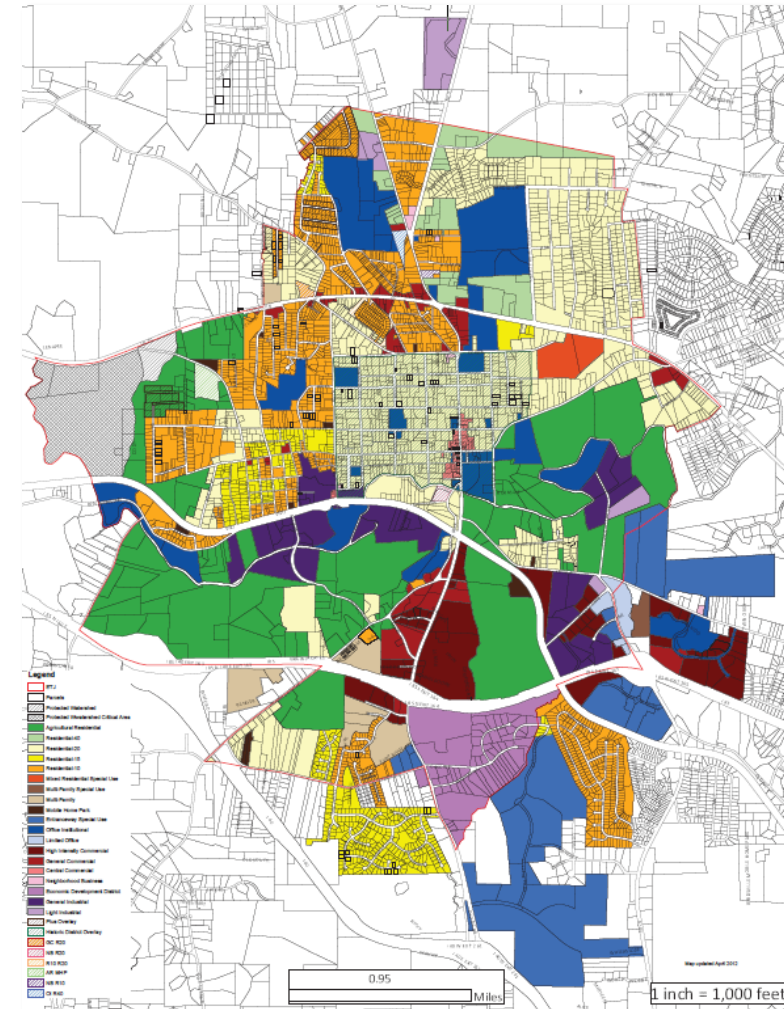
# Implementing a Plan: Development Regulations and Decisions

CHAPTER 6. USE REGULATIONS | Article 6.1. Allowed Uses  
Sec. 6.1.4. Allowed Principal Use Table

Use Category Specific Use	RESIDENTIAL					MIXED USE						SPECIAL					Definition/ Use Standards	
	R-1	R-2	R-4	R-6	R-10	RX-	OP-	OX-	NX-	CX-	DX-	IX-	CM	AP	IH	MH		CMP
<b>PUBLIC &amp; INSTITUTIONAL</b>																		
Civic, EXCEPT AS LISTED BELOW:	L	L	L	L	L	P	P	P	P	P	P	P	--	P	P	--	P	Sec. 6.3.1.A. & E.
Cemetery	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	--	L	Sec. 6.3.1.B.
College, community college, university	--	--	--	--	--	P	P	--	P	P	P	--	--	--	--	--	P	Sec. 6.3.1.C.
School, public or private (K-12)	L	L	L	L	L	L	L	L	L	L	L	L	--	L	--	--	L	Sec. 6.3.1.D.
<b>PARKS, OPEN SPACE AND GREENWAYS</b>	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 6.3.2.A.
MINOR UTILITIES	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 6.3.3.A.
MAJOR UTILITIES, EXCEPT AS LISTED BELOW:	--	--	--	--	--	--	--	--	--	--	S	--	--	S	--	--	--	Sec. 6.3.3.B.
Telecommunication tower (<250 ft)	L	L	L	L	L	L	L	L	L	L	L	L	--	L	L	L	L	Sec. 6.3.3.C.
Telecommunication tower (≥250 ft)	S	S	S	S	S	S	S	S	S	S	S	S	--	S	S	S	S	Sec. 6.3.3.D.
<b>COMMERCIAL</b>																		
Day Care, AS LISTED BELOW:																		Sec. 6.4.1.A.
Day care, home	L	L	L	L	L	L	--	L	L	L	L	L	--	L	--	L	L	Sec. 6.4.1.B.
Day care center	S	S	S	S	S	S	L	L	L	L	L	L	--	--	--	S	L	Sec. 6.4.1.C.
<b>INDOOR RECREATION, EXCEPT AS LISTED BELOW:</b>	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	--	P	Sec. 6.4.2.A.
Adult establishment	--	--	--	--	--	--	--	--	S	S	S	--	--	S	--	--	--	Sec. 6.4.2.B.
Health club	--	--	--	--	--	L	P	P	P	P	P	P	--	--	--	--	--	Sec. 6.4.2.C.
Sports academy	--	--	--	--	--	--	--	--	P	P	P	P	--	--	--	--	--	Sec. 6.4.2.D.
MEDICAL	--	--	--	--	--	L	P	P	P	P	P	P	--	--	--	--	--	adju... Internet access Sec. 6.4.3.A. & B.
OFFICE	--	--	--	--	--	L	P	P	P	P	P	P	--	--	--	--	--	Sec. 6.4.4.A. & B.
<b>OUTDOOR RECREATION, EXCEPT AS LISTED BELOW:</b>	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	P	Sec. 6.4.5.A.
Golf course	L	L	L	L	L	--	--	--	P	--	P	--	--	--	--	--	P	Sec. 6.4.5.B.
Outdoor sports or entertainment facility (≥250 seats)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	P	P	Sec. 6.4.5.C.
Outdoor sports or entertainment facility (<250 seats)	S	S	S	S	S	S	S	S	S	S	S	S	--	S	S	S	S	Sec. 6.4.5.C.
Riding stables	L	--	--	--	--	--	--	--	--	--	L	--	--	--	--	--	--	Sec. 6.4.5.D.

Key: P = Permitted Use L = Limited Use S = Special Use -- = Use Not Permitted

6 - 4 Part 10A: Unified Development Ordinance



# Implementing a Plan: Public Infrastructure & Investments

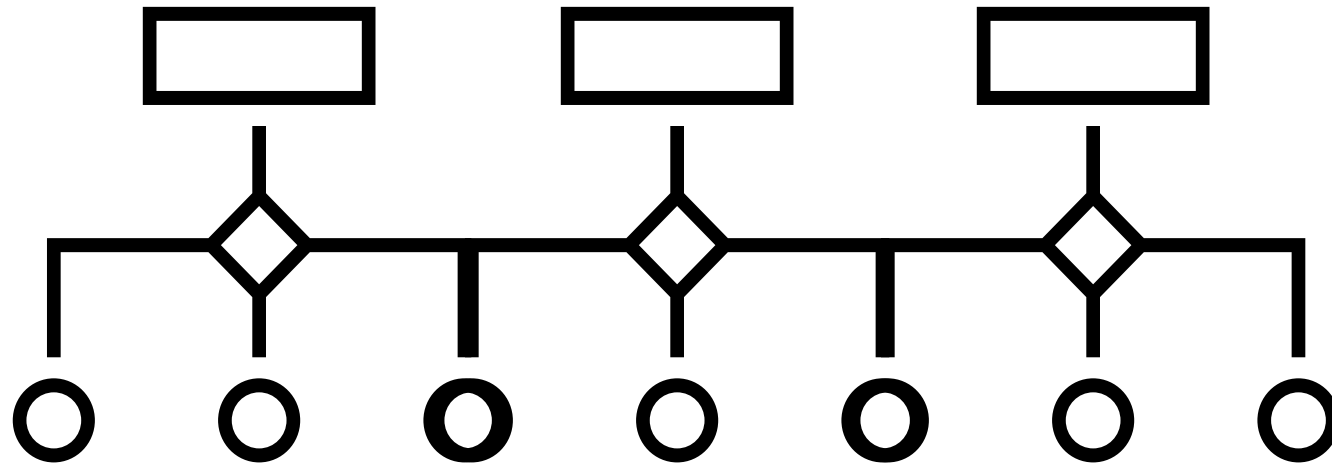
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# Implementing a Plan: Government Actions and Organization

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- Public lands and building
- Departmental organization and work plans





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# Planning Board Basics

## Composition (G.S. 160D-301)

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- At least three members
- Proportional representation for ETJ (G.S. 160D-307)
- Broad local discretion: local rules for composition, terms, process for appointments, etc. (160D-310)
  
- Members
  - Must take an oath of office (G.S. 160D-309)
  - May get compensation (G.S. 160D-301 & -502)



# Alternatives

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- May establish joint planning board
- May assign duties to another board

# Statutory Duties

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- **Advise** on Comprehensive and Land Use Planning (G.S. 160D-301 & -601)
- **Advise** on Initial Zoning (G.S. 160D-604(a))
- **Advise** on Zoning Amendments (Plan Consistency) (G.S. 160D-604(b))
- May **advise** on other development regulations (G.S. 160D-604(c))



# Potential Decision-Making

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- Preliminary and final subdivision plats (G.S. 160D-803)
- Special use permits (G.S. 160D-705)
  
- May serve as
  - Board of Adjustment (variances, appeals, etc.)
  - Historic Preservation Commission (certificates of appropriateness)



# Rules of Procedure (G.S. 160D-308)

- May be adopted by governing board
- If not adopted by governing board, then may be adopted by the board itself
- Maintained by local government clerk (or another authorized official)
- Posted to the website

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## Charlotte-Mecklenburg Planning Commission Rules of Procedure Amended through November 7, 2011

*These Rules of Procedure are derived from the Interlocal Agreement which indicates that the Planning Commission shall adopt such Rules of Procedure as it shall see fit for the transaction of its business (Section 3.33).*

### ARTICLE I - OFFICERS

Section 1. The officers of the Charlotte-Mecklenburg Planning Commission shall be the Chairperson and the Vice-Chairperson

Section 2. For the purpose of Planning Commission business the Chairperson shall preside at all meetings, appoint all standing and temporary committees, and shall have the right to vote. The Vice-Chairperson shall preside at meetings in the absence of the Chairperson. In the absence of both the Chairperson and the Vice-Chairperson the Commission shall select its presiding officers from those present.

Section 3. For the purpose of Planning and Zoning Committee business, the Chairperson of the respective Committee shall preside at all meetings, appoint all standing and temporary committees, and shall have the right to vote. The Vice-Chairperson shall preside at meetings in the absence of the Chairperson. In the absence of the Chairperson and the Vice-Chairperson the Commission shall select its presiding officers from those present.

Section 4. The Chairperson shall distribute the rotation schedule that will take effect in July at the April Planning Commission work session.

Section 5. The officers of the Commission shall be elected for a term of one year. The Chairperson will appoint a nominating committee by April. The Nominating Committee will present a slate of officers at the May work session. The definition of slate is one person per office. Additional nominations may be made from the floor. The election of officers will take place at the June meeting. The Chairperson and Vice-Chairperson will take office July 1.

Section 6. The Planning and Zoning Committees will elect their Vice-Chairpersons at their July committee meeting.

Section 7. In the event the office of Chairperson becomes vacant, the Vice-Chairperson automatically becomes the Chairperson as of the date of the vacancy. In the event the office of Vice-Chairperson becomes vacant, the Planning Commission shall elect a new Vice-Chairperson from a group consisting of the Committee Vice-Chairpersons and any Commissioners nominated from the floor. The vacancy will be announced at the work session following the vacancy. The election shall take place at the work session following the announcement (second work session after the vacancy).

Section 8. In the event of a vacancy for any reason in the position of Vice-Chairperson of the Planning or Zoning Committee, the respective Committee shall elect a new Vice-Chairperson from the members of that Committee. This election shall take place at the next work session following the date of the vacancy.





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## Discussion: Plans and Planning

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Consider your plans and planning in your community.

- Are your adopted plans current?
- What ways are you implementing your plans?
- What are missed opportunities for implementation?

## Outline

- 1. Development Rules**
- 2. Land Use Planning**
- 3. Rezoning Considerations**
- 4. Rezoning Procedures**



# Considerations for Legislative Zoning Decisions

**Good Considerations**

**Topics Out of Bounds**

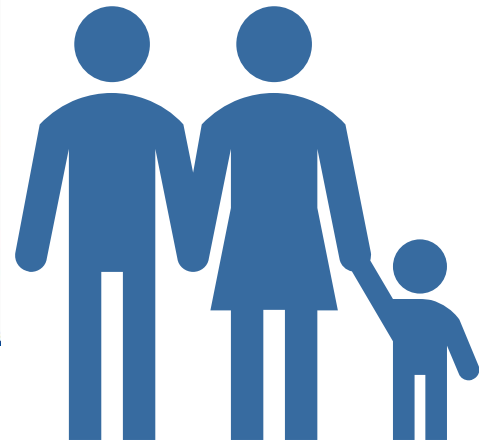
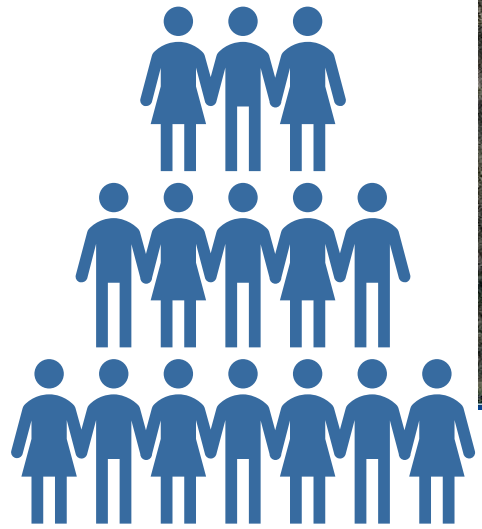
**Spot Zoning, Contract Zoning, and Conflicts of Interest**





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# Good Considerations



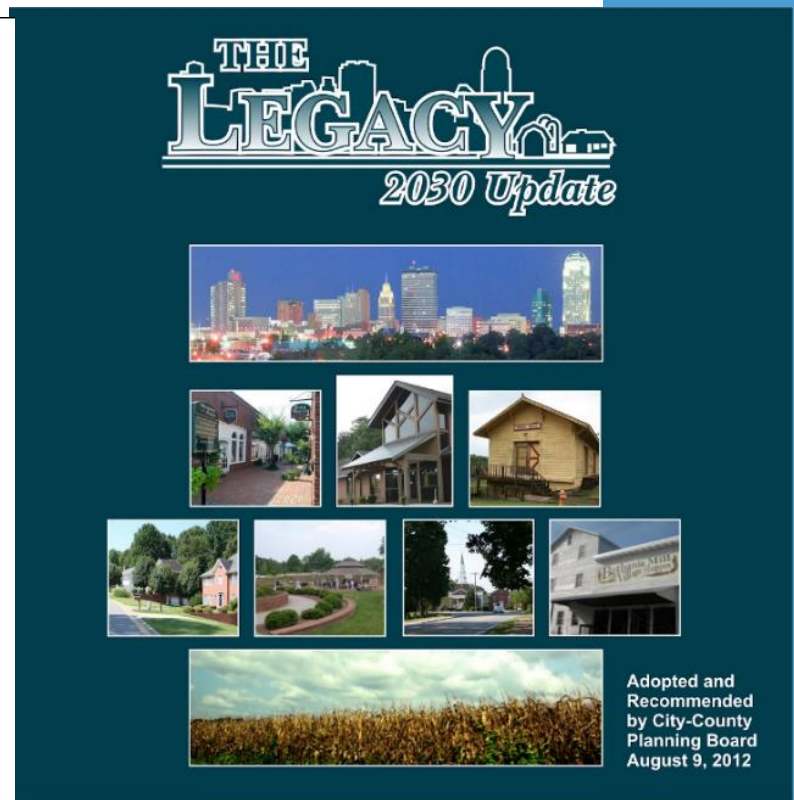
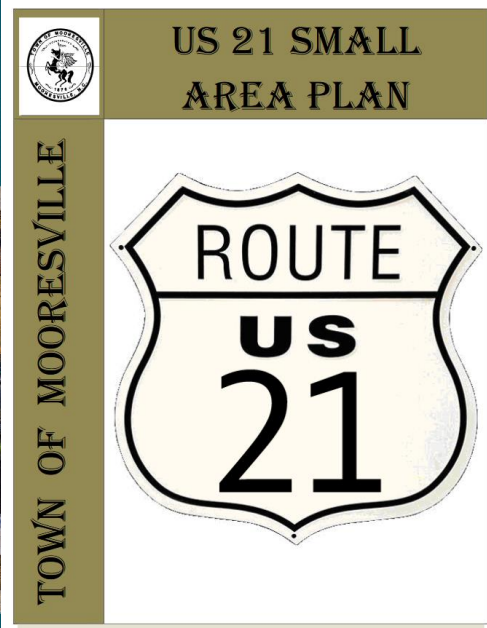
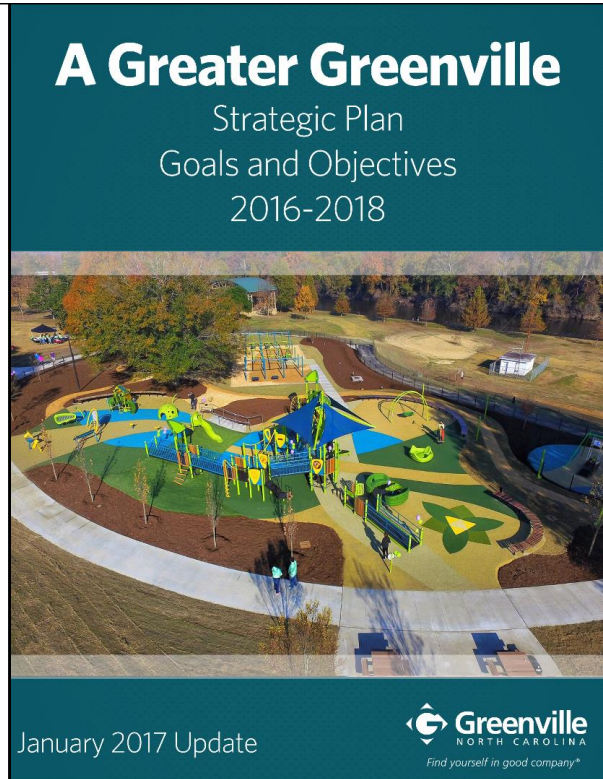
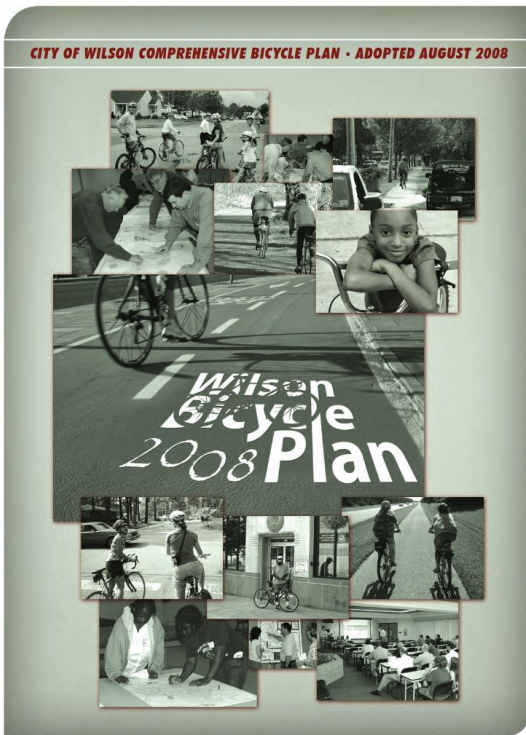
# Good Consideration: General Land Use Impacts

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- To the owner/developer
  - Property value, free use of land, investment expectations
- To the neighbors
  - Safety, noise, odor, traffic, aesthetics, stormwater, property value, investment expectations
- To the community
  - Safety, convenience, traffic, appropriateness of use, character of community, property values, availability of housing types
- To the local government
  - Infrastructure costs (capital and maintenance), service costs, tax implications, diversity of economy, mix of housing types



# Good Consideration: Consistency with Applicable Plans





# Good Consideration: Consider All Uses

5.1.5 TABLE: USE TABLE FOR RESIDENTIAL DISTRICTS													
P = PERMITTED BY RIGHT SUP = PERMITTED WITH A SPECIAL USE PERMIT C = PERMITTED WITH A CONDITIONAL USE PERMIT													
	AR	R-40	R-20	R-15	R-10	MF	MHP	MFSU	MRSU	RSU	PW	PWCA	
Adult Day Care										SUP			
Adult Use													
Artisan Studio										SUP			
Bank & Financial Institution													
Bar													
Bed and Breakfast Facility													
Botanical Garden & Arboretum	Family Child Care Home			P/C	P/C	P/C	P/C	P/C					
Building/Trade Contractor's office	Farm, Bona fide			P	P								
Cemetery	Farmer's Market			P/C	P/C								
Cemetery, Faith Based	Flex Space												
Child Day Care	Funeral Home												
Church, Place of worship	Gallery/Museum												
Club or Lodge	Greenhouses/Nursery												
Community Center	Group Care Facility												
Detention facility	Health Care Facility												
Drive-up Window	Health/Fitness Club												
Dry Cleaning or Laundry Plant	Homeless Shelter												
Dwelling: Accessory	Hospitals												
Dwelling: Attached (1-4 units)	Hotels & Motels												
Dwelling: Attached (5-19 units)	Junkyard/Outside Storage of												
Dwelling: Attached (20+ units)	Junked or Wrecked Motor Vehicle												
Dwelling: Mobile Home A	Kennels, Boarding												
Dwelling: Mobile Home B	Library												
Dwelling: Mobile Home C	Mail Order Houses												
Dwelling: Single-family	Manufacturing Complex												
Event Center	Meeting Facility												
Extended Care Facility	Mobile Home Park												
Family Care Home	Motor Vehicle Fuel Station												
	Motor Vehicle Maintenance, & Service												
	Motor Vehicle Repair												
	Motor Vehicle Sales & Rentals												
	Nightclubs												
	Non-residential uses in historic houses in the historic district									C			
	Offices not providing direct services to clients via walk in												
	Offices providing direct services to walk in clients												
	Outlet sales												
	Park, Athletic or Community			C	C	C	C	C	C	C			
	Park, Cultural or Natural			P	P	P	P	P	P	P			
	Park, Neighborhood			P	P	P	P	P	P	P			
	Parking as Principal Use, Surface or Structure												
	Performance Facility												
	Personal service business												SUP
	Personal Vehicle Sales												
	Petroleum Products (storage & distribution)												
	Processing Facility												
	Public Safety Services			P	P	P	P	P					
	Public Utilities			SUP	SUP	SUP	SUP	SUP	SUP	SUP			SUP
	Recreational Facilities												
	Recycling Materials Collections Center												
	Research Facility												
	Restaurant A												
	Restaurant B												
	Restaurant C												

# Good Consideration: Reasonableness for Small Scale Rezoning

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- (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.



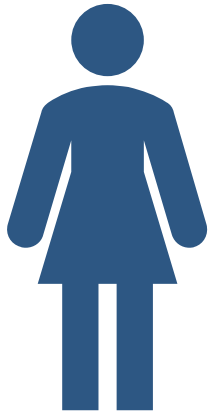


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# Out of Bounds

# Out of Bounds: Character of the Applicant, Owner, or Tenants

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# Out of Bounds: Renter v. Owner

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# Out of Bounds: Lack of Land Use Rationale

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# Out of Bounds: Conditions Unless Cond'l Zoning

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- Standard zoning districts are uniform across the properties in that district
- Promises by a developer beyond the uniform standards are unenforceable (and must not be considered in making the legislative decision)
- Conditional zoning allows project-specific conditions and standards



## Note: Protected Land Uses

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- Agriculture
- Adult Businesses
- Architectural Design Controls
- Cell Towers
- Family Care Homes
- Manufactured Homes
- Religious Land Uses
- And more





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# Spot Zoning, Contract Zoning, and Conflicts

# Spot Zoning

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- Courts defer to legislative decisions  
(Legislative action is presumed reasonable)
- But, there are scenarios where that presumption is altered  
(shift the burden to the government to justify the action)
- “Spot Zoning”: the rezoning of a relatively small area
- In North Carolina, courts push the burden to the local government to justify spot zoning, but spot zoning is legal if reasonable.



# Factors in Spot Zoning

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- Is it spot zoning?
  - Small tract
  - Single owner
- Is it reasonable?
  - Size of the tract,
  - Compatibility with plans,
  - Benefits and detriments, and
  - Relationship of uses

(b) Additional Reasonableness Statement for Rezoning. – When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may 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 a zoning map amendment qualifies as a



# Contract Zoning

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- Local governing board (commission or council) cannot bargain away legislative prerogative (“we promise to rezone the property in exchange for some benefit to the gov”)
- Similarly, governing board cannot make a legislative decision based on unenforceable promises from the developer (“I promise I’ll build that new fire station for the town in exchange for the rezoning.”)
- Current law allows negotiated decisions through conditional zoning and development agreements
- Permissible because the governing board is making a legislative decision now with enforceable conditions (consented by the applicant) and attached to decision



# Conflicts of Interest (160D-109)

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- Financial Interest

“Members of appointed boards shall not vote . . . where the outcome of the matter being considered is reasonably likely to have a *direct, substantial, and readily identifiable financial impact* on the member.”

- Close Relationship

“An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.”





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# Discussion: Legislative Considerations

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Which are legitimate issues for the board to consider in making the legislative land use decision?

1. Neighbor: “That road is already backed up and dangerous at rush hour. This is gonna make traffic even worse. And the sewer system is already stretched thin. We don’t have capacity for this.”
2. Developer: “I can assure you, we will build according to the site plan and architectural renderings attached to the application.”
3. Community activist: “This is just a giveaway to some out-of-town developer.”
4. Neighbor: “You can’t rezone to allow multifamily. The future land use map says ‘low density residential.’ And we don’t want *those* people move into our neighborhood.”

## Outline

- 1. Development Rules**
- 2. Land Use Planning**
- 3. Rezoning Considerations**
- 4. Rezoning Procedures**



# Process for Legislative Zoning Decisions

**Transparency**

**Application and Staff Review**

**Planning Board Review**

**Governing Board Review and Decision**



## Open Meetings (G.S. 143-318.10(d))

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An official meeting is “a *meeting, assembly, or gathering together at any time or place* or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon *or otherwise transacting the public business* within the jurisdiction, real or apparent, of the public body.”

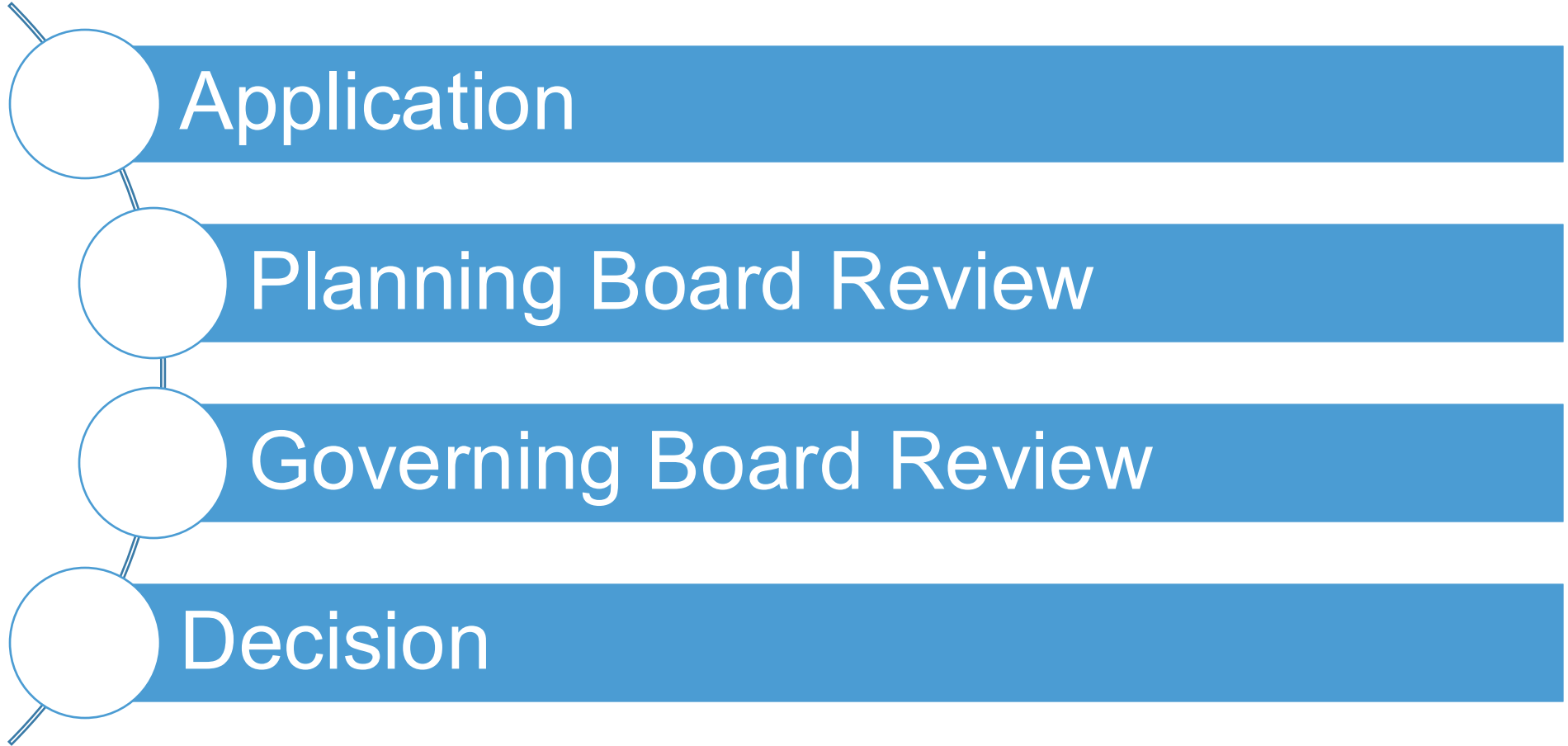


## Public Records (G.S. 132-1)

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- Public Records are “all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, *regardless of physical form or characteristics*, made or received . . . in connection with the transaction of public business . . . .”

## PROCESS FOR LEGISLATIVE DECISIONS



# Right to Petition for Legislative Change

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- Citizen
- Property Owner
- Local Government

## Local Procedures (160D-602)

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“an ordinance shall provide for the manner in which zoning regulations and the boundaries of zoning districts are to be determined, established, and enforced, and from time to time amended, supplemented, or changed, in accordance with the provisions of this Chapter.”



# Applications and Staff Review (160D-402)

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- “The local government shall have the authority to enact ordinances, procedures, and fee schedules relating to the administration and the enforcement of this Chapter.”
- “Duties assigned to staff may include . . . determining whether applications for development approvals are complete; receiving and processing applications for development approvals; providing notices of applications and hearings; . . . and any other actions that may be required in order adequately to enforce the laws and development regulations under their jurisdiction.”
- (Option for Preapplication Meeting and Neighborhood Meeting)



# Limits on Downzoning (G.S. 160D-601(d))

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- No downzoning without property owner's consent
- Downzoning defined to include:
  - Decreasing density
  - Reducing permitted uses
  - Creating any type of nonconformity



# No Waiting Period to Reapply

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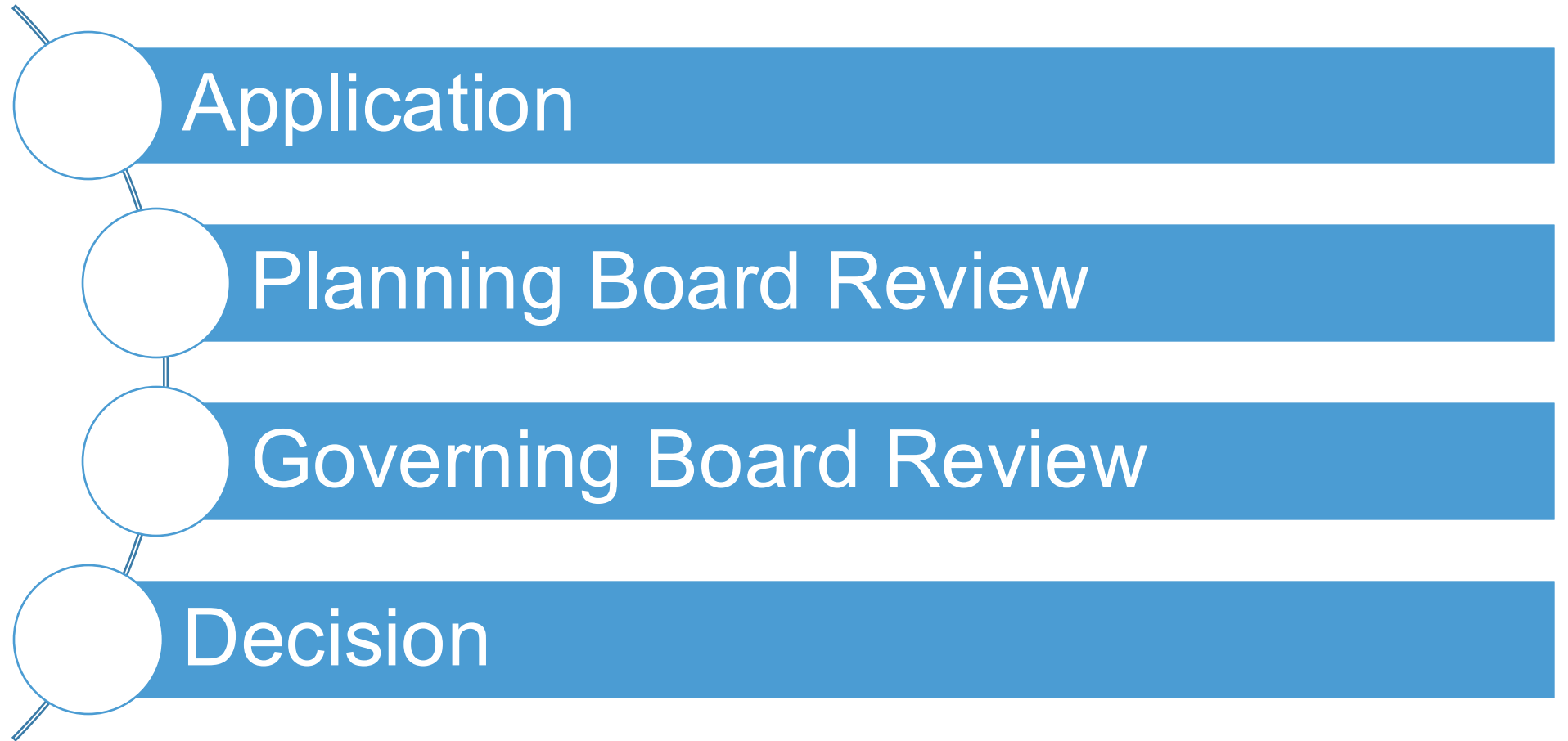
## PROHIBIT WAITING PERIODS FOR REILING OF DEVELOPMENT APPLICATIONS

**SECTION 11.** G.S. 160D-601 is amended by adding a new subsection to read:

"(e) Withdrawn or Denied Applications. – A development regulation or unified development ordinance may not include waiting periods prohibiting a landowner, developer, or applicant from reiling a denied or withdrawn application for a zoning map amendment, text amendment, development application, or request for development approval."



## PROCESS FOR LEGISLATIVE DECISIONS



# Referred to Planning Board for Recommendation (160D-604)

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- For initial adoption of zoning: “The planning board shall prepare or shall review and comment upon a proposed zoning regulation”
- For subsequent amendments: “all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment.”
- Option for other Dev Regs: “Any development regulation other than a zoning regulation that is proposed to be adopted pursuant to this Chapter may be referred to the planning board for review and comment.”



## Timing for Planning Board Review (160D-604)

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- At least 30 days for review: “If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may act on the amendment without the planning board report.”



# Substance of Planning Board Recommendation (160D-604)

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- Plan consistency: “the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive or land-use plan that has been adopted and any other officially adopted plan that is applicable.”
- Written rec: “planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board.”
- Rec for large-scale rezoning may be general: “the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.”



## Planning Board is Merely Advisory (160D-604)

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- Advisory: “The governing board is not bound by the recommendations, if any, of the planning board.”
- “a comment by the planning board that a proposed amendment is inconsistent with the comprehensive or land-use plan shall not preclude consideration or approval”

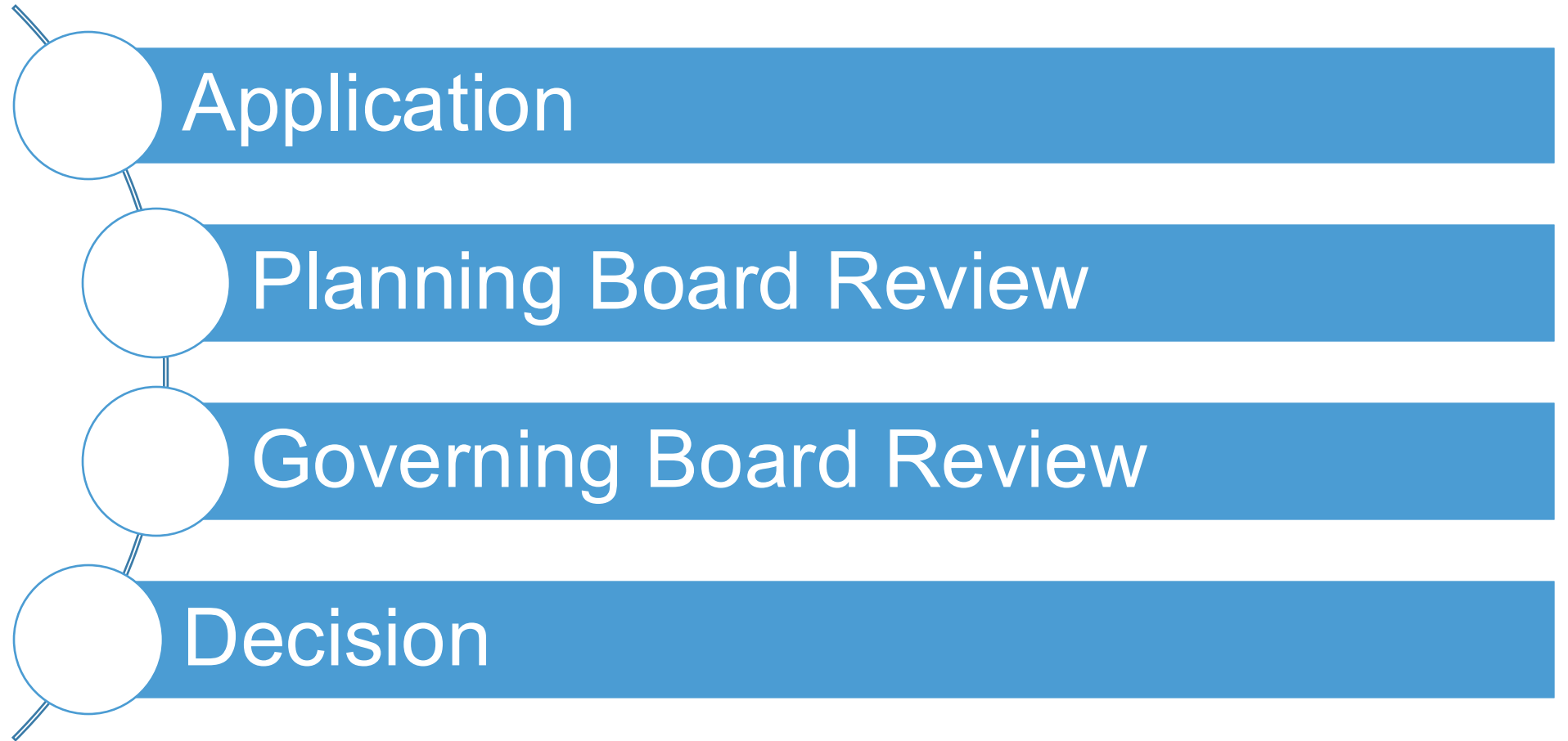


# Planning Board Meeting

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- State law does not specify “legislative hearing” or “notice of the hearing” for planning board review
- Local ordinance or procedures may specify

## PROCESS FOR LEGISLATIVE DECISIONS



## Notice . . . Published in Newspaper (160D-601)

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- “A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.”



# Notice . . . Posted at the Site (for Rezonings) (160D-602)

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- Specific to map amendments
- “on the site proposed for the amendment or on an adjacent public street or highway right-of-way”
- “posted within the same time period specified for mailed notices of the hearing” [10-25 days before hearing]
- For rezoning including multiple parcels, don’t have to post every parcel, but “post sufficient notices to provide reasonable notice to interested persons”





## Notice . . . Mailed to Neighbors (for Rezonings) (160D-602)

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- Specific to map amendments
- Mailed to “[t]he owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land”
  - “properties are ‘abutting’ even if separated by a street, railroad, or other transportation corridor”
- Mailed by “first-class mail at the last addresses listed for such owners on the county tax abstracts.”
- “deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing”



## Other Notice Considerations

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- For large-scale rezonings, an option for half-page newspaper in place of some mailed notice (160D-602)
- Special notice to military base commanders for rezonings within five miles of military base (160D-601)
- Zoning notice may be aligned with ETJ notice when expanding ETJ (160D-602)

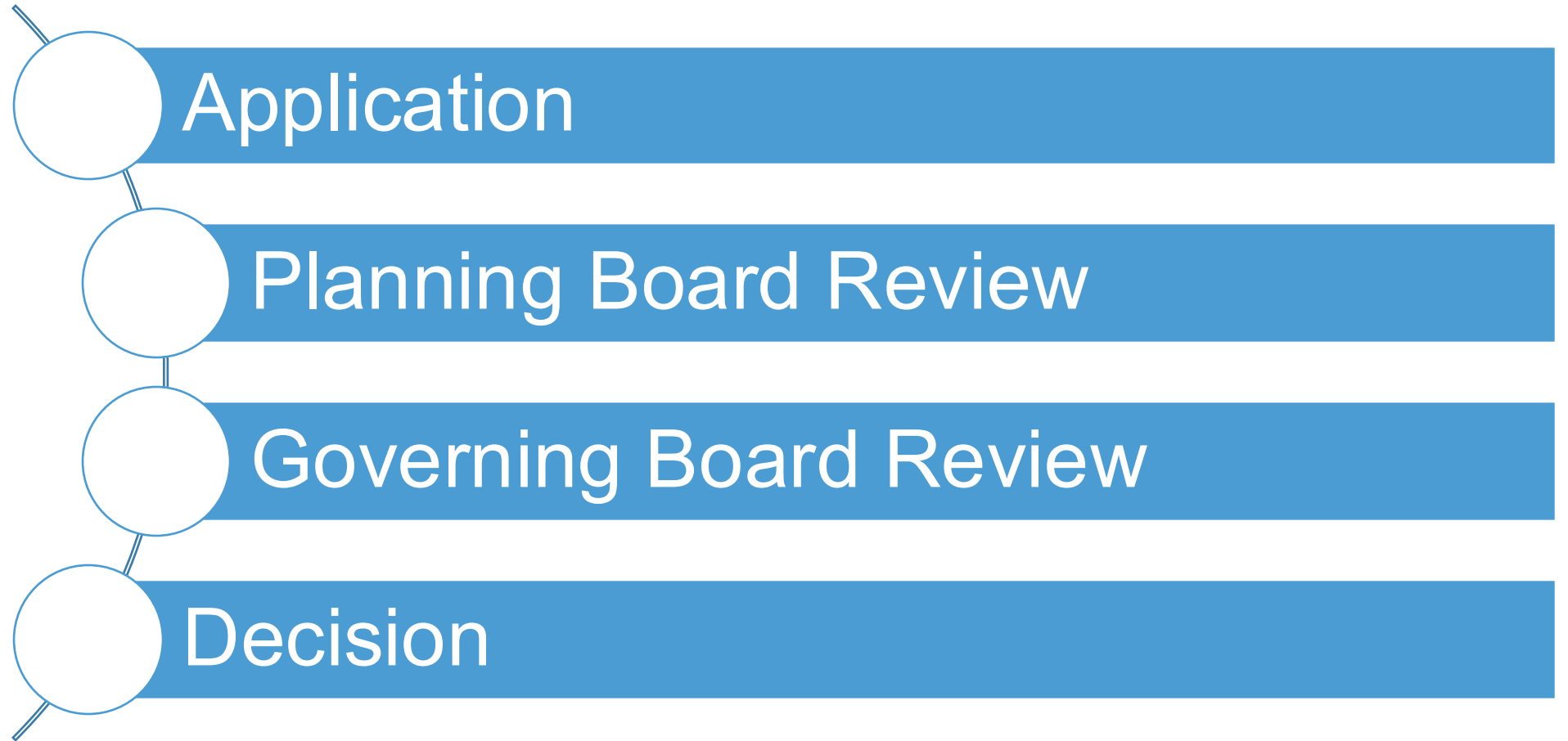


## “Legislative Hearing” (160D-102(20))

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- “Legislative hearing. - A hearing to solicit public comment on a proposed legislative decision.”
- May have reasonable rules for participation
  - Time limits on speakers
  - Sign up sheets
  - Overall time limits
- Must maintain fundamental fairness (but strict procedures of quasi-judicial do not apply)
- May continue to a subsequent meeting

## PROCESS FOR LEGISLATIVE DECISIONS



## Decision . . . Adopted as an Ordinance (160D-601)

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- “A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.”

# Calculating the Vote

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- Simple majority
  - No protest petition for super-majority
  - No super-majority for date of introduction
- For municipalities (160A-75)
  - Governing board members have an obligation to vote (unless conflict of interest)
  - If member fails to vote without being excused, counts as a negative vote (for other votes it would be counted as affirmative)



# Governing Board Statements

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- Plan Consistency
- Reasonableness (for small rezonings)

## Statement of Plan Consistency (160D-605)

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- “When adopting or rejecting any zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive or land-use plan.”
- If inconsistent rezoning is approved, it automatically updates the plan’s future land use map



## Statement of Plan Consistency (160D-605)

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- Sufficient if meeting minutes show “the governing board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive or land-use plan”
- For large scale rezoning, statement “may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.”

# Statement of Reasonableness (for small rezonings) (160D-605)

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- “When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board.”
- May be combined with statement of plan consistency

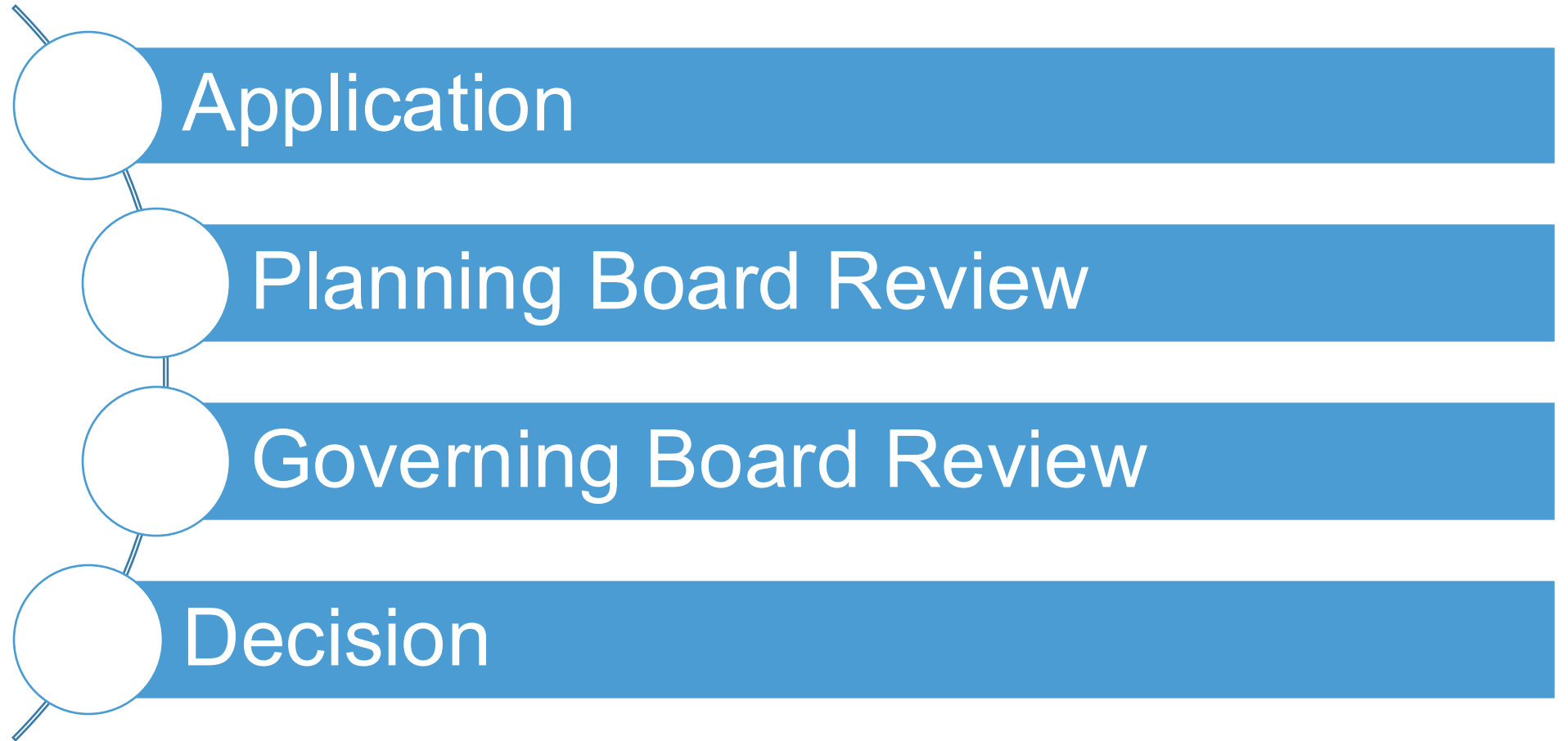
# Statement of Reasonableness (for small rezonings) (160D-605)

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- Factors to consider:
  - (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.



## PROCESS FOR LEGISLATIVE DECISIONS





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# Discussion: Legislative Procedures

CONSIDER THE FOLLOWING SCENARIOS. ANY CONCERNS?

1. David serves on the planning board. Jane is an applicant for rezoning. David and Jane went to the same high school, live in the same neighborhood, and are second cousins twice-removed. Also, unrelated to the zoning application, David and Jane jointly own a restaurant downtown.
2. One evening, while bored at home, board member Samantha started a text chat with the whole board. “Hey y’all. I am not loving this rezoning application for next week. What do you think?” Within moments, all but one of the board members was responding, debating the pros and cons of the rezoning.
3. Planning board member Jay is not a fan of the rezoning. He fears the governing board will approve it (“they are all growth, all the time”). Jay suggests “How about we just sit on this another month? And another month after that.”

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