Affordable Housing Digest **for the Town of Boone**

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Introduction

At the request of the Town of Boone (hereinafter Town), the School of Government conducted the first of two in-person workshops on the topic of affordable housing. The workshop was conducted by Development Finance Initiative (DFI) Assistant Director Sarah Odio and DFI Real Estate Development Analyst Frank Muraca on February 20, 2023.

These officials from the Town were in attendance:

- Tim Futrelle, Mayor,
- Edie Tugman, Mayor Pro Tem,
- Todd Carter, Council Member,
- Dalton George, Council Member,
- Becca Nenow, Council Member,
- Virginia Roseman, Council Member,
- Amy Davis, Town Manager,
- Allison Meade, Town Attorney, and
- Jane Shook, Director of Planning and Inspections.

The first session introduced basic terminology and strategic choices available to the Town Council for the preservation and development of affordable housing. In addition, an assessment of housing data for the Town, attached as an appendix to this digest, was shared with the Council. The analysis highlighted the type and scale of housing demand by household income while considering local economic dynamics and the housing supply in the Town of Boone.

Based on feedback from Council members about their preferred strategic choices and questions pertaining to legal authority, this digest was prepared to assist the Council with understanding the Town's options. Part One discusses the Town's authority to implement development regulations such as zoning and how to evaluate those regulations in light of the Town's desire to produce more affordable housing. Part Two describes the Town's legal authority to invest in affordable housing through public-private partnerships with private housing developers and operators.

In the second and final workshop, the DFI team will review publicly owned sites and discuss the financial aspects of undertaking various affordable housing approaches. Specifically, the Council will hear about the Low-Income Housing Tax Credit (LIHTC) program and how local governments can help address funding gaps and facilitate the private development of housing for low- and moderate-income households.

The Development Finance Initiative (DFI)

The Development Finance Initiative (DFI) is a School of Government program established in 2011 to assist local governments and their partners in North Carolina and beyond with achieving their community economic development goals. DFI partners with communities to attract private investment for transformative projects by providing specialized finance and real-estate-development expertise.

In addition to assisting local governments with downtown revitalization, neighborhood development, adaptive reuse of historic buildings, and other locally defined interests, DFI has worked in urban, suburban, and rural areas to provide technical assistance related to the development of housing for low- and moderate-income households. DFI's technical assistance includes housing needs assessments, tailored educational workshops, identification of sites appropriate for affordable housing development, predevelopment feasibility analyses, as well as assisting local governments with the recruitment and identification of qualified private development partners.

PART 1
Balancing Interests: Development Regulations and Housing Affordability

Adam Lovelady

I. Housing and Development Regulation

Can my neighbor build a house? A row of townhomes? An affordable apartment? Or a high-rise condominium? And, if so, what permits are needed? What infrastructure is required? What fees must be paid? These are the basic questions of development regulations. Development regulations such as zoning and subdivision seek to balance the competing interests of development in a community—between the property owner and the neighbors, between the negative impacts of new development and the benefits of new investment, and between the essential concerns of public safety and the costs of regulatory compliance.

The discussion below provides some details on the variety of ways development regulations can affect housing in a community. When a community is evaluating their own regulations and considering policies to alter housing outcomes, here are some high-level questions to ask.

- ***What types of housing are allowed?*** Housing is more than one-family houses. Historically, communities included a range of housing types. Do your development regulations allow for a range of housing types?
- ***Where is housing allowed?*** A fundamental aspect of zoning is limiting the locations of land uses. But those limitations can be adjusted. What areas of your community are available for housing development? And at what densities?
- ***What development standards apply to housing?*** Development standards addressing building size, infrastructure needs, and open-space requirements are rooted in public health and safety, but they also limit what can be built and the costs of that construction. Are there any standards that should be adjusted?
- ***What fees apply to housing?*** Fees for development can be costly. These include the administrative permit fees and development fees to address the impact of the development. What are the fees for housing in your jurisdiction and should they be adjusted?
- ***What is the permitting process for housing?*** Some review processes are quick and predictable. Other review processes are time-consuming and mysterious. What are the applicable permitting processes for housing in your jurisdiction and could they be improved?
- ***How does affordability factor into development regulations?*** North Carolina state law does have some protections against excluding affordable housing, but the statutes do not explicitly address inclusionary zoning. Arguably, inclusion of affordable housing in new development may be addressed through incentives such as density bonuses and through discretionary approvals such as conditional zoning.

II. Development Regulations

A. Background

Think about the Main Street of any small town in North Carolina. There are shops and restaurants and professional offices. Above some of those businesses are apartments and perhaps more office space. Continuing along the street, you see government buildings and gas stations and churches and a theater. Maybe a town green or courthouse square. As you continue around the corner, there's a mix of old mansions, quaint cottages, small apartment buildings, and garage apartments. Back on the other side of Main Street, along the railroad tracks, there are mill buildings and industrial operations. All of these different uses are within a short walk of each other.

Much has changed since that style of development was common across North Carolina. Cars and transportation infrastructure drew commerce to other areas, development styles and preferences evolved, and a separated suburban model of development arose. Going hand in hand with those social and market changes was the rise of development regulations. Modern zoning, subdivision, and other development regulations arose through the mid-twentieth century with an emphasis on separating uses, modernizing infrastructure, and limiting density. The underlying principle of land use zoning was *everything in its place*: industrial uses over here, residential uses over there, and commercial uses elsewhere.

Early zoning was fairly general. Charlotte's zoning ordinance in 1950 simply had six zoning districts (two industrial, two commercial, and two residential). Through the latter half of the twentieth century, however, zoning grew more and more detailed and complex. Today, zoning ordinances commonly have more than six zoning districts just for residential uses (large lot one-unit residential, medium lot one-unit, small lot one-unit, two-unit, four-unit, multifamily, manufactured-home park, and so on). Not only that, but modern development standards require infrastructure, parking, setbacks, open space, and much more.

These contemporary development regulations did not appear from thin air. They were policy choices by elected officials based on technical recommendations, planning practices, and political preferences. Some regulations are rooted in public health and safety: ensuring safe drinking water and adequate sewer service, limiting the proximity between heavy industries and homes, and preserving open space and sensitive natural areas. At the same time, some regulations were rooted in minimizing change, increasing the separation among developments, and as a result, adding to the costs of housing.

With such levels of regulatory detail and emphasis on separation, contemporary development regulations would prohibit those traditional Main Street neighborhoods across North Carolina. Change is possible, however. Communities across North Carolina have updated development regulations to permit a greater mix of uses, traditional forms of neighborhood development, and increased housing opportunities.

B. Authority for Development Regulations

While development decisions are made at the local level, zoning power is a state government power that has been delegated to cities and counties. This is significant because it means that the state legislature passes laws that set the legal framework within which local governments adopt, amend, and implement their zoning and other development regulations. State statutes "enable" or authorize local governments to adopt these ordinances. Although local governments decide whether to have zoning and what the content of the ordinance will be, the process they must follow in making those decisions is set by state law. The state legislature imposes a number of special

requirements, via statutes, on how these powers may be exercised. These statutes ensure that the ordinance-adoption process includes broad public notice and discussion of the policies and standards proposed. The courts also impose legal limits, mostly by protecting the due-process rights of persons affected by regulatory decisions.

C. Types of Development Regulations

Development regulation is a broad term covering a variety of different interrelated regulations, including land use zoning, land subdivision, and more. Taken together, development regulations impose restrictions and requirements on the construction of new buildings, the use of existing buildings, and the impacts to natural environments. Here are some typical development regulations:

- A *land use zoning ordinance* divides the jurisdiction into districts and restricts activities, building development, and development characteristics, as described in more detail below.
- A *land-subdivision ordinance* sets procedures and standards for how a large piece of property is divided into smaller lots.
- A local *historic-preservation ordinance* designates districts and landmarks that have special significance for their history, culture, or architectural design. Rules regulate the design and style of changes (such as those for new buildings or changes to existing buildings) within the district or for the landmark.
- The *North Carolina State Building Code* sets the safety requirements for construction of new buildings. Local government officials enforce the state-mandated building-code standards.
- A *minimum housing code* is a locally adopted minimum standard for habitability of housing.
- A *nuisance code* is a locally adopted standard to address public nuisances such as overgrown lots and unsafe structures.
- A *flood-damage-prevention ordinance* is a locally adopted ordinance required by state and federal agencies to limit development and activity in areas subject to flooding.

Additional development regulations address environmental matters (stormwater, erosion and sedimentation control, tree preservation), infrastructure provisions (street standards, water and sewer standards), and specific land uses (signs, adult businesses, and more).

Development regulations may stand alone as independent ordinances or be combined into a unified development ordinance.

III. Spectrum of Housing

A. Building Forms and Residential Uses

We have a common conception of a house: pitched roof, doors and windows, front yard, picket fence, and so on. But that simple conception is only one sliver of the spectrum of housing types and forms. Consider these examples:

- Is a historic mansion housing? What if it is converted to a bed-and-breakfast? Or converted to an accounting office?
- Is a hotel room housing? What if the building is converted to condominiums? Or converted to long-term residences for individuals facing homelessness?
- Is an industrial building housing? What if the building is an old mill converted into loft apartments?

Housing can take many forms, and houses can host many different uses. Consider that house with a picket fence. Within that one typical form, an owner could choose from a variety of land uses if zoning allows: one residence, multiple residences, short-term rental, office, restaurant, and more. Similarly, one or more residences may be the land use in a former mill building, an old church, a former school, and more. When a community evaluates housing, it can evaluate the full spectrum of housing. Depending on the community, that spectrum might include any and all of the following:

- high-rise condominiums,
- low-rise garden apartments,
- large homes on large lots,
- small homes on small lots,
- one-family buildings (one-plex),
- two-family buildings (duplex),
- three-family buildings (triplex),
- four-family buildings (quadplex),
- townhomes,
- apartments above shops,
- apartments above garages,
- apartments below homes,
- single units within a large home,
- multiple units within a large home,
- manufactured homes,
- modular homes,
- tiny homes,
- and more.

Some of these building types may tend to be more affordable than others. Some affordability comes from greater density on land, such as multifamily structures and apartments. Others are more affordable by taking advantage of assembly-line efficiencies, such as manufactured and modular housing. The Town could consider the extent to which its development regulations authorize land to be used for these more affordable housing categories.

B. State-Law Protection of Certain Housing Types

State and federal laws limit local government authority to regulate certain types and aspects of housing. Here are some key protections.

1. North Carolina Fair Housing Act

Chapter 41A, Section 4(g) of the North Carolina General Statutes (hereinafter G.S.) makes it unlawful housing discrimination if a land use decision is based on the fact that a development includes affordable housing. As an exception to this general rule, the statute provides that a decision limiting high concentrations of affordable housing is not unlawful discrimination.

Separately, the federal Fair Housing Act prohibits discrimination in housing and requires local governments to make reasonable accommodations in rules and policies to afford protected persons equal opportunities to use and enjoy a dwelling.

2. No "Harmony Requirement" for Affordable Housing

G.S. 160D-703(b1) prevents local governments from imposing a harmony requirement on a multifamily development that includes units meeting certain affordability standards. "For parcels where multifamily structures are an allowable use, a local government may not impose a harmony requirement for permit approval if the development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of the area median income." This provision most likely applies when a special use permit is necessary for a multifamily development.

3. Manufactured Homes

State law allows local governments to regulate the location, appearance, and dimensions of manufactured housing but prohibits the total exclusion of manufactured housing from a jurisdiction.[1]

4. No Minimum Square Footage

Local zoning and development regulations may not require houses to be big. G.S. 160D-702(c) prohibits local development regulations from setting a minimum square footage for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

5. Family Care Home

Family care homes are facilities that provide health, counseling, or related services to a small number of persons in a family type of environment. Both state and federal laws affect zoning regulation of these facilities. G.S. 160D-907 provides that local ordinances must treat certain family care homes as if they were single-family homes. They cannot be prohibited in a district that allows single-family residences, nor can they be subject to any special review requirements, such as a special use requirement.

6. No Regulation of Ownership

In North Carolina, local governments may use development regulations to regulate the use and division of land, but not to regulate the ownership of land. In *Graham Court Associates v. Town Council of Chapel Hill*,[2] the North Carolina Court of Appeals ruled that zoning may regulate land use, but not the form of ownership. In that case, the town's ordinance regulated multifamily rental

1. G.S. 160D-910.
2. 53 N.C. App. 543 (1981).

apartments distinctly from multifamily owner-occupied condominiums. After a property owner (a partnership) was denied a permit to convert an apartment to a condominium, it challenged the ordinance. The court ruled that the multifamily development would have the same impacts whether it was occupied by renters or owners. As such, zoning cannot legally distinguish between the two, nor can it require extra permits to change from renter-occupied to owner-occupied.

The North Carolina Court of Appeals reaffirmed that rule in *City of Wilmington v. Hill*.[3] A Wilmington ordinance required that, in order for a residential property to have an accessory apartment (e.g., a garage apartment or in-law suite), the owner of the property must reside on site, either in the principal residence or the accessory residence. The court ruled that the requirement for owner-occupancy was an unconstitutional regulation of ownership and beyond the scope of delegated zoning authority.

Given these precedents, under current law a local government could not use zoning or land subdivision regulations to regulate build-to-rent development differently from comparable owner-occupied development.

IV. Zoning Regulations

A. Overview

The basic principle of zoning is simple: Zoning creates a number of different districts, or "zones," in a city or county, and each zone has a specific set of rules on how the land in that district can be used. For example, a district set aside for residential land uses may exclude businesses and industries. A local governing body sets forth the specific rules and zone boundaries in the form of a zoning ordinance.

A zoning ordinance can be an imposing document. Zoning ordinances often include several hundred pages of mind-numbing detail. To further complicate matters, each ordinance is unique—there is no standardized format, content, or even terminology for zoning ordinances. For example, a zoning district named "R-10" in one ordinance may allow single-family homes on 10,000-square-foot lots, but in another zoning ordinance an R-10 district may allow multifamily residential units at a density of ten units per acre. Differences between one ordinance and the next, however, allow cities and counties to tailor specific provisions to address local needs and government policies. Despite the lack of uniformity, ordinances do typically address certain issues, and most zoning ordinances contain some common features.

Zoning ordinances, in addition to specifying land uses permitted in each zone, often also set detailed development standards. These development standards commonly specify where new buildings may be built (*setbacks* and/or *build-to lines*), parking standards, sign limitations, and landscaping requirements. Those development standards are discussed in more detail below.

B. Zoning Districts

While most city and county ordinances—from those covering taxes to those addressing dog licensing—apply uniformly throughout a jurisdiction, zoning ordinances set different standards for different parts of a jurisdiction. To accomplish this, a zoning ordinance must contain text regulations as well as a map. The text of the ordinance describes what land uses are permitted

3. 189 N.C. App. 173 (2008).

in each district and what development standards have to be met in that district. The map places the land in the jurisdiction into various zoning districts. This map is an official part of the zoning ordinance. Any change in the map that moves land from one zoning district to another, a process called a "rezoning," is an amendment of the ordinance and must follow all of the procedures required for zoning amendments.

A contemporary zoning ordinance usually contains a number of districts: standard, conditional, overlay, and floating. Each is described below.

1. Standard Zoning Districts

Standard zoning districts allow a variety of permitted uses. Over time, the range of uses allowed in a single district has become progressively narrower. As local governments have more finely tuned and limited the permitted uses in each district, the number of different zoning districts has multiplied. For example, instead of a single residential district, a modern zoning ordinance may have five or ten different residential districts—one for single-family residences on large lots, one for single-family residences on small lots, one for multifamily residences, and another for mobile homes. Similarly, a single business district may now be subdivided into separate zoning districts for neighborhood business, highway commercial, central business, and shopping center uses. While a small town or rural county ordinance may still only have five to ten zoning districts, a typical contemporary city zoning ordinance may now have twenty or thirty different zoning districts.

Modern zoning ordinances have been criticized for being too rigid in their separation of uses, for producing sterile neighborhoods with no commercial uses, and for unduly separating homes from workplaces and shopping. A recent trend in zoning has been to reexamine the proliferation of districts and consider allowing a greater range of uses within individual districts.

Contemporary zoning ordinances increasingly permit more "mixed use" to allow greater flexibility among the types of uses permitted and "traditional neighborhood" design to reduce lot size or setback requirements. These districts are adopted to accommodate houses clustered on smaller lots, some neighborhood-scale commercial and office development, and a strong pedestrian focus. These are sometimes referred to as "traditional neighborhood districts," "pedestrian-oriented development," or "transit-oriented development" districts. Some communities use "form-based codes" to shift the entire zoning ordinance to focus on the form of the development rather than just the use of the land. Form-based codes are discussed in more detail below.

The number of districts and the range of uses allowed in each are key policy choices for local governments amending and modernizing their ordinances. Zoning an area does not require a rigid separation of different land uses even though that is the way many ordinances have been structured. Each city and county can custom design its ordinance to include whatever number and type of districts and use restrictions seem appropriate in that particular place.

2. Conditional Zoning Districts

In some situations, a particular development does not fit neatly into the standard boxes of the zoning ordinance. Conditional zoning districts allow a community to address the unique circumstances of a particular development. A conditional zoning district may include site-specific conditions to make the zoning rules more lenient or more stringent for that project. Project approval may be conditioned upon a site plan and the development may be limited to specific land uses.

The authority for conditional zoning is set forth at G.S. 160D-703. Conditional zoning must be at the request of the property owner. Conditions are limited to those that address the impacts

of the development and those that ensure the development will adhere to applicable plans. The property owner must consent in writing to any conditions, and the local government must follow certain procedures to properly adopt conditional zoning. Note that conditions may not be added to a regular *standard* rezoning. Conditions on a rezoning are only enforceable when added through a proper *conditional* zoning process.

Early efforts at flexible zoning included *conditional use district zoning* and *planned unit development*. Conditional use district zoning was a process that combined a standard rezoning with a quasi-judicial conditional use permit. Now that purely legislative *conditional zoning* is authorized, the awkward conditional use district zoning is not necessary. Planned unit development (PUD) approval was another precursor to conditional zoning. PUD approval was used to allow a large site to be developed with a mixture of land uses according to an approved overall site plan. For example, a large tract might be developed with a mix of single-family and multifamily housing, with part of the site also devoted to commercial and office uses. Other PUD districts allow greater flexibility in dimensional standards (such as lot sizes and setbacks) upon approval of an overall master plan for the entire development. PUDs can still be approved either as a conditional zoning district or through a special use permit.

As discussed in more detail below, some North Carolina communities include affordable housing as a condition in conditional zoning decisions. Such action requires plans or policies addressing affordable housing and careful adherence to the required procedures for conditional zoning.

3. Overlay Districts

Overlay zones are a common feature of zoning ordinances. These are special zones in which requirements are imposed in addition to the basic or underlying zoning-district requirements. For example, if a river runs through a city, special flood-hazard requirements (such as setback, building-elevation, or flood-proofing requirements) may be imposed on all property lying within the flood-hazard area adjacent to the river.

4. Floating Districts

Floating zones are specialized districts used in many ordinances. These zoning districts are defined and set out in the text of the ordinance but not applied on the ground unless and until a landowner petitions to rezone his or her property to one of these districts. For example, a mobile-home-park district may be included in the zoning text to define the development standards for these uses—the densities allowed, road standards, minimum total size, and so forth. But the district is not applied to the zoning map unless and until a landowner asks for it. Conditional zoning is a type of floating district.

C. Form-Based Codes

Form-based codes or form-based districts are zoning regulations with an emphasis on design, a mix of uses, and public improvements. Form-based codes arose in the 1990s in towns like Davidson, Huntersville, and Cornelius as a response to traditional suburban development and the limitations of standard zoning. Today, many zoning ordinances incorporate elements of form-based codes.

As the name implies, form-based codes emphasize the form of a place over the use of a place. Development standards are calibrated to place types (downtown, main street, neighborhood, etc.) rather than use types (office, commercial, residential, etc.). Form-based development standards are commonly set to encourage mixed use and walkable urbanism. Buildings are pulled close to the street and parking is pushed to less prominent locations behind them. Form-based codes

integrate illustrations and diagrams to make the regulations more user-friendly and to make the development standards clear.

Some form-based codes include architectural design standards that require a certain style of design. Such regulation is not essential, and in North Carolina such design restrictions would not apply to buildings built to the One- and Two-Family Residential Building Code.

Form-based codes place emphasis on the *public realm*—the public spaces and private frontages. They commonly include cross-sections that specify street configurations, tree plantings, sidewalk and bike amenities, and how a private building relates to the public right-of-way (yards, porches, encroachments, etc.).

An essential characteristic of a form-based code is its distinction between form and use. Use is a secondary consideration for a form-based code or district. Form-based codes typically encourage mixed use, allowing retail on the ground floor of a building and residential or office on the upper floors. Additionally, form-based codes can allow for a variety of housing types in the same neighborhood. Though use is not the primary organizing element, form-based codes do still regulate where certain land uses are permitted.

As with any development regulation, form-based codes can be tailored to be more (or less) conducive to housing affordability. Strict design and infrastructure requirements can drive up construction costs. But increased density, a mix of uses, and transportation alternatives can reduce housing costs and living expenses. Additionally, form-based codes often structure development decisions as administrative. An administrative process typically provides more certainty for outcomes and more efficiency for the approval process. That shortens the time for development review and increases the predictability of outcomes—both can help keep down development costs.

D. Use Standards

A foundational element of zoning is use standards. As mentioned, even form-based codes have some limits on where particular uses are permitted.

1. Yes, No, Maybe So

Each zoning ordinance has a use table—a chart with a long list of types of land use activities and specifications about where the uses are permitted.

Within a zoning district some uses are permitted ("yes"), some uses are prohibited ("no"), and some uses are permitted under certain circumstances ("maybe so"). For example, in a residential zoning district, single-family residences, schools, and places of worship may be permitted; asphalt plants, strip clubs, and racetracks might be prohibited; and small-scale apartments might be permitted if they meet certain standards.

By right uses. Permitted uses are commonly called "by right" or "as of right" uses. Such uses do not need special permission to commence. A property owner simply needs to obtain administrative permits such as site-plan approval and building permits.

Prohibited uses. Some uses are not permitted in a particular zoning district. A heavy-industrial operation, for example, may be prohibited from low-density residential districts. Public safety and compatibility argue for separating such uses. The reverse also may be true. Residential uses may be prohibited from an area of heavy-industrial operations. Manufacturers, quarry operators, and other high-impact land users invest substantial amounts into their facilities and operations. Encroachment by residences—and the related complaints of noise, odor, vibration, and pollution—could threaten those investments by industrial operators.

Heightened development standards. The local government may determine that certain uses are suitable for a particular zoning district if (but only if) specified conditions are met and only after detailed individual review. For example, it may determine that a multifamily residential development is permissible in a single-family zoning district if the development will be on a site of at least two acres, there is a twenty-foot-wide vegetated buffer maintained between the development and adjacent single-family lots, and the project is designed to be compatible with the surrounding neighborhood. Such uses are allowed only after an individual makes an application for the use and the local government approves and grants a permit for it.

Special use permit. Some uses are only permitted if the applicant obtains a special use permit. A special use permit is a quasi-judicial decision. The applicant must provide evidence that the project meets discretionary standards in the controlling zoning ordinance. Special use permits formerly were called "conditional use permits" or "special exceptions." The zoning ordinance itself must set out the standards (or conditions) under which each special use will be allowed. The local government is prohibited from making an ad hoc, case-by-case discretionary review of each project; the ordinance itself must spell out the standards for obtaining such a permit and include a specific list of allowable uses. When someone wants to apply for a special use permit, the local government board holds an evidentiary hearing to take evidence on whether the project meets these standards. The governing board, the planning board, or the board of adjustment is responsible for holding the evidentiary hearing and making the decision. Staff members may not make decisions on special use permits.

Unlisted uses. It is impossible to list every potential land use that might be proposed in the future. Thus, a zoning ordinance must be carefully crafted to handle uses that are not explicitly addressed in it. Many ordinances contain several broad categories of uses, such as "other commercial uses," and specify where they can be located. Others prohibit any use not listed as permitted. Still others direct that unlisted uses be treated the same as the most nearly similar listed use. The courts have said that any ambiguity in the ordinance as to whether a particular use is permitted should be resolved in favor of the landowner.

2. Principal, Accessory, and Temporary Uses

In addition to the use restrictions discussed above, uses may be treated differently depending on the extent and time of the use. The primary use on a property is the ***principal use***. For a house that is home to a one-family unit, the principal use is one-family residence. In contrast, if that house was converted to serve as the office for an accounting firm, the principal use would be office.

Local regulations typically permit an ***accessory use*** alongside the principal use. Rules for accessory uses depend on the local ordinance, but usually an accessory use is one that is customary and incidental to the principal use. Home occupations are a common accessory use. In the case of that same one-family residence, if the family wanted to continue living there but planned to convert the dining room into an office for their small accounting firm, many communities would permit the home occupation as an accessory use. Accessory dwelling units (ADUs), such as basement in-law suites or garage apartments, are frequently permitted as accessory to principal residential uses.

V. Development Standards

Whether it is a large new residential subdivision or a new fast-food restaurant along a commercial road, a variety of development standards apply to new development. These rules can come from different directions: a local zoning ordinance, state highway regulations, federal environmental permitting, and more.

Here is a checklist of common development standards that impact all development, including housing.

- Site-design standards:
  - lot dimensions (size, width),
  - building setbacks,
  - road frontage,
  - open space, and
  - landscaping.
- Building-design standards:
  - building dimensions (height, bulk),
  - density,
  - floor area ratio, and
  - architectural-design standards (limited to one- and two-family dwellings).
- Site-improvement standards:
  - water and sewer/well and septic,
  - stormwater,
  - transportation improvements, and
  - parking.
- Environmental considerations:
  - stormwater,
  - water-supply-watershed protections,
  - streams and wetlands,
  - steep slopes,
  - flood hazard,
  - tree protection, and
  - environmental review.

While some development standards are prescribed by state or federal rule, many are policy decisions for the local government. Lot-size requirements can be reduced to allow more lots on a tract of land. Density caps can be increased to permit additional dwellings on each lot. Parking mandates can be reduced or eliminated to reduce costs and impervious surfaces. A closely related topic—fees—is discussed in the next section.

VI. Fees for Development

North Carolina local governments have the authority to charge fees related to development, including *administrative fees* to address the costs of administering permit reviews and inspections, as well as certain *development fees* to address the impacts of the development.

A. Administrative Fees

Local governments retain the authority to charge "reasonable fees for support, administration, and implementation of programs authorized by this Chapter [160D], and all such fees shall be used for no other purposes."[4] The North Carolina Supreme Court concluded that reasonable fees can be required to offset the costs of administration, but such fees generally may not exceed the cost of the regulatory program.[5] An administrative fee can recoup the costs of advertising and holding a hearing, staff analysis, and the like. If a fee moves beyond cost recovery, it is a tax, not an administrative fee.

Sliding fee scales, such as basing the fee on the number of lots or acreage involved in an application, should be used with caution. Higher fees charged for larger projects must not exceed the actual administrative costs of review, even if that project seemingly has a greater "ability to pay."

A local government can also pass some administrative costs directly on to applicants without making them part of the application fee. For example, the ordinance may require that a traffic-impact analysis or engineering verification of stormwater controls be submitted for certain types of applications. In these situations, local governments often provide a list of approved contractors, and the applicant hires someone from that list. If information and analysis are needed for an application review, the local government may require that the applicant pay for them.

B. Development Fees

Separate from administrative fees, North Carolina local governments have a limited authority to charge fees to address the direct impacts of development. G.S. 160D-804 and -702 authorize local development ordinances to require fees in lieu of transportation improvements and recreation improvements. Some local governments have enacted legislation authorizing other development fees.

Note that development fees are limited. North Carolina courts have been clear: there is no general statutory authority for school impact fees, for example. And even when there is statutory authority, there are constitutional limits. Development fees must have an essential connection with the impacts of the development and must be roughly proportional to the extent of those impacts.

State law does authorize local governments to charge water and sewer impact fees called "system-development fees."[6] The statutes set forth specific procedures for how the fees are calculated, adopted, assessed, and expended.

C. Reimbursement Agreements

In addition to the authority for charging fees, local governments have limited authority to enter into agreements with developers to address certain costs of constructing required public infrastructure accompanying private development. A local government could, for example, agree to share in the costs of publicly owned infrastructure for an affordable housing development to a greater extent than it would for a market-rate development.

A development agreement, authorized under Article 10 of Chapter 160D of the General Statutes, is one tool to share infrastructure costs. Additionally, local governments may contract with a developer to construct improvements beyond what is necessitated by the development.

4. G.S. 160D-402(d).
5. *See* Homebuilders Ass'n of Charlotte v. City of Charlotte, 336 N.C. 37 (1994).
6. G.S. 162A-200 to -215.

Contracting for additional capacity in roads and pipes or constructing public improvements adjacent to a given development may be authorized under a public enterprise improvement contract, a roadway improvement contract (cities only), or a general reimbursement agreement. These overlapping authorities can be used to ease the burden on private developers who must bear the construction costs of public infrastructure. But a local government must be careful to mind the procedures and limitations that apply to each type of authority.[7]

VII. Approval Processes

Suppose you own a vacant lot in your town and you want to build a small, six-unit apartment building on the site. Who decides what standards apply, and how much discretion do they have? Do the neighbors get to weigh in? The short answer is it depends. The standards, the decision-maker's discretion, and the role of public input depend on whether the decision is administrative, quasi-judicial, or legislative.

Administrative development decisions are the everyday decisions to enforce the development ordinances: zoning permits, notices of violation, interpretations of the ordinance, and similar ministerial decisions. ***Quasi-judicial development decisions*** involve the outcomes of special requests made when there is need for some adjustment to the rules (variances), resolutions of a dispute in interpretation (appeals of staff decisions), or decisions on specialized permits (special use permits and certificates of appropriateness). ***Legislative development decisions*** are the political decisions made by the governing board to set or amend development ordinances. Adopting a new unified development ordinance, rezoning a piece of property, adopting the comprehensive plan, amending the standards in the subdivision ordinance—each is a legislative decision. It is setting the broad policy for the community.[8]

Each process is a tool. And, like any tool, each is appropriate for some things but not everything. When a community is evaluating development regulations for impacts on affordable housing, the difficulty and time required to undertake a particular approval process is a key consideration.

VIII. Requirements and Incentives for Affordable Housing

Housing availability and affordability are legitimate governmental goals and a high priority for many communities. As discussed above, many levers are available to adjust regulations to allow more housing: the community can permit more types of housing, permit housing in more locations, reduce the development standards and fees for housing, streamline the permitting process, and more. These are all means to address housing generally.

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7. Adam Lovelady, *Reimbursement Agreements*, Coates' Canons: NC Local Government Law Blog (UNC School of Government, January 19, 2016), https://canons.sog.unc.edu/2016/01/reimbursement-agreements/.

8. Adam Lovelady, *Types of Development Decisions*, Coates' Canons: NC Local Government Law Blog (UNC School of Government, August 24, 2021), https://canons.sog.unc.edu/2021/08/types-of-development-decisions/.

Some communities seek to address specific levels of affordability—for example, to make sure that there are homes affordable to households with incomes at certain levels (e.g., under 80 percent of area median income (AMI)). North Carolina local governments have specific authority to *invest* in the creation of new affordable housing or the maintenance of existing affordable housing, as discussed in Part Two of this digest. State law is less clear about local government authority to *require* affordable housing through development regulations.

A. General Authority

Inclusionary zoning is a regulatory requirement that new development must include housing that is affordable to individuals with certain income levels. In some states, inclusionary zoning is clearly authorized. In other states, inclusionary zoning is clearly prohibited. In North Carolina, the statutes do not address the topic directly.

Some North Carolina communities use regulatory incentives for affordable housing. For example, if a specified proportion of a development will provide affordable housing, it becomes eligible for expedited permit processing or a density bonus. These programs are likely permissible under the general authority for development regulations—local governments are clearly authorized to set administrative permitting procedures and density standards. Some local governments have enacted legislation authorizing density bonuses for affordable housing.

It is unclear if North Carolina local governments can impose a straightforward inclusionary zoning requirement (such as "developer shall provide *x* percent of new residential units as affordable to *x* percent of AMI").

B. Conditioned Approvals

In some North Carolina communities and for some projects, affordable housing is among the conditions addressed through a discretionary zoning approval. Common examples of discretionary zoning approvals are conditional zoning, development agreements, and special use permits.

As discussed above, ***conditional zoning*** allows for site-specific standards and conditions to address the impacts of a project and its conformance with applicable plans and policies. Some North Carolina comprehensive plans call for a full range of housing affordability in new developments. Other plans may address the need for more affordable and workforce housing. So, the argument goes, conditional zoning conditions may address affordable housing to address the development's conformance with applicable plans. With that in mind, some conditional zonings and development agreements include the provision of a specified amount of affordable housing or a commitment to make payments to a local affordable housing trust fund.

The statute for conditional zoning, G.S. 160D-703(b), grants fairly broad authority for imposing conditions, but those conditions must be "approved by the local government and consented to by the petitioner in writing." Furthermore, the conditions are "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."

North Carolina local governments are authorized to enter into ***development agreements*** with developers to approve and manage large-scale, long-term developments.[9] Development agreements are intended to address the unique needs and impacts of a specific development. In the statutory authorization, the General Assembly finds that the large-scale, long-term developments

9. Article 10 of G.S. Chapter 160D.

subject to development agreements allow "communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas." As such, development agreements have some flexibility for conditions.

G.S. 160D-1006(d) offers authority for the conditions of a development agreement, which "may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law." This language, like the language for conditional zoning, allows for broad conditions if they are mutually agreed upon by both the developer and the local government.

In contrast, the general authority set forth at G.S. 160D-1001 clearly states: "[A] local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law." It is not clear how this general limitation squares with the specific authority for the conditions granted by Section 1006(d). Given the purpose of development agreements and the specific authority for mutually acceptable terms, it would seem that the provision of affordable housing may be addressed through a development agreement.

State law gives less flexibility for the conditions related to a ***special use permit***. A special use permit is a quasi-judicial decision based on discretionary standards in the ordinance. Standards for special use permits are established locally, but the standards commonly include a requirement that the development be *in conformance with applicable plans*. One might argue that plan conformance could be a means of requiring affordable housing through the special use permit process, as is done with conditional zoning. However, G.S. 160D-705(c) sets clear limits on the conditions for special use permits. The relevant language states that "[c]onditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate . . . ." This contrasts with the language for conditional zonings and development agreements, and, arguably, curtails the authority for affordable housing conditions in special use permits.

IX. Conclusion

Development regulations affect housing in many different ways. They regulate the types of housing permitted and where that housing is permitted; they regulate the improvements and fees that must accompany housing development; and they establish the processes through which housing is permitted. But development regulations are not etched in stone. They may be amended and updated to align with current community needs and priorities. There are multiple options for modifying the Town's development regulations to encourage or enable affordable housing.

PART 2
A Proactive Approach: Investing in Public-Private Partnerships for Affordable Housing

C. Tyler Mulligan

Part One of this digest explored development regulations, which impose no immediate costs on the Town. The immediate costs are borne by private owners and developers of property who must comply with the Town's requirements. If the immediate costs on owners and developers are so great as to reduce returns on development, such that developers cannot find investors willing to commit capital for projects, then development activity will be curtailed until market conditions are more attractive for investors. Developers will only construct projects that are financially feasible for them and for their investors.

Affordable housing projects operate under the same constraints as any other housing development. When housing units are reserved for eligible low-income households, and when rents for those units are reduced to make them affordable to the eligible households, the units may not earn enough revenue to make it financially feasible for a developer to produce them in the first place. When this situation causes the private sector to stop developing affordable housing on its own, North Carolina law authorizes local governments to partner with private owners and developers to make it financially feasible to produce and operate affordable units anyway.

I. Threshold Conditions for Local Government Involvement in Privately Owned Housing Projects

A local government can always serve the neediest populations in the community by investing in publicly owned affordable housing, also known as *public* housing, so long as it is owned and operated by the government.[1] Resources are limited for public housing, so local governments may also seek to encourage the creation of *private* affordable housing by partnering with private housing providers. However, local government authority in this area is quite limited.

As a general rule, local governments are not authorized to interfere in the private housing market. They are not permitted to make gifts to private housing developers, to favor certain developers over others, or to enter the housing market themselves as competitors to developers. Public funds must be used for public purposes, not for aid to private enterprise. Indeed, local governments are even prohibited from making donations to charitable nonprofit housing providers.[2]

1. Local governments can produce publicly owned and publicly operated housing by following the statutory authority provided in the Housing Authorities Law. Chapter 157 of the North Carolina General Statutes (hereinafter G.S.).

2. Brumley v. Baxter, 251 N.C. 691 (1945).

All payments of local government funds to private entities must be made *in exchange for services* that fulfill a constitutional "public purpose" and for which the General Assembly has granted statutory authority.

When does government investment in private housing amount to a payment for *services that meet a constitutional public purpose*? The courts alone interpret which activities serve a constitutional public purpose, and North Carolina case law indicates that local governments possess authority to construct housing or partner with housing developers only under both of the following conditions:

1. The purpose of government involvement is to "make available decent, safe and sanitary housing to 'persons and families of lower income,'"[3] defined as "persons in households the annual income of which . . . is not more than sixty percent (60%) of the local area median family income as defined by the most recent figures published by the U.S. Department of Housing and Urban Development."[4]
2. The "planning, construction, and financing of residential housing is not otherwise available to 'persons and families of lower income'" due to "the inability of private enterprise and investment, without assistance, to meet that need."[5]

What about households earning slightly more than 60 percent of area median income (AMI), such as households earning as much as 80 percent of AMI? These households with slightly higher incomes, known as "moderate income," can be included *alongside* low-income persons, so long as the government "is acting with the same public purpose in mind" as serving low-income persons and with the goal "'to make available decent, safe and sanitary housing' to another group 'who cannot otherwise obtain such housing accommodations.'"[6]

When the Town formally approves any housing programs, it will need to show that the conditions above have been met. The data to support such findings can be obtained through a housing needs assessment. The data evaluated by the Development Finance Initiative (DFI) for the Town is contained in the Appendix.

The constitutional public purpose test is merely the first legal threshold. The Town must also identify statutory authority for any activity it wishes to undertake. The General Assembly has enacted statutes to authorize local governments to engage in public-private partnerships for affordable housing, but the statutes contain important requirements and limitations. In addition, statutes must always be interpreted to be consistent with the state constitution, such as by ensuring that all activities serve a constitutional public purpose and prohibiting donations or gifts to private enterprises.

This part of the digest proceeds under the assumption that the Town of Boone has met the threshold constitutional conditions above and intends to operate within its constitutional and statutory authority. The discussion below lays out the legal requirements imposed on public-private partnerships for affordable housing.

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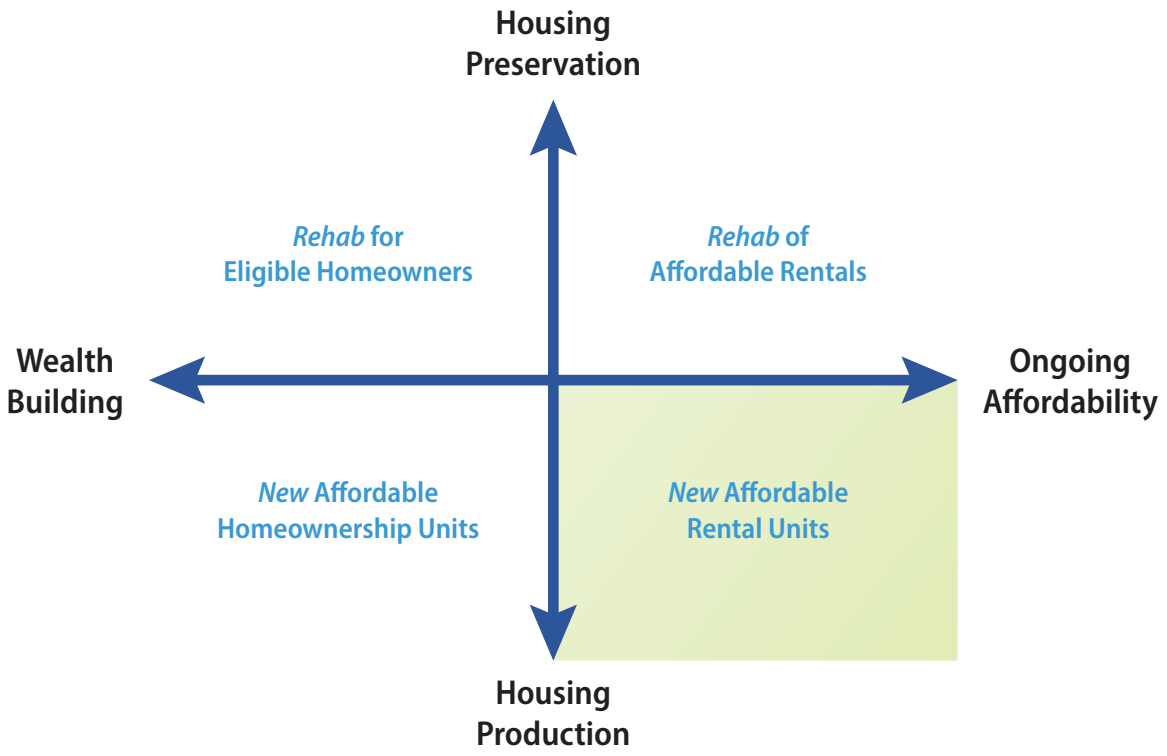
3. Martin v. N.C. Hous. Corp., 277 N.C. 29, 49 (1970).

4. G.S. 157-3(15a).

5. *Martin*, 277 N.C. 29, 49–50.

6. *In re* Denial of Approval to Issue $30,000,000.00 of Single Family Hous. Bonds & $30,000,000.00 of Multi-Family Hous. Bonds for Persons of Moderate Income, 307 N.C. 52, 60 (1982) (quoting *Martin*). Moderate income, under state law, extends to income levels eligible for "federal housing assistance." G.S. 157-3(15b). According to this standard, after reviewing federal housing assistance programs, moderate income can reasonably be assumed to be as high as 80 percent of AMI. Note that "low income" and "moderate income" limits are defined differently in state law and federal law. The state law definitions must be followed by local governments when authorizing local housing programs.

Figure 1. Preliminary Indication of Town Leadership's Affordable Housing Priorities



II. Tools and Legal Authority for Public-Private Partnerships for Affordable Housing

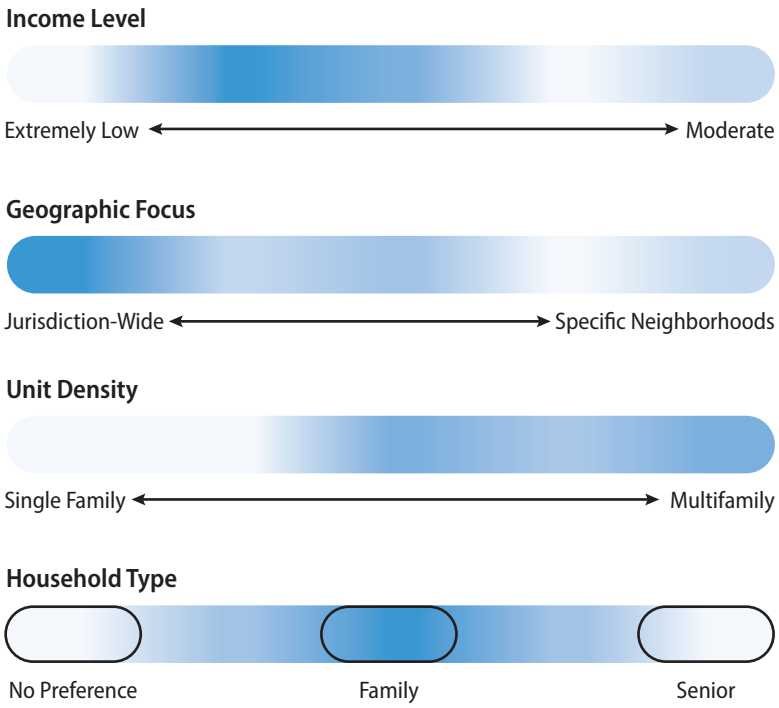
During conversations at the Town's affordable housing workshop on February 20, 2023, and in responses to an anonymous survey following the workshop, Town leadership provided initial indications of its strategic focus. There was general agreement on supporting the production[7] of multifamily rental housing for lower-income households. In other words, Town leadership showed greatest interest in the shaded section of Figure 1.

In addition, Town leadership gave initial indications of its preferences for affordable housing as indicated in Figure 2. The darker shades indicate higher levels of interest.

Town leadership appears to be interested in supporting private affordable housing that serves relatively lower incomes but not necessarily the lowest income levels. This makes sense from a practical standpoint because private affordable housing typically cannot serve the lowest incomes due to the deep subsidy required for such housing. An example is transitional housing for the homeless. The lowest incomes are usually served entirely by public and charitable providers. Town leadership also appears to be interested in developing relatively dense housing for families throughout the jurisdiction. Accordingly, this part of the digest will describe tools that support those priorities.

7. Demand-side programs such as housing counseling, credit repair, down-payment assistance, and rental vouchers are not the subject of this digest.

Figure 2. Preliminary Indication of Town Leadership's Affordable Housing Preferences



Based on responses from Town leadership, the focus here is primarily on tools for the production of new rental units, but it should be noted that some members of Town leadership expressed interest in preservation approaches. The data indicate that the Town's rental housing stock is not as old as that in other rural areas, and the multifamily units in the Town that were subsidized with federal Low-Income Housing Tax Credits (LIHTC) are not expiring within the next five years. This might indicate that preservation is not as urgent as in other communities. However, rents have increased by 15 percent since 2021 due to the limited supply of rental housing. Town leadership therefore wishes to consider options for preserving the units that exist already, so an overview of preservation tools will be provided. In addition, as requested by the Town, the "land trust" model will be explored briefly as an approach for preserving long-term affordable homeownership opportunities.

A. Production of New Private Affordable Rental Units

As mentioned above, local governments generally are not authorized to invest public funds in private housing unless there is a constitutional public purpose for doing so, and the General Assembly has granted statutory authority for the activity. There are four approaches typically undertaken by local governments to produce new affordable units in partnership with the private sector: (1) conduct a property inventory and strategically acquire property; (2) perform a feasibility analysis to determine where affordable housing production is feasible for the private sector; (3) convey property to private housing providers with affordability restrictions; and (4) provide financing and financial assistance to rental housing projects to the extent that such financing is necessary after private sources have been exhausted.

1. Conduct a Property Inventory and Strategically Acquire Property for Multifamily Housing

This strategy involves reviewing property owned by the Town that might be suitable (individually or in combination) for development into affordable housing rentals. In addition, it involves a search for property not yet owned by the Town with the same goal in mind.

Local governments possess general corporate authority to acquire property for public use, such as land for a public park, or a building to be used for Town offices. However, acquiring property *to be used by the private sector* for affordable housing is another matter altogether. Local governments are not authorized to engage in activities occurring in the realm of private enterprise unless they serve a constitutional public purpose. As explained above, the acquisition of property for housing serves a constitutional public purpose only for the purpose of creating housing for low-income persons, and only when the private sector is not producing enough of that housing on its own.

Multiple statutes authorize local governments to acquire property for low-income housing, and there are no special procedural requirements. If the Town acquires property under one statute and later realizes it must dispose of the property under another statute, it will not pose an obstacle to the Town's plan because there is no difference in procedural requirements at the acquisition stage. Thus, the Town can rely on one statute for acquisition of property and a different statute for disposition, so long as the Town adheres to the procedures required by the statute it ultimately uses for disposition.

The most flexibility is afforded by exercising the powers of a housing authority under Chapter 157 of the North Carolina General Statutes (hereinafter G.S.).[8] A housing authority is empowered to acquire and convey property for a housing project and, importantly, to provide financial assistance to "developers of housing for persons of low income."[9] Financial assistance for housing projects will be discussed in Section II.A.4, below. Persons earning more than 80 percent of AMI may be served by a housing project, but no subsidy may flow to them, and no less than 20 percent of the units in the housing project must be set aside for the "exclusive use" of low-income persons.

Local governments have another source of authority for acquiring property. G.S. 160D-1316 empowers local governments to acquire and convey property for affordable housing. However, under this statute, no financial assistance may be provided to developers, and no residents earning above 80 percent of AMI may be served.

Outside of the limited instances above, there is no statutory authority for local governments to acquire property for affordable housing. Specifically, there is no authority for local government involvement in projects that serve residents earning more than 80 percent of AMI and where less than 20 percent of the units are set aside for low-income persons. At that point, the affordable housing for low-income persons is such a minor component of the overall project that it essentially loses its "public" purpose.

There may be alternative sources of authority for property acquisition and disposition, unrelated to affordable housing, such as acquiring and disposing of property in pursuit of a community development plan[10] or acquiring and disposing of property pursuant to an approved redevelopment plan.[11] However, each of those alternatives involves different goals and separate procedures that are outside the scope of this digest.

8. G.S. 157, pursuant to G.S. 160D-1311(b).
9. G.S. 157-3(12)(e).
10. G.S. 160D-1312.
11. G.S. 160A-514.

2. Perform Predevelopment Analysis on Key Sites to Determine Where Affordable Housing Is Feasible

If a local government is authorized to undertake an activity, then it obviously must also possess implied authority to develop *plans* for that activity. Thus, the Town may analyze scenarios and create plans for the development of housing for low-income persons on property that it owns or controls—and that includes creating plans for housing projects involving a private development partner.

Why is a feasible development plan helpful in accomplishing the Town's goals? Affordable housing developers often don't have the time or financial resources to undertake a speculative feasibility analysis of government-owned property. Doing so entails extraordinary risk—a developer might invest time and resources in a predevelopment analysis and create a feasible plan for development, only to discover later that the local government does not like the plans and is not interested in partnering with the developer. All of the developer's investment of time and resources into developing those plans would be lost. For this reason, it is not realistic to expect private developers to evaluate the potential of government-owned property.

Local governments who wish to partner with private affordable housing developers can instead perform the analysis themselves. Key questions a local government should address in its analysis include the following:

- What public interests does the Town hope to achieve on the site?
- What are the physical and zoning-imposed constraints of the site in terms of development density and supporting amenities such as parking?
- What public facilities, if any, will be constructed in conjunction with private development on the site, and how will those public facilities be financed?
- What are the market conditions related to the intended development?
- What affordability requirements will be imposed by the Town?[12]
    - Number of affordable units.
    - Household-income eligibility.
    - Affordability level as a percentage of income.
    - Timing and phasing of construction of affordable units, especially as compared to market-rate units.
    - Process for monitoring and certification of eligible households.
    - Transfer controls (deeds of trust, restrictive covenants, etc.).
    - Control period in number of years.
- What are the costs of the proposed development?
- What private sources of capital, ranging from loans to federal tax-credit equity, can realistically be obtained for the project within a reasonable time frame?
- What additional financing is required to make the project financially feasible for a private developer?
- Which developers possess the experience and expertise required to complete the intended development project?

With those questions answered, the Town will be prepared to approach qualified developers who possess the capital and expertise to complete the project within a reasonable time frame. Many local governments make the error of assuming that private developers will come to them

12. These questions are explored in greater detail in C. Tyler Mulligan and James L. Joyce, *Inclusionary Zoning: A Guide to Ordinances and the Law* (UNC School of Government, 2010).

Table 1. Conveyance of Property at Fair Market Value (Unsubsidized)

Affordability restrictions imposed	*Private Sale Authority (Municipality Chooses Buyer)*		
	Lease	**Sale acting solely as municipality**	**Sale acting as a housing authority pursuant to G.S. 160D-1311(b)**
All units reserved for low- and moderate-income persons only (serving no person over 80% of AMI)	G.S. 160A-278	G.S. 160D-1316(3)	G.S. 157-3(12) and 157-9
Residents above 80% of AMI served. **At least 20%** of units reserved for low-income persons (60% of AMI or below)	G.S. 160A-278	No statutory authority.*	G.S. 157-3(12) and 157-9
Residents above 80% of AMI served. **Less than 20%** of units set aside for exclusive use of low-income persons	No statutory authority nor supporting constitutional case law.*		
How long must property be used for affordable housing for eligible households?	The entire term of the lease.	Restricted in perpetuity. Property reverts to municipality if restrictions cease to be observed.	20% of the units must be set aside for the exclusive use of low-income persons for at least 15 years. G.S. 157-3, 157-9.4.

*Alternative conveyance powers, unrelated to affordable housing, are described in the text accompanying notes 10 and 11.

and invest the substantial time and energy necessary to negotiate each of these points. Rather than waiting for that rare private developer to come along, local governments can take the initiative themselves and in turn significantly reduce the risk for potential development partners.

3. Convey Property to Private Housing Providers with Affordability Restrictions

The statutory authority for conveying property to private affordable housing providers depends upon the affordability restrictions to be imposed on the property and whether the sale price is reduced below fair market value. The permutations and associated statutory authority are described in Table 1 and Table 2.

Table 1 describes the statutory authority when a conveyance of property is made at fair market value. The placement of affordability restrictions on the property immediately reduces its fair market value because its income potential has been reduced. The deeper the affordability and the longer the affordability is required, the less revenue earned by the owner, which translates into a lower fair market value for the restricted property. This is a reduction in the property's fair value, not a subsidy to the buyer.

Table 2 describes the statutory authority when the conveyance is accompanied by a subsidy or when the conveyance is made at a price below the (already reduced) fair market value. Keep in mind that local governments are not permitted to make gifts or donations to private entities. Every payment to a private entity must be made in exchange for specific services to the public—or, in the case of affordable housing, in exchange for the creation of housing units for low-income persons. Table 2 sets forth the services that are required in exchange for a reduction in the sale price.

Table 2. Conveyance of Property *Below* Fair Market Value (All Subsidies Must Flow to Eligible Tenants)

Affordability restrictions imposed	*Private Sale Statutory Authority (Municipality Chooses Buyer)*			
	Lease to nonprofit lessee only, acting solely as a municipality	**Sale acting solely as municipality**	**Sale or lease to any buyer; municipality acting as a housing authority pursuant to G.S. 160D-1311(b)**	**Sale to nonprofit buyer only; municipality acting solely as a municipality**
All units reserved for low- and moderate-income persons only (serving no person over 80% of AMI)	Charitable nonprofit lessee only: G.S. 160A-279 to accomplish G.S. 160D-1316.	No statutory authority.	G.S. 157-3(12)(e) and 157-9	Charitable nonprofit buyer only: G.S. 160A-279 to accomplish G.S. 160D-1316.
Residents above 80% AMI served. **At least 20%** of units reserved for low-income persons (60% of AMI or below)	No statutory authority.		G.S. 157-3(12)(e) and 157-9	No statutory authority.
Residents above 80% of AMI served. **Less than 20%** of units set aside for exclusive use of low-income persons	No statutory authority nor supporting constitutional case law.			
How long must property be used for affordable housing for eligible households?	The entire term of the lease.	Not permitted.	20% of the units must be set aside for the exclusive use of low-income persons for at least 15 years. G.S. 157-3, 157-9.4.	Restricted in perpetuity. Property reverts to municipality if restrictions cease to be observed.

Must Rent Levels Be "Affordable" to Eligible Households?

When a local government conveys property to an affordable housing developer at a fair market price,[13] without subsidy, there is no requirement to ensure that units reserved for low- and moderate-income tenants are also *affordable* to those tenants. However, when a *housing authority* (or a local government acting as a housing authority)[14] is involved with a rental housing project, the rentals must be "within the financial reach" of low-income renters.[15] The "financial reach" requirement does not extend to moderate-income renters. The statute does not define "within the financial reach." It would be reasonable to assume that the federal guideline for affordability—e.g., combined rent and utilities costing no more than 30 percent of household income—is within the "financial reach" of a household for purposes of state law.

The affordability and eligibility requirements appearing in the statutes are the floor—the minimum required. The statutes *impose no ceiling.* Thus, the Town is always entitled to require

13. Pursuant to G.S. 160D-1316.
14. Pursuant to G.S. 157 as authorized by G.S. 160D-1311(b).
15. G.S. 157-29(b)(2).

deeper affordability for a longer period of time, or to require a housing project to reserve more units than required, or to reserve units for even lower incomes than otherwise required by statute.

Securing Public Benefits

Prior to conveying property to an affordable housing developer, the Town must take steps to restrict the use of the land to ensure that the sought-after public benefit will be achieved—that the property will indeed be used for housing for eligible households. There are several methods for securing the public benefits, each of which can be drafted with the assistance of a real-estate attorney.

- Deed restrictions with reverter. Some local governments record a deed containing the affordability requirements plus language that reverts the property back to the local government once the property is no longer used for affordable housing. A drawback of deed restrictions is that they might be ignored in subsequent sales of the property, though the reverter language is helpful in that regard. A reverter is a basic requirement when property is conveyed by a local government for less than fair market value.[16]
- Deed of trust or mortgage lien. Some local governments record a deed of trust or mortgage lien containing the affordability requirements. The advantage of a deed of trust is that it must be released prior to any sale, so it is never ignored upon subsequent sale. A violation of a deed of trust authorizes the holder (the Town) to proceed with foreclosure to enforce the terms of the deed of trust. The dollar amount secured by the deed of trust or mortgage lien is often tied to any subsidy invested in the property.
- Ground lease. Some local governments retain control of the land over the long term by leasing the property to an affordable housing provider, and the ground lease contains the affordability requirements. A violation of the affordability restrictions is a breach of the terms of the lease. Ground leases are regularly used for projects funded by federal Low-Income Housing Tax Credits (LIHTC). Lease terms can be as short as fifty years depending on the requirements of lenders and investors. The longest term is usually ninety-nine years, but extensions can be added. Upon termination of the lease, ownership of all improvements on the land reverts to the lessor local government.
- Right of first refusal. In the affordable housing context, a right of first refusal (ROFR) grants a right to the local government to purchase property from the current owner once the current owner is ready to sell. This offers the local government an opportunity to acquire the housing to ensure that it continues to be reserved for low-income persons. The terms

16. Brumley v. Baxter, 225 N.C. 691 (1945). When a local government conveys property for less than fair market value in exchange for a promise to use the property for a public service, then the conveyance must be conditioned on the continued use for that purpose by the recipient, and the property must revert back to the local government in the event the recipient ceases to use it for that purpose. In the context of affordable housing, this means that any conveyance of property to a private provider of affordable housing for less than fair market value must be subject to covenants and conditions to ensure that the property is used for affordable housing for low- and moderate-income persons in perpetuity (or sold to them). Once the property is no longer used by the recipient for that purpose, it reverts back to the government. *See also* Frayda Bluestein, *Donating Property: Beware of Constitutional Constraints*, Coates' Canons: NC Local Government Law Blog (UNC School of Government, April 13, 2015), https://canons.sog.unc.edu/2015/04/donating-property-beware-of-constitutional-constraints/. Most federal programs impose a similar requirement under 2 C.F.R. § 200.311.

can be negotiated. A major drawback of a ROFR is that the timing of the ROFR is unknown, making it difficult to budget and plan for the acquisition and redevelopment of the property.

The restrictions placed in these documents must be related to the Town's legal authority to enter into the agreements in the first place; that is, the restrictions should apply to unit affordability and tenant eligibility, not unrelated matters such as building setbacks or signage (which are more appropriately regulated by zoning). A helpful list of items to cover is provided in Section II.A.2, above.

4. Provide Financial Assistance to Rental Housing Projects, if Necessary, to Achieve Feasibility

It is important to start with a reminder that the state constitution prohibits local governments from making gifts or donations to private entities. The prohibition against donations even extends to charitable nonprofit entities.[17] Every payment to a private entity, charitable or otherwise, must not only serve a constitutional public purpose but also must secure the performance of an equivalently valued public service. In the context of affordable housing, any financial assistance must be necessary to make the housing project feasible—otherwise it amounts to a mere gift.

Local governments are not permitted to engage in private business.[18] Offering grants or low-interest loans would directly undercut private banks and investors, who are in the business of offering capital for development. A more appropriate approach involves offering high-interest loans. Not only does this ensure that a developer seeks private financing first, but due to the higher interest rate, it also causes a developer to take only so much public financing as is absolutely necessary to make the project work. Each project is different, and sometimes low-interest loans are necessary for affordable rental-housing projects with low or negligible net operating income. Development finance experts, such as those at the School's Development Finance Initiative (DFI), can assist the Town with underwriting to determine whether a particular form of financial aid is suitable and necessary for a particular project.

Any financial assistance to a housing project, whether in the form of a grant or a loan, should be documented by an agreement in which the housing provider agrees to supply housing units for certain eligible households in exchange for the government assistance. The statutory authority for providing financing or financial assistance for housing projects is described in Table 3.

Must Rent Levels Be "Affordable" to Eligible Households?

As shown in Table 3, the only way that a local government may provide direct financial assistance to a housing project is by exercising the powers of a housing authority pursuant to G.S. Chapter 157.[19] When a housing authority (or a local government acting as a housing authority) manages housing or provides financial assistance for housing, rents for low-income persons should be set as low as possible without jeopardizing the project's financial sustainability. A housing authority is required to "fix the cost of dwelling accommodations for persons of *low income* at the lowest possible rates

17. *Brumley*, 225 N.C. at 699.

18. Mitchell v. N.C. Indus. Dev. Fin. Auth., 273 N.C. 137, 156 (1968) (stating that "it is not the function of government to engage in private business"); Nash v. Town of Tarboro, 227 N.C. 283 (1947) (holding that it is not a public purpose for a town to own and operate a hotel).

19. G.S. 160D-1316 does not authorize a local government to provide financial assistance to private landlords. Property must be conveyed at fair market value. However, no maximum or affordable rent level is required, so each owner may set rents at whatever level it deems best, so long as all units are reserved for eligible households of low and moderate income.

Table 3. Financial Assistance to Rental Housing Projects

Affordability restrictions imposed	*Type of Financial Assistance*	
	Financial assistance to landlord; local government acting solely as municipality	**Financial assistance to landlord; local government exercising powers of a housing authority**
All units reserved for low- and moderate- income persons only (serving no person over 80% of AMI)	No statutory authority.	G.S. 157-3(12)(e) and 157-9, pursuant to G.S. 160D-1311(b).
Residents above 80% of AMI served. **At least 20 percent** of units reserved for low-income persons (60% of AMI or below)	No statutory authority.	G.S. 157-3(12)(e) and 157-9, pursuant to G.S. 160D-1311(b).
Residents above 80% of AMI served. **Less than 20%** of units set aside for exclusive use of low-income persons	No statutory authority nor supporting constitutional case law.	
How long must property be used for affordable housing for eligible households?	Not permitted.	20% of the units must be set aside for the exclusive use of low-income persons for at least 15 years. G.S. 157-3, 157-9.4.

consistent with . . . providing decent, safe, and sanitary dwelling accommodations."[20] Further, rentals must be "within the financial reach" of *low-income* renters.[21] It is reasonable to assume that the federal guideline for affordability—e.g., combined rent and utilities costing no more than 30 percent of household income—is within the "financial reach" of a household.

Rent levels should be no higher than necessary to recoup the cost of operating the housing. Not only must a housing authority manage housing projects "in an efficient manner" to enable "the lowest possible rates," but also no revenues may be diverted "for other activities."[22] Applying these rules to partnerships with the private sector, this means that *any subsidy* provided to a housing project must be shown to flow *entirely to eligible low- and moderate-income households* and not be diverted for other tenants, activities, or profit. A conservative approach would ensure that all subsidies flow *solely to low-income households earning at or below 60 percent of AMI.* Development finance experts, such as those at DFI, can assist the Town with underwriting to determine whether government subsidies are being diverted away from eligible households.

Can Fees Be Waived for Affordable Housing Development?

A local government generally cannot "waive" fees of any kind. In the context of utilities, there must be a utility-based business reason for any difference in rate classifications. As Professor Kara Millonzi writes in a blog post on this topic: "For example, a local unit may assess a different rate for water used for irrigation purposes than for household or other commercial purposes (classification based on the purpose for which the water is used), but it cannot charge a different rate

20. G.S. 157-29(a) (emphasis added).
21. G.S. 157-29(b)(2).
22. G.S. 157-29(a).

to all farmers (classification based on status). A unit may vary its utility rates based on the size of the house or the number of bathrooms (proxies for different costs or capacity demands), but it may not charge a different rate based on customer income levels (classification based on status)."[23]

In the context of building-permit fees, there is specific authority for reduced fees for sustainably designed buildings,[24] but not for affordable housing. Generally, a local government has authority to set its fees, but the fees apply unit-wide. Project-by-project waivers are arguably arbitrary and therefore legally suspect. Rather than approving problematic waivers of fees—fees that have a questionable relationship to the income-eligible households and virtually no relationship to the cost of operating the housing—a local government should instead approve more precise subsidy payments in amounts that are necessary to make the project feasible. In addition, subsidies must flow to eligible households, not private owners, to satisfy constitutional prohibitions against making gifts to private entities and to meet statutory requirements that ensure public subsidy does not "provide revenues for other activities."[25]

What if a Household's Income Increases above the Eligible Level while the Household Is Residing in Income-Restricted Affordable Housing?

A developer or landlord must have a plan to address occupants whose income increases. When a housing project receives financial assistance from a local government exercising the powers of a housing authority, the law requires at least 20 percent of the units to be set aside for the "exclusive use" of persons of low income in households earning 60 percent of AMI or below.[26] There is no flexibility in that requirement; a household earning more than 60 percent of AMI cannot qualify toward the 20 percent set-aside requirement.

Further, once a housing unit is occupied by a household earning more than 80 percent of AMI, the constitutional and statutory authority for supporting that housing unit evaporates. Immediate eviction is not required, but certainly the lease cannot be renewed. Often, affordable housing operators in this situation will decline to renew the lease or they will move the household to an unrestricted unit.

Can the Town Require Private Affordable Housing Providers to Discriminate against Full-Time Students?

Full-time students, as a class of persons, are not protected from discrimination under federal or state law. However, that doesn't mean a Town policy of discriminating against students would survive a legal challenge. Such a policy could be deemed arbitrary and capricious, or individual students could be protected under other classifications. Furthermore, the Town would have little control over the fairness and means of enforcement used by landlords, perhaps creating legal liability for the Town. The Town Attorney should be consulted prior to adopting any policy that involves some sort of discrimination against full-time students.

Nondiscriminatory approaches could be attempted instead. Normal business practices such as yearlong leases and credit requirements would not exclude students but would tend to favor non-student households. Some design features tend to be more suitable for families. A full review

23. Kara Millonzi, *Using Utility Rates as an Economic Development Incentive Tool*, Community and Economic Development in North Carolina and Beyond Blog (UNC School of Government, August 31, 2010), https://ced.sog.unc.edu/2010/08/using-utility-rates-as-an-economic-development-incentive-tool/.

24. G.S. 160D-704.

25. G.S. 157-29(a).

26. G.S. 157-9.4.

of these design and business approaches is beyond the scope of this digest. Development finance experts, such as those at DFI, could assist the Town with evaluating nondiscriminatory approaches.

Securing Public Benefits

The financial assistance agreement between the Town and the landlord should follow one or more of the forms described earlier in Section II.A.3. The important deal points to cover in any agreement are listed in Section II.A.2.

B. Overview of Preservation Approaches

Thus far, Part Two of this digest has been devoted to tools for creating new affordable units in partnership with the private sector. However, as noted earlier, Town leadership has expressed some interest in preservation approaches because rents have increased dramatically since 2021 due to the limited supply of rental housing.

This section will therefore describe the basic tools used for the preservation of existing affordable rental units. Many of the tools are similar to those used for the production of new rental units, and two new approaches will be explained: rent subsidies and code enforcement. An overview of the "land trust" model, a strategy for preserving affordable homeownership units over the long term, will also be provided.

1. General Preservation Tools for Rental Units

In general, the same tools that are used for the production of new rental units are also applicable to preserving existing rental units. That is, the Town may: (1) conduct a property inventory and strategically acquire property that is appropriate for preservation or rehabilitation; (2) perform a feasibility analysis to determine which units can feasibly be preserved by the private sector; (3) convey property with affordability restrictions; and (4) provide financing and financial assistance to the extent that such financing is necessary after private sources have been exhausted. The legal authority and requirements for the preservation of affordable units is essentially the same as that described above for the production of new affordable units.[27]

2. Rent Subsidies for Low-Income Persons

Under North Carolina law, local governments are prohibited from enacting rent control at the local level, except when the property is government-owned, or there is an agreement with the owner about the rent to be charged, or the property was assisted with Community Development Block Grant (CDBG) funds.[28] Thus, the Town may impose rent caps on privately owned rental units only upon entering into an agreement with the landlord to make the units available and affordable to low-income persons.

Landlords may demand some payment in exchange for their agreement to rent properties to low-income persons at affordable rent rates. Under North Carolina law, the Town is authorized to pay rent subsidies only when the Town is exercising the powers of a housing authority and only

27. There is separate authority for community development programs involving rehabilitation "principally for the benefit of low- and moderate-income persons." G.S. 160D-1311(a). Buildings that are acquired and rehabilitated may be sold through normal competitive processes found in Article 12 of G.S. Chapter 160A or for fair market value pursuant to a community development plan. G.S. 160D-1312.

28. G.S. 42-14.1.

for "persons of low income."[29] There is no authority for a local government to subsidize rents for persons of moderate income.

The Town may, instead of entering into agreements with landlords, pay rent subsidies directly to low-income persons, who may then use those subsidies to obtain housing. Federal voucher programs operate in this manner. There is no authority for a local government to provide rent subsidies to persons of moderate income.

3. Code Enforcement

An important additional tool for preservation is code enforcement. Housing owners, whether they own housing as their personal residence or own it as a landlord for rental to others, have a responsibility to maintain structures so they do not become unsafe or nuisances to residents and neighbors. When structures become unsafe, local governments may condemn and demolish them,[30] and nuisances may be abated.[31] However, demolition is obviously not the goal when it comes to the preservation of affordable housing.

The most appropriate code-enforcement tool for preservation is the minimum housing code.[32] It is *optional* for local governments to enact. The Town of Boone enacted its minimum housing ordinance under Chapter 151 of the Town of Boone Code of Ordinances, though it should be reviewed to ensure that it reflects current statutory authority.

The key feature of the minimum housing code that makes it suitable for preservation efforts is that owners can be ordered to *repair* housing that has become "unfit for human habitation." After the owner fails to repair the housing as ordered, the Town Council may empower its code-enforcement official to repair the unit directly using Town funds, and the costs become a lien on the property.[33] The lien has the same priority and is collected as a special assessment or tax lien.[34] At that point, the unit is safe for human habitation and is preserved for future use. If the owner does not pay the lien, the Town may foreclose the unit and facilitate its sale to a more responsible owner. As an alternative, the Town's code-enforcement official may petition a court to place the property in the hands of a court-appointed receiver charged with repairing and managing the property.[35]

A strategic approach to code enforcement involves answering important questions:

- Should the Town focus its housing inspections on certain areas?
- Should the Town modify its minimum housing ordinance so that repair orders are more frequently issued than demolition orders?
- How aggressively should the Town pursue payment of liens?
- When should the Town bid on properties undergoing foreclosure in pursuit of the Town's affordable housing strategy?

29. G.S. 157-3(12)(c).
30. G.S. 160D-1119.
31. G.S. 160A-174, -175, -193.
32. Article 12 of G.S. Chapter 160D.
33. G.S. 160D-1203.
34. Chris McLaughlin, *Fighting Blight with Property Tax Bills*, Community and Economic Development in North Carolina and Beyond Blog (UNC School of Government, May 16, 2017), https://ced.sog.unc.edu/2017/05/fighting-blight-with-property-tax-bills/.
35. G.S. 160D-1130.

Examples of how the City of Winston-Salem and the City of High Point wrestled with these questions are available in reports on the "Community and Economic Development in North Carolina and Beyond" page of the School of Government website.[36]

As a practical matter, code enforcement is only as effective as the Town Council's willingness to enforce the requirements of the code. In addition, the Town must be prepared to invest time and energy in inspections and repairs up front, with no certainty of recouping those costs in the future.

4. Land Trusts: A Hybrid Homeownership Model

The Town expressed interest in a homeownership approach called the "land trust" or "community land trust" model, which accomplishes two goals: (1) it makes purchasing a home more affordable for eligible households and (2) it preserves the affordability of the units in perpetuity. Grounded Solutions, an organization dedicated to supporting community land trusts around the nation, explains how a land trust works:

- A family or individual purchases a house that sits on land owned by the community land trust.
- The purchase price is more affordable because the homeowner is only buying the house, not the land.
- The homeowners lease the land from the community land trust in a long-term (often 99-year), renewable lease.
- The homeowners agree to sell the home at a restricted price to keep it affordable in perpetuity, but they may be able to realize appreciation from improvements they make while they live in the house.[37]

Several land trusts have been established in North Carolina. A local government could establish and maintain a land trust by exercising the powers of a housing authority. However, land trusts are most typically formed and maintained as independent charitable nonprofit organizations.[38] A special property-tax-assessment process has been enacted for land trusts in North Carolina.[39]

The Town could partner with a charitable nonprofit land trust in several ways:

- Convey property to the land trust with permanent affordability requirements through deed restrictions and a reverter to the Town as described in the last column of Table 2.
- Offer loans or grants to eligible homeowners earning no more than 80 percent of AMI.

The legal authority and associated requirements for these "demand side" homeownership

36. *See* "CCP Report on Addressing Vacancy and Abandonment in High Point, N.C." (2016), and "CCP Report on Addressing Vacancy and Abandonment in Winston-Salem, N.C." (2019), "Resources: Revitalization and Community Development," Community and Economic Development in North Carolina and Beyond, https://ced.sog.unc.edu/resources/.

37. Grounded Solutions Network, Strengthening Neighborhoods, Community Land Trusts, https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts.

38. One example is Orange County's Community Home Trust, https://communityhometrust.org/.

39. G.S. 105-277.17. *See also* Tyler Mulligan, *Taxation of Affordable Housing in Community Land Trusts*, Community and Economic Development in North Carolina and Beyond Blog (UNC School of Government, December 23, 2009), https://ced.sog.unc.edu/2009/12/taxation-of-affordable-housing-in-community-land-trusts/.

programs have not been discussed in this digest, but the School of Government website contains helpful resources.[40]

- Provide loans or grants to the community land trust as the developer and operator of affordable housing. Land trust housing, if subsidized by a local government, must be used for a qualifying eligible household, and all subsidies must flow to the eligible household.

III. Conclusion

This part of the digest outlined the authorized means by which local governments may invest in public-private partnerships for affordable housing. The key for the Town is to determine its strategic priorities and then select the tools that best achieve its goals. In the second set of in-person workshops, the financial implications of various affordable housing strategies will be explored, including the largest federal funding source for workforce rental housing, the Low-Income Housing Tax Credit.

40. Tyler Mulligan, *Local Government Support for Privately Owned Affordable Housing*, Community and Economic Development in North Carolina and Beyond Blog (UNC School of Government, May 16, 2022), https://ced.sog.unc.edu/2022/05/local-government-support-for-privately-owned-affordable-housing/. *See also* "Local Government Tools for Private Affordable Housing: Affordable Housing Flowchart," UNC School of Government (January 2023), https://www.sog.unc.edu/resources/legal-summaries/local-government-tools-private-affordable-housing-chart.

Appendix: Housing Needs Assessment

The following PowerPoint data visualizations were presented to the Town in February 2023.

Town of Boone

February 20, 2023

Housing Needs Assessment

UNC | SCHOOL OF GOVERNMENT
Development Finance Initiative

DEVELOPMENT FINANCE INITIATIVE

Summary

- Watauga County and Town of Boone rental markets are uniquely challenging (tourism- and university-related pressures) for LMI households.
- At least **900 LMI renters** and **60 LMI owners** need housing assistance.
  - Not including approx. 8,000 employees making less than $40,000 and commuting from out of town.
- To afford the average home in Boone, a household needs an annual income of $145,000, **about double from two years ago.**
- While housing quality is not as poor as more rural counties, growing enrollment and limited new supply **drove up rents by 15% since 2021.**
- There are nearly twice as many extremely low-income renters than there are affordable units in Boone and **rental vacancy rates are below 1%.**
- Competition for affordable units is largely driven by students rather than higher income non-student renters. **At least half of units** affordable to LMI renters are likely **occupied by students**.

2

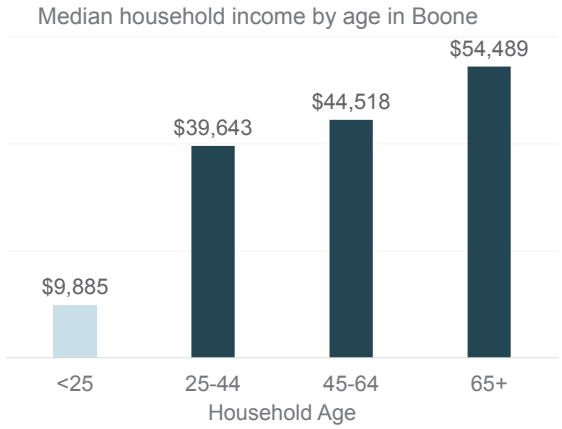
DEVELOPMENT FINANCE INITIATIVE

Boone's demographics are heavily influenced by App State students

Only 1 in 20 Boone residents is over 65 years old compared to over 1 in 5 Watauga County residents (outside of Boone)

The homeownership in Boone is 23%, compared to 75% in Watauga County (excluding Boone)

Boone's median household income is $25,000, roughly half of the county. But **older households** have comparable incomes to the county.



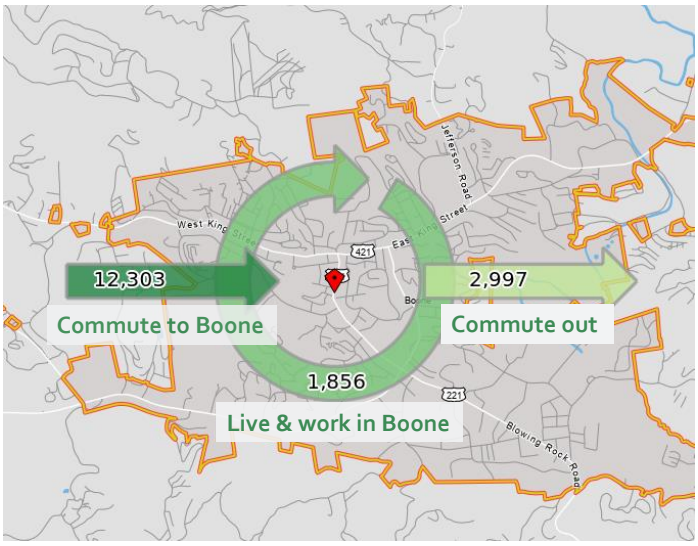
Source: ACS 2021 (5-year estimates)

3

DEVELOPMENT FINANCE INITIATIVE

Boone is the biggest employment center in the county

- 65% of all employees in Watauga County work in Boone
- 86% of people employed in Boone (~12,000) commute from out of town
- 87% of local employees making less than $40,000 a year commute from out of town
- 1 in 4 workers travel more than 50 miles to work in town
  - About 7 percentage points higher than the state average



Source: Census LEHD 2019

4

DEVELOPMENT FINANCE INITIATIVE

App State supports a wide range of industries besides educational services

Top 10 Industries in Boone	Employees	% of local employment
Educational Services	3,730	26%
Accommodation and Food Services	2,533	18%
Health Care and Social Assistance	2,437	17%
Retail Trade	2,172	15%
Public Administration	588	4%

5

Source: EPI Family Budget Calculator & Census LEHD (2019)

DEVELOPMENT FINANCE INITIATIVE

Occupations sustained by App State rarely have enough income to cover living expenses *and* housing costs

Top 10 Industries in Boone	Employees	% of local employment
Educational Services	3,730	26%
Accommodation and Food Services	**2,533**	**18%**
Health Care and Social Assistance	2,437	17%
Retail Trade	2,172	15%
Public Administration	588	4%

Cooks employed by Appalachian State dining services make around $35,000 a year.

If you're a single household, you need about **$31,000 a year to cover non-housing related expenses** such as food, transportation, and healthcare.

Leaving about $300 a month to spend on housing.

6

Source: EPI Family Budget Calculator & Census LEHD (2019)

DEVELOPMENT FINANCE INITIATIVE

Occupations sustained by App State rarely have enough income to cover living expenses *and* housing costs

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Educational Services	3,730	26%
Accommodation and Food Services	2,533	18%
Health Care and Social Assistance	**2,437**	**17%**
Retail Trade	2,172	15%
Public Administration	588	4%

Nurses at Appalachian Medical Center make around $50,000 a year.

If you're a single-parent household, you need about **$45,000 a year to cover non-housing related expenses** such as childcare, food, transportation, and healthcare.

Leaving about $415 a month to spend on housing.

Source: EPI Family Budget Calculator & Census LEHD (2019)

7

DEVELOPMENT FINANCE INITIATIVE

Low-Income Households in Boone

8

DEVELOPMENT FINANCE INITIATIVE

Area Median Income

The average rent for a One-Bedroom unit is **$900**, and **$1,300** for a Two-Bedroom.

Income limits (annual)

AMI	One Person	Two Person	Three Person	Four Person
30%	$16,770	$19,170	$21,570	$23,940
50%	$27,950	$31,950	$35,950	$39,900
60%	$33,540	$38,340	$43,140	$47,880
80%	$44,720	$51,120	$57,520	$63,840

Max housing costs (per month)

AMI	Efficiency	One bedroom	Two bedroom	Three bedroom
30%	$419	$449	$539	$622
50%	$698	$748	$898	$1,037
60%	$838	$898	$1,078	$1,245
80%	$1,118	$1,198	$1,438	$1,660

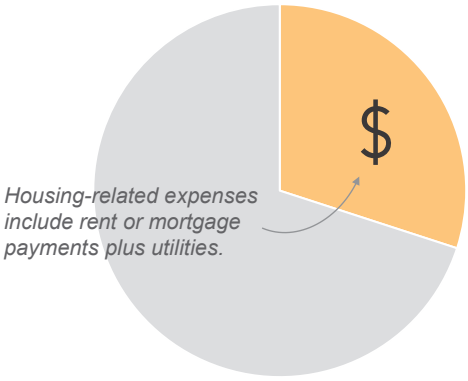
Source: HUD 2022

9

DEVELOPMENT FINANCE INITIATIVE

Housing need is both cost and quality

Housing-related expenses are **more than 30% of a household's income.**



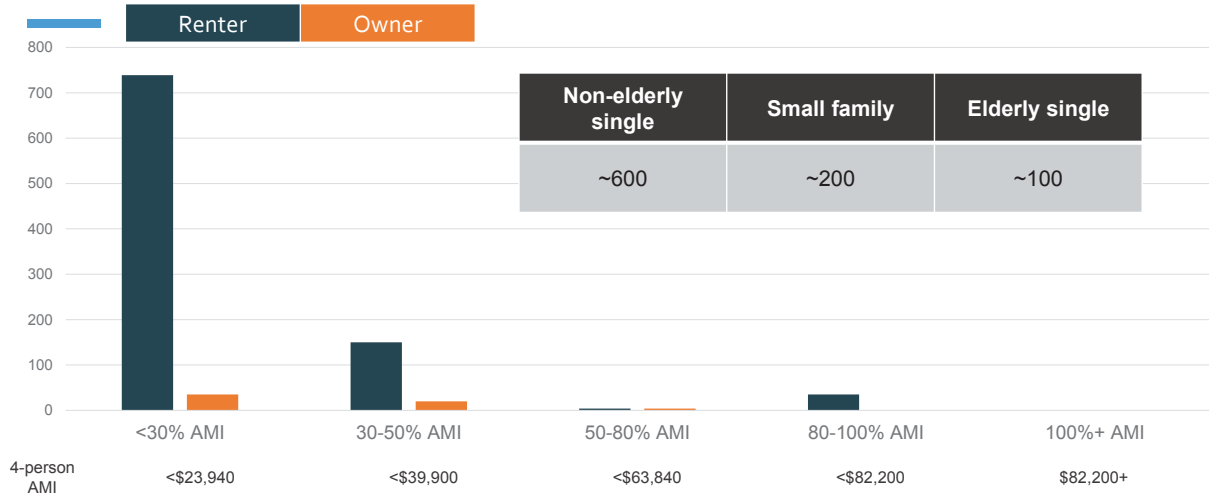
Households may have housing-needs if they live in **poor quality** or **overcrowded** housing.

Housing need could be addressed by building new units **or** by providing other housing resources.

10

DEVELOPMENT FINANCE INITIATIVE

At least 900 non-student LMI renters and 60 LMI homeowners need housing assistance in Boone



Non-elderly single	Small family	Elderly single
~600	~200	~100

Households with need are defined as households with 1 of 4 severe housing problems as defined by HUD: Spending over half of household income on housing-related costs, living in units without complete kitchen or bath facilities, or living with more than 1.5 people per bedroom.

Source: HUD CHAS & ACS Microdata (2019)

11

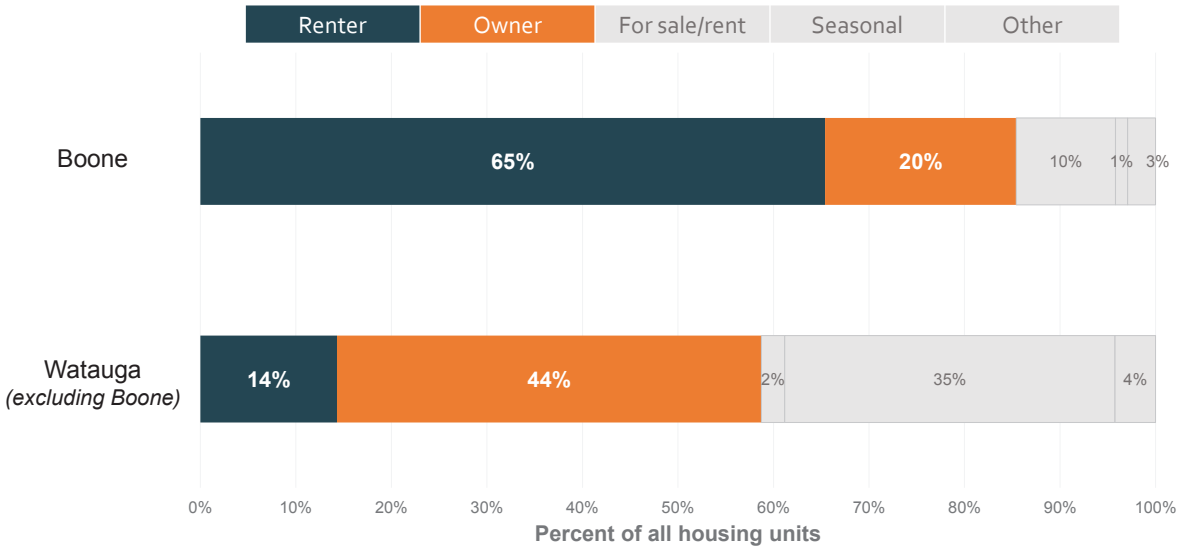
DEVELOPMENT FINANCE INITIATIVE

Boone Housing Market

12

DEVELOPMENT FINANCE INITIATIVE

Boone and Watauga have unique housing supplies

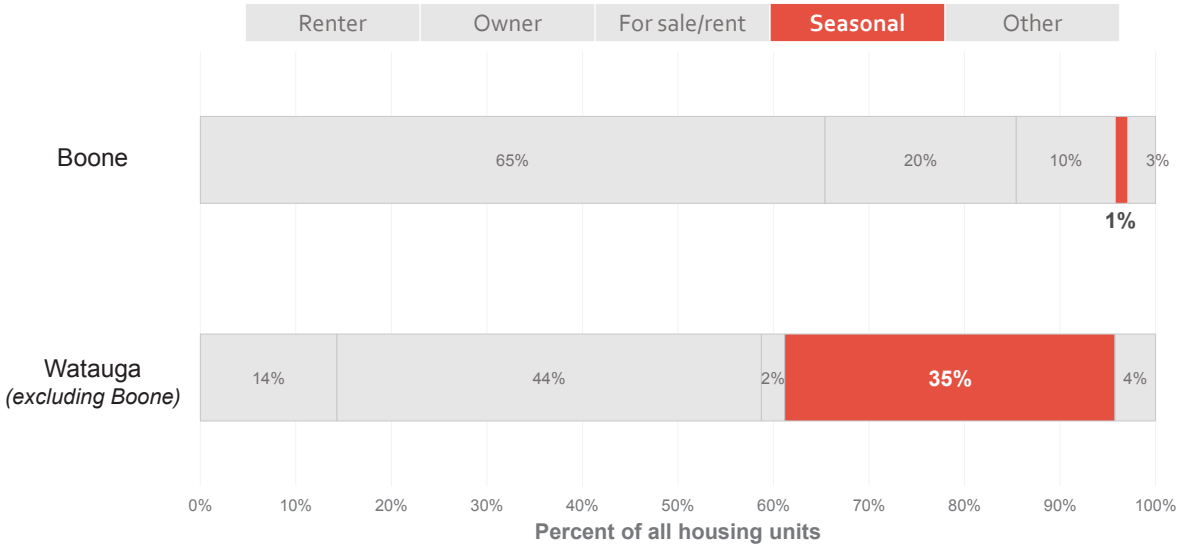


13

Source: ACS 2021 (5-year estimates)

DEVELOPMENT FINANCE INITIATIVE

Boone and Watauga have unique housing supplies

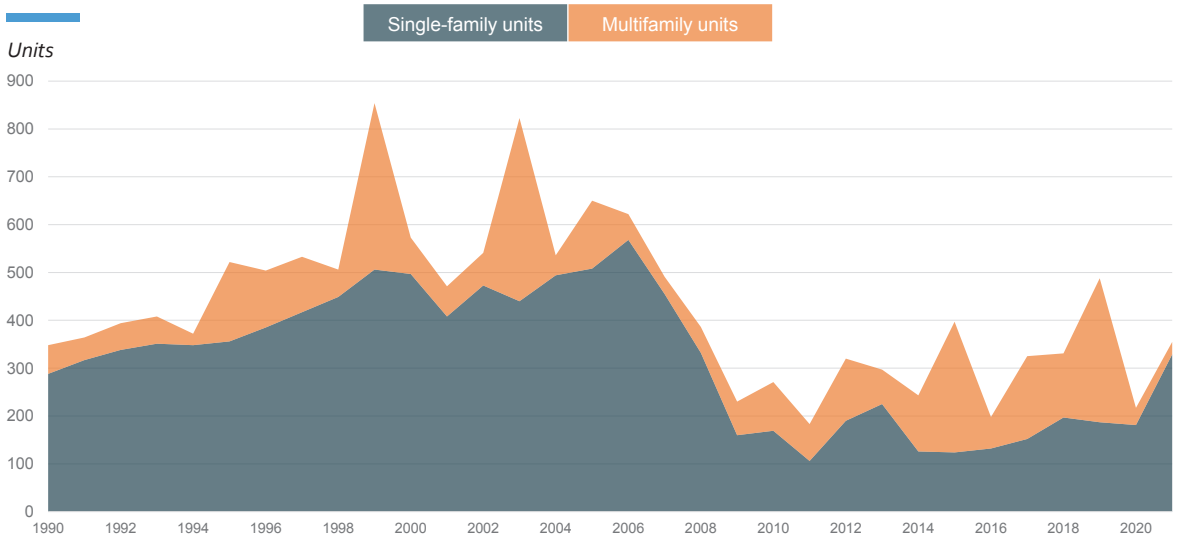


14

Source: ACS 2021 (5-year estimates)

DEVELOPMENT FINANCE INITIATIVE

New residential development countywide has not returned to levels prior to the great recession



Source: Census Building Permit Survey

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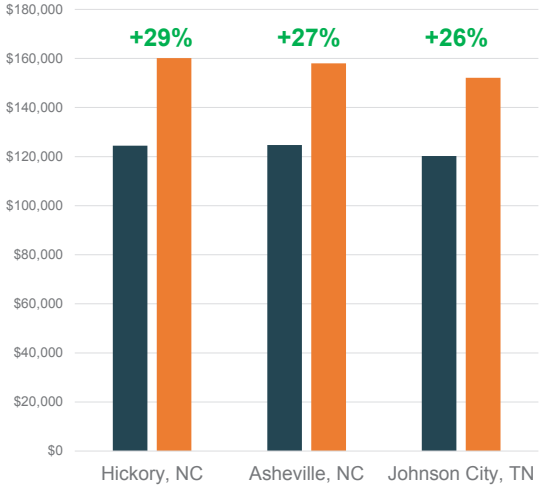
DEVELOPMENT FINANCE INITIATIVE

Households need to make nearly $150,000 to afford an average home on the market

	Jan 2021	Jan 2023	Change
Interest rate	2.6%	6.5%	+3.9%
Median home price	$310,000	$450,000	+$140,000
Down payment	$21,700	$31,500	+$9,800
Monthly mortgage costs	$1,185	$2,645	+$1,460
Monthly taxes, insurance, utilities	$784	$1,000	+$216
Annual income needed	**$77,500**	**$147,000**	**+$69,500**

Source: Zillow, St. Louis FRED, RS Means, and DFI analysis of JCHS methodology

Change in home development costs between **2019** and **2023**
(excluding land)



*Assumes 30-year fixed rate, 7% down payment with no PMI, credit score >710, maximum 31% housing costs to income

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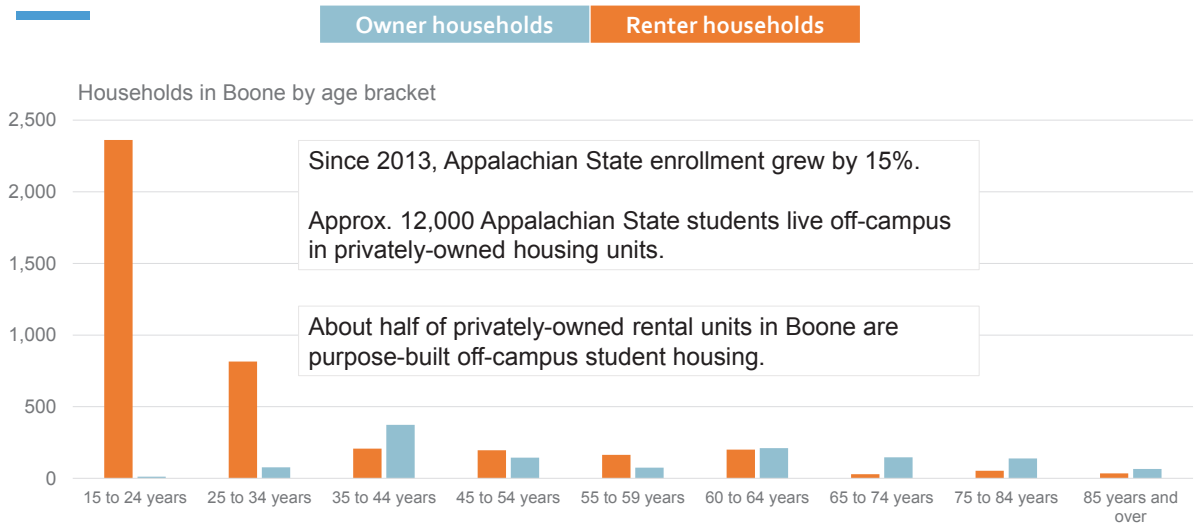
DEVELOPMENT FINANCE INITIATIVE

Housing market in Boone is dominated by younger renters



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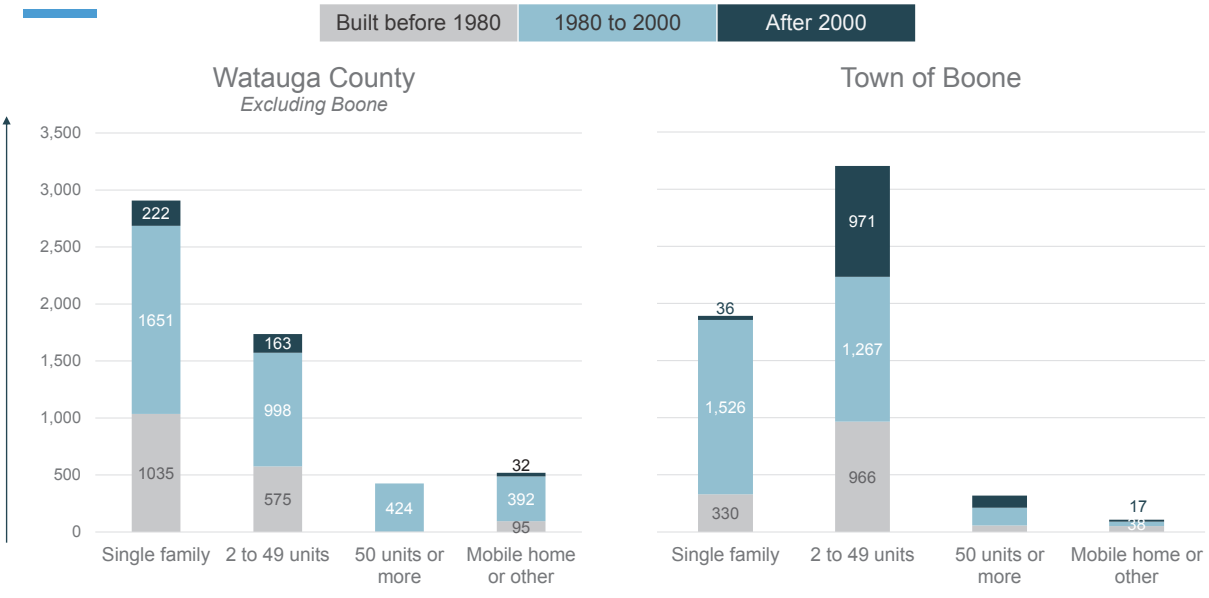
Source: ACS 2021 (5-year estimates), Appalachian State University, the University of North Carolina System, and Bowen National Research

DEVELOPMENT FINANCE INITIATIVE

Boone renters tend to live in newer multifamily units



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Renter-occupied units

DEVELOPMENT FINANCE INITIATIVE

Vacancy rates remain below 1%

Estimated vacancy rate among multifamily units

Vacancy rates increased to 7% after Skyline Villas began leasing 180 units in 2019.

Source: CoStar. Photo source: Skyline Villas.

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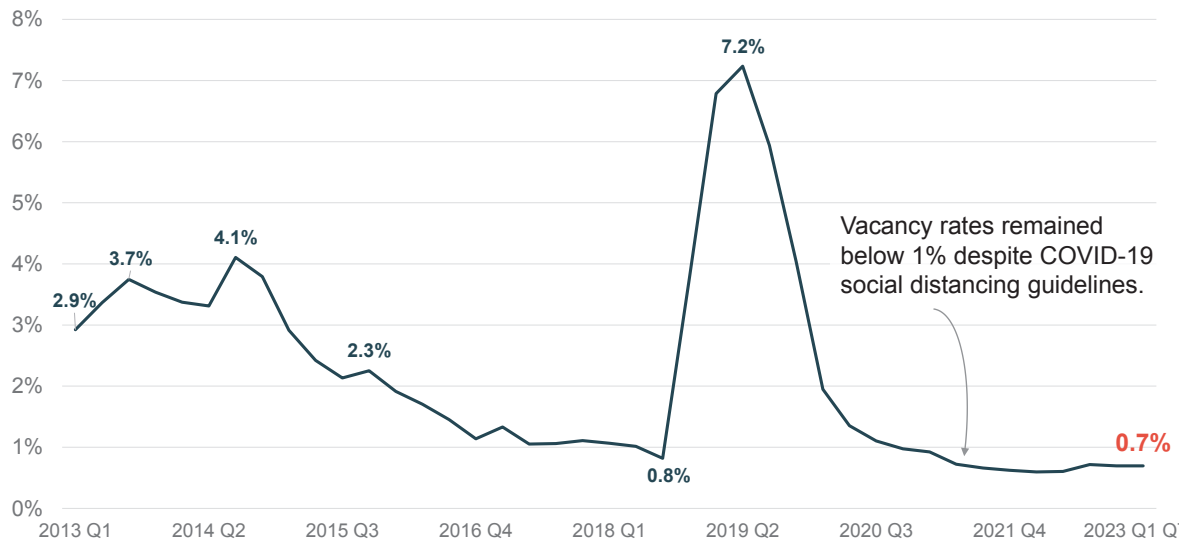
DEVELOPMENT FINANCE INITIATIVE

Vacancy stayed below 1% through COVID transitions

Estimated vacancy rate among multifamily units



Source: CoStar

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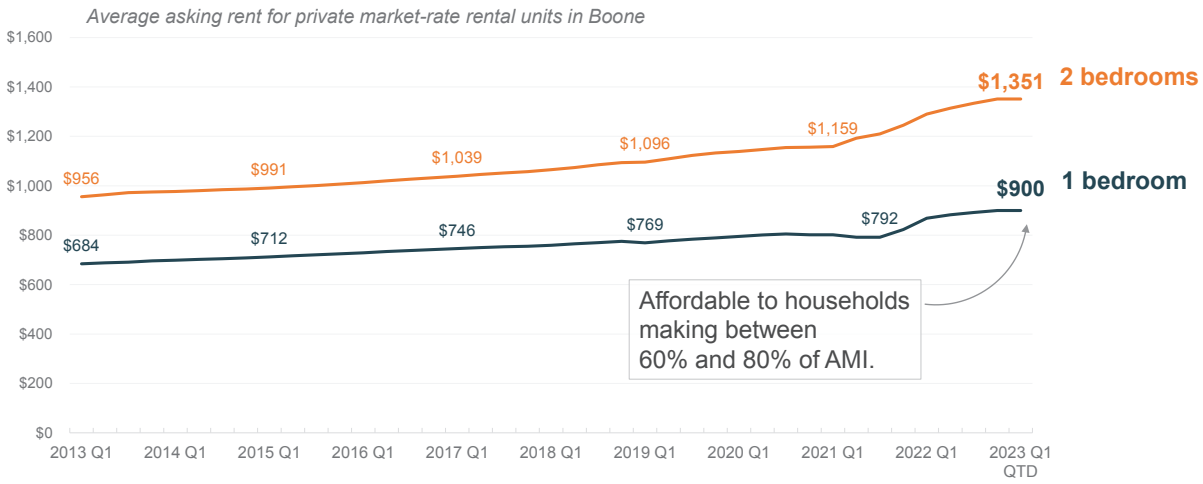
Since 2021, rents for 1- and 2-bedroom units increased by 15%



Source: CoStar & DFI survey of rental properties

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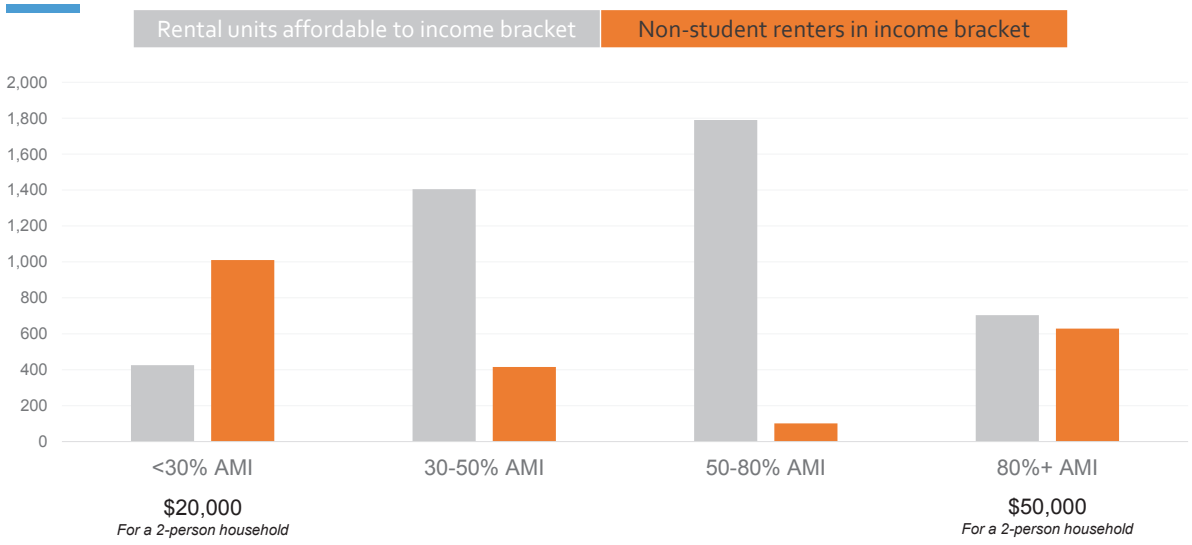
Renters are concentrated in the highest and lowest income brackets



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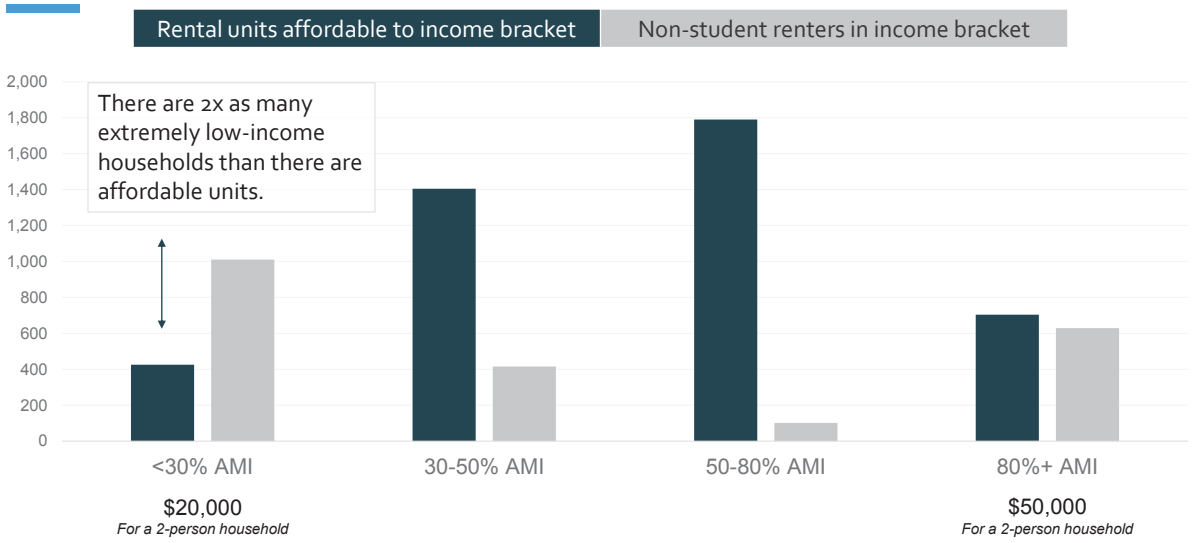
DEVELOPMENT FINANCE INITIATIVE

The market is largely affordable to renters making between 50% and 80% AMI



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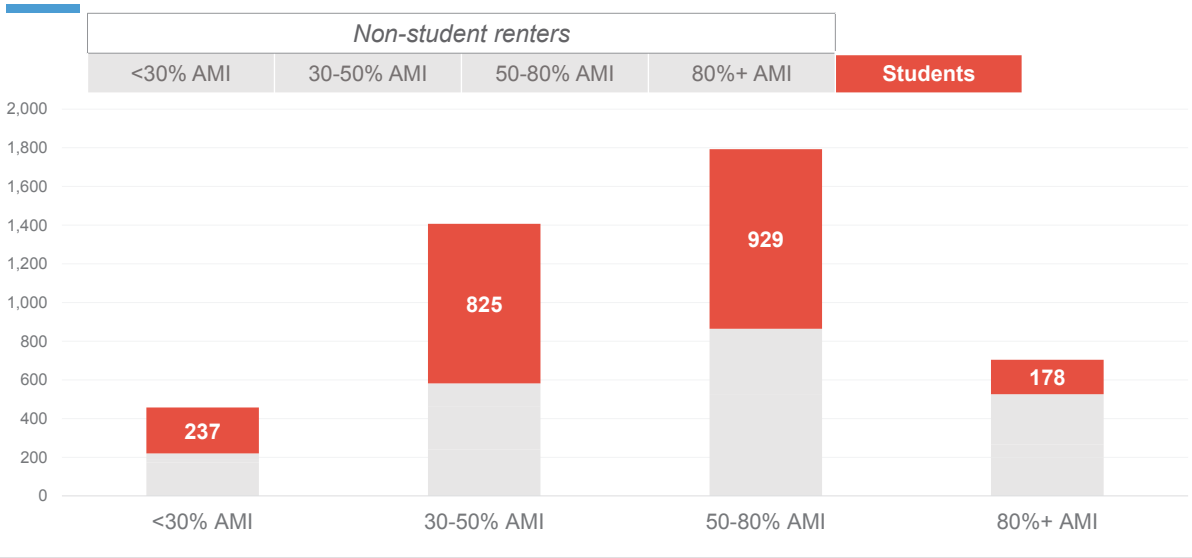
DEVELOPMENT FINANCE INITIATIVE

Students occupy over half of rental units affordable to LMI renters



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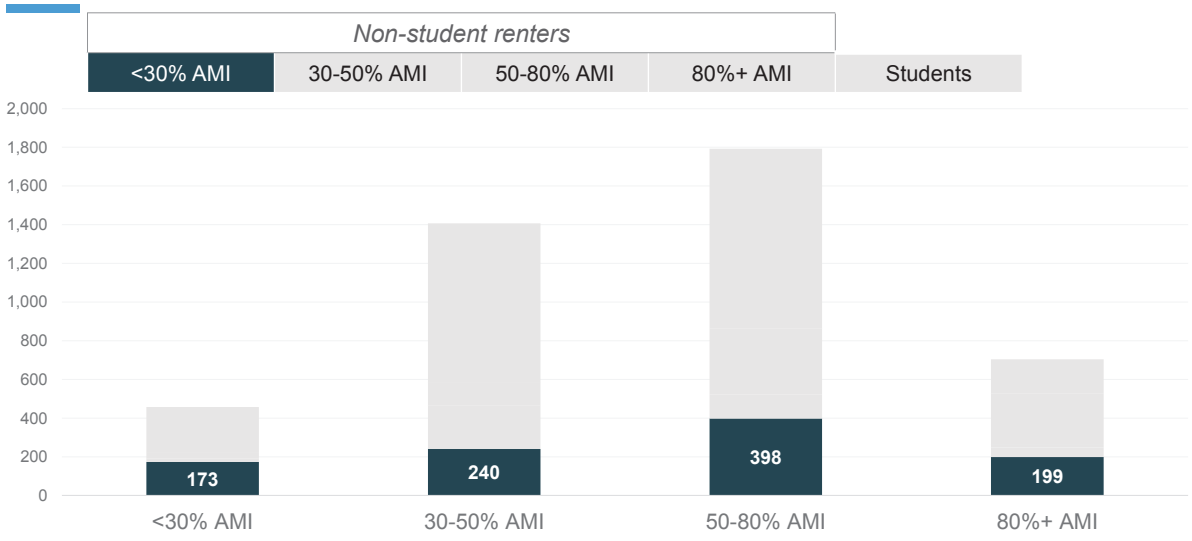
DEVELOPMENT FINANCE INITIATIVE

83% of extremely low-income renters live in unaffordable units



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Income restricted units in Boone

- No public housing. Regional housing authority manages ~2,000 vouchers.
- Of the 260 income-restricted, privately held affordable units in Watauga County, 95% are in Boone
  - 65% were built between 1980 and 2000, 35% percent built since 2000
  - Vacancy rates are below 1% with waiting lists.
- None of these units have subsidies expiring in the next 5 years

White Laurel development in Boone. 42 units of income-restricted rental housing developed in late 1990s by Northwestern Regional Housing Authority and other partners.

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Summary

- Watauga County and Town of Boone rental markets are uniquely challenging (tourism- and university-related pressures) for LMI households.
- At least **900 LMI renters** and **60 LMI owners** need housing assistance.
  - Not including approx. 8,000 employees making less than $40,000 and commuting from out of town.
- To afford the average home in Boone, a household needs an annual income of $145,000, **about double from two years ago.**
- While housing quality is not as poor as more rural counties, growing enrollment and limited new supply **drove up rents by 15% since 2021.**
- There are nearly twice as many extremely low-income renters than there are affordable units in Boone and **rental vacancy rates are below 1%.**
- Competition for affordable units is largely driven by students rather than higher income non-student renters. **At least half of units** affordable to LMI renters are likely **occupied by students**.

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DEVELOPMENT FINANCE INITIATIVE

Talking to community members about housing

- Data and maps are an important first look but have limits:
  - They often don't reflect the most current conditions (COVID)
  - They show location and ownership but not *who* occupies rental units
- Why hold conversations as part of a housing needs assessment?
  - Root the data in community history and experience
  - Better understand how community members experience the housing market
  - Identify capacity and opportunities for future work
    - Community oriented developers, non-profits/CDCs, land, etc

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DEVELOPMENT FINANCE INITIATIVE

Talking to community members about housing

- How does the data support what you already know?
- What's missing?
- How might a resident in one neighborhood or area talk about their experiences differently from another?

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