

# Planning & Zoning Decisions

Board Workshops  
Spring 2018  
David Owens or  
Adam Lovelady



UNC  
SCHOOL OF GOVERNMENT

www.sog.unc.edu

- I. Why Plan and Zone?
- II. Considerations in Zoning
- III. Rezoning Process



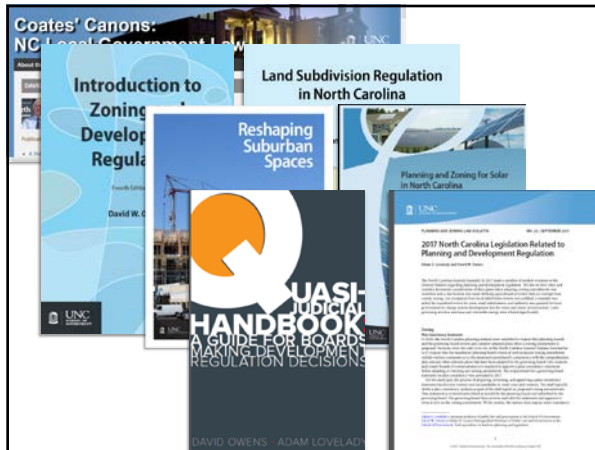
## On-Demand Training



- \$325 for entire library
- access for local government

- Introduction
- Amending the Ordinance
- Ordinance Interpretations
- Evidentiary Hearings
- Quasi-Judicial Decisions
- Variance Standards
- Special & Conditional Use Permits
- Conflicts of Interest
- Historic Preservation
- Vested Rights
- Exactions
- Spot Zoning
- Group Homes
- Adult Businesses






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#### Planning and Zoning Courses

- Foundations (Sept)
- Zoning Practice (Oct)
- Subdivision Practice (Nov)
- Zoning Officer Certification (Spring)




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### Rezoning Z-03-18

Apartment Developers, LLC seeks to rezone from Single-family (RM-1) to Multifamily (RMF)




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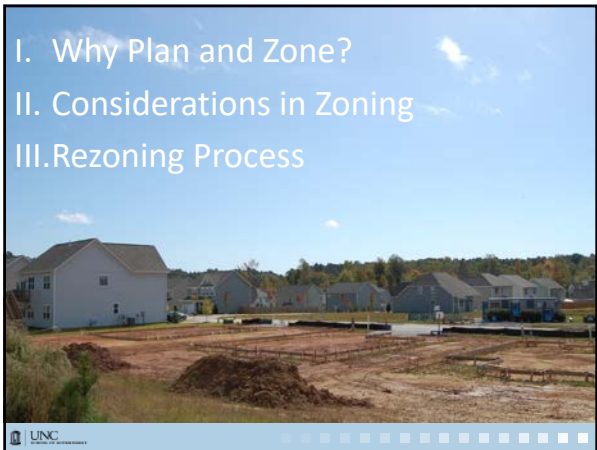
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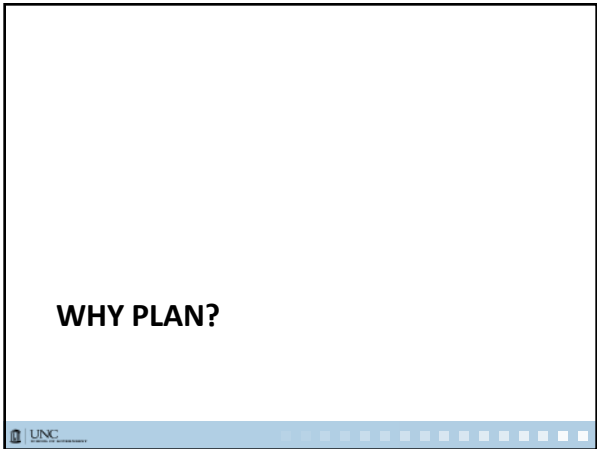
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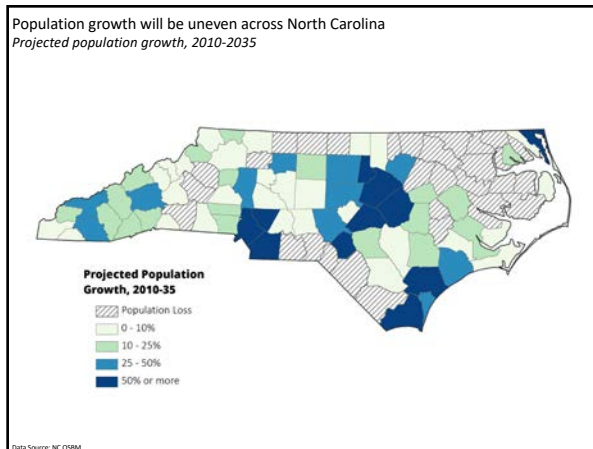
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## Public Engagement



- Community meetings
- Surveys
- Appointed boards
- Public Education
- Design workshops/charrettes
- Stakeholder outreach
- Public hearings

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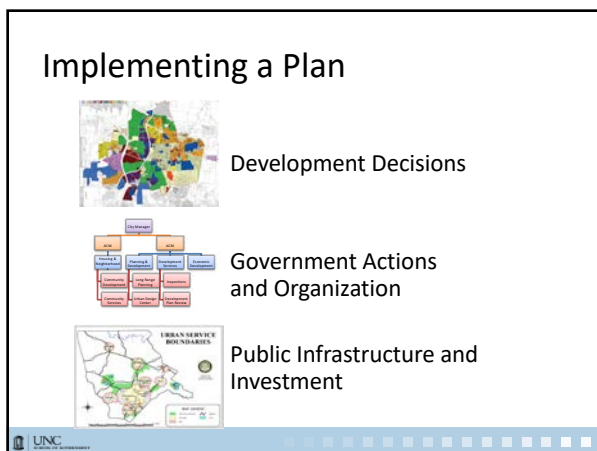
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## Planning Board Authority

- Studies of areas in and around the jurisdiction
- Determine objectives for areas
- Develop plans to reach objectives
- Recommend policies and ordinances to implement
- Advise governing board, including mandatory comment on all zoning amendments
- Other functions as directed by governing board




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## Planning Board: Optional Additional Responsibilities

- Conditional Use (or Special Use) Permits
- Preliminary and Final Subdivision Plats
- Designating Redevelopment Areas
- Board of Adjustment
- Historic Preservation Commission




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## WHY ZONE?




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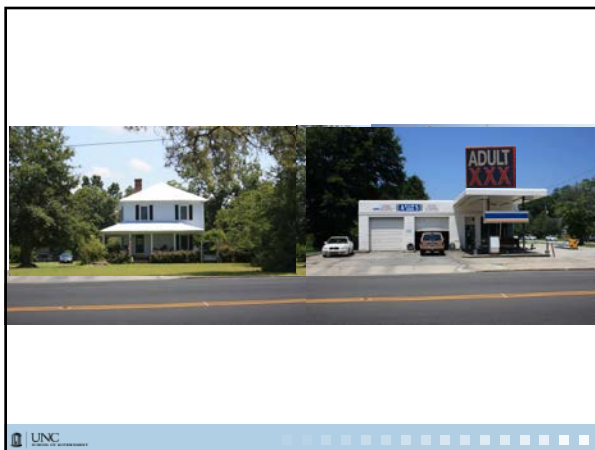
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## Considerations for Zoning

(160A-383; 153A-341)

- Public health, safety, and general welfare
- Encouraging the most appropriate use of land throughout such city
- Prevent overcrowding
- Efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements
- Lessen congestion in the streets
- Conserving the value of buildings
- Character of the district and suitability for particular uses

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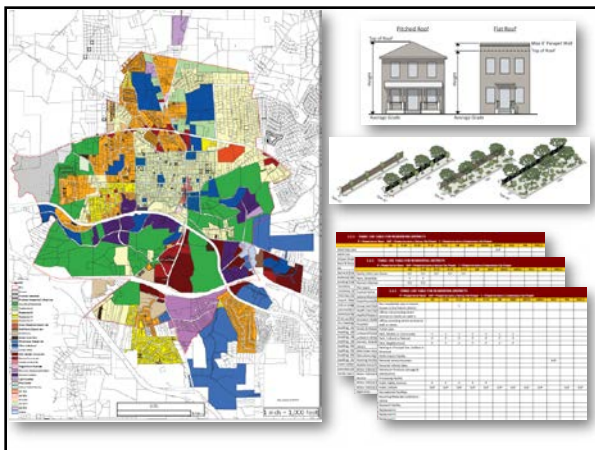
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## Conditional Zoning Limits

Only conditions needed . . .

- For ordinance/plan compliance
- To address impacts reasonably expected to be generated by project
- Mutual consent
  - Conditions may be proposed by applicant or local government
  - But conditions must be mutually approved by the applicant and local government




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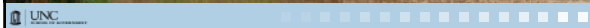
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## Do Consider: Land use impacts

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




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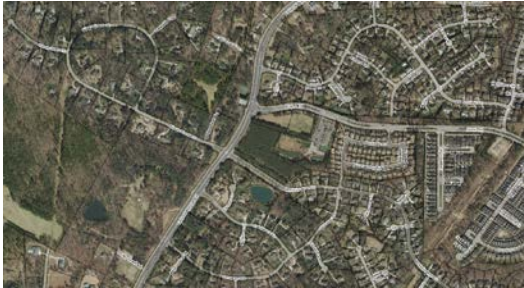
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## Do Consider: Surrounding Context




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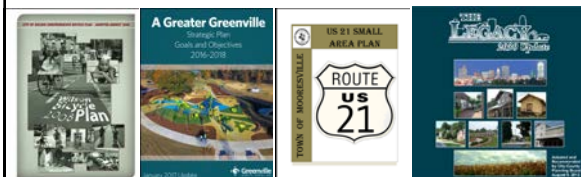
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## Do Consider: Applicable Plans




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## Do Consider: All Permissible Uses

The image shows three overlapping spreadsheets from the UNC Planning Department. The top spreadsheet is titled '2.2.1. Table of Permissible Uses in Residential Districts'. The middle spreadsheet is titled '2.2.2. Table of Permissible Uses in Commercial Districts'. The bottom spreadsheet is titled '2.2.3. Table of Permissible Uses in Industrial Districts'. Each spreadsheet lists various zoning codes and their corresponding permissible uses.

## Do NOT Consider:

Issues beyond zoning requirements

For basic zoning districts, extra conditions are unenforceable

(Remember conditions may be applied through conditional zoning or special use permits)

## Do NOT Consider:

Identity and Ownership



## Do NOT deny based on Inclusion of Affordable Housing

- City or county cannot deny land use permit based on inclusion of affordable housing
- Unlawful if “motivated in full, or any part at all, by the fact that a development or proposed development contains affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income”
- Exception for consideration of avoiding high concentrations of affordable housing




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### Legitimate Considerations

- Land use impacts on owner, neighbors, public
- Context and appropriateness of uses
- Consistency with applicable plans
- Staff and planning board recommendations (gov. board is not bound by recs)

### Illegitimate Considerations

- Issues beyond the zoning requirements
- Ownership status or identity
- Inclusion of affordable housing (except to prevent high concentrations)




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## SPECIAL USES




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## Family Care Homes



- Provides room, board, and care for up to 6 disabled persons
- Must be allowed same as single-family homes
- Includes physical, emotional, and mental disabilities (but not those dangerous to themselves or others)
- Up to half-mile separation allowed
- G.S. 168-22
- Federal protections also apply

## Agricultural Uses

In counties and municipal ETJ area, exemption for bona-fide farms and agricultural, horticultural, and silvicultural activities



## Cell Towers



- Cannot totally exclude
- Cannot regulate on health basis
- Decisions must be in reasonable time and in writing
- Can impose limits on siting
- Can impose standards: height, fencing, co-location, stealth technology, etc.
- Special rules for colocation, minor additions, small cells

## Manufactured Housing

- Cannot totally exclude from entire jurisdiction
- Cannot regulate value, age
- Can regulate location, dimension, and appearance




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## Adult Businesses



- May not totally prohibit
- May regulate secondary impacts
  - Separation requirements
  - Limits on advertising, noise, operations
  - Licensing requirements




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## Regulating Signs

- Need strong rationale for regulation
- May regulate size, type, lighting, and other characteristics
- May not regulate content of sign (very limited exceptions)




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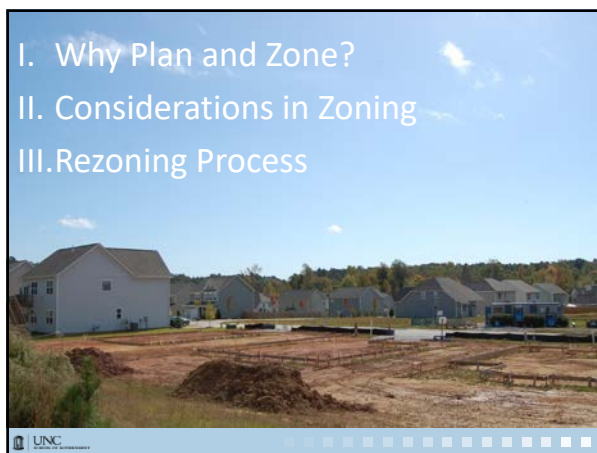
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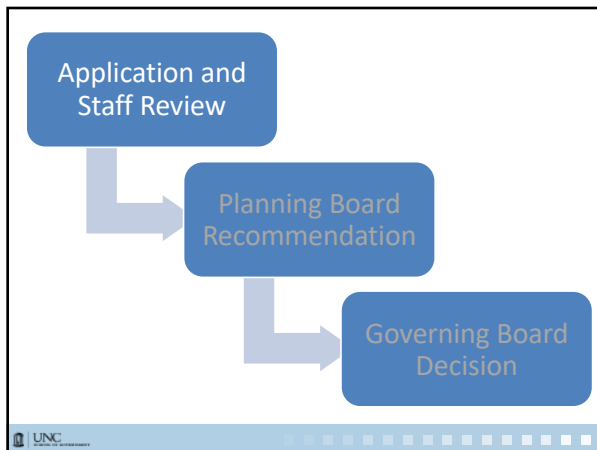
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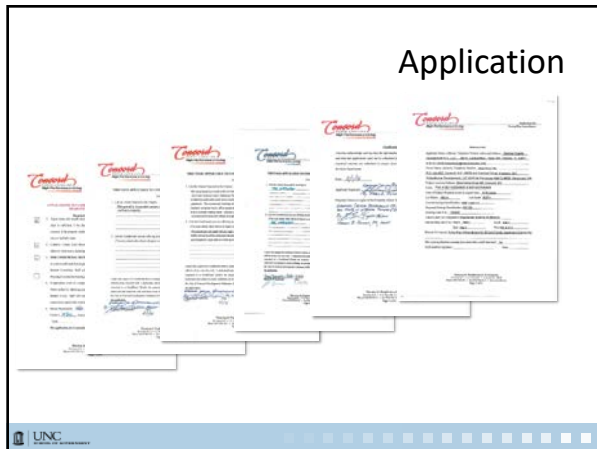
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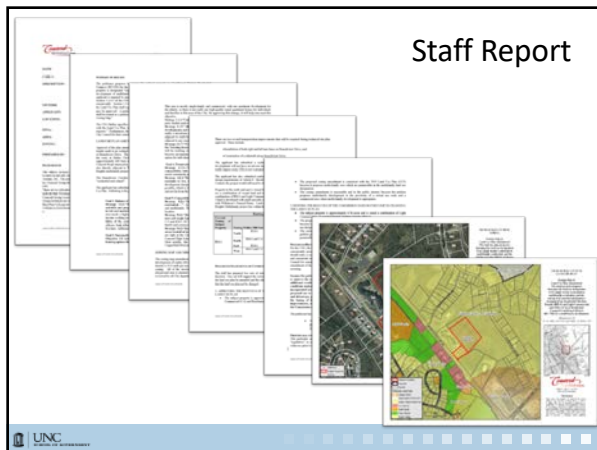
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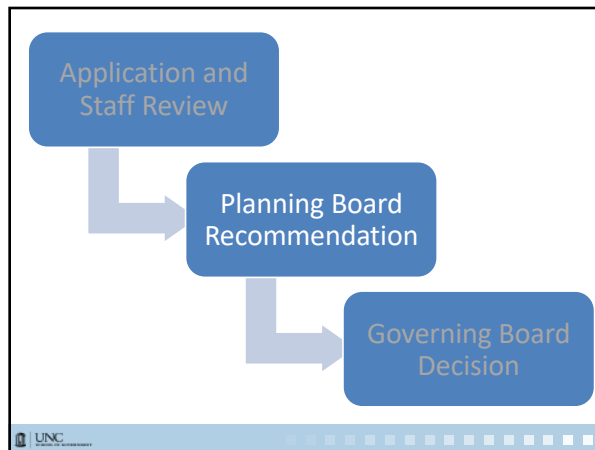
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### Planning Board Review and Comment

- Planning board referral is mandatory for all amendments
- Must allow up to 30 days from referral
- May have public notice and public hearing
- Written comment
  - Must address plan consistency
  - May address other matters
  - May be drafted in line with governing board consistency statement

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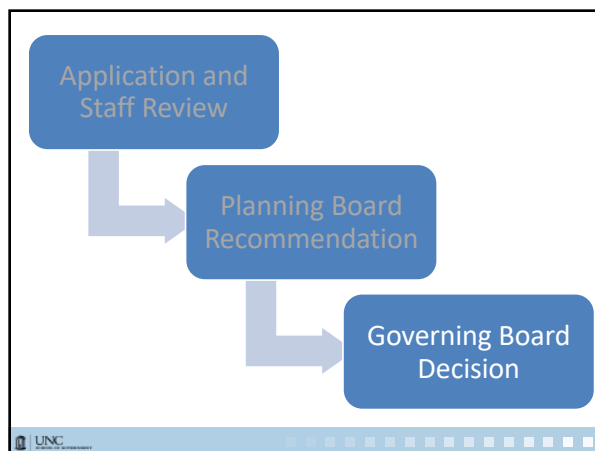
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## Notice

### Published/Newspaper Notice

- Two legal ads
- first 10-25 days before hearing
- Second in separate week

### Additional Notice for Rezonings

- Posted notice on the site
- Mailed notice to affected parties and abutting landowners (newspaper alt. available)
- Actual notice for third-party rezoning




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## Conducting the Hearing

- Reasonable rules acceptable
  - Time limits on speakers
  - Sign up sheets
  - Overall time limits
- Maintain fundamental fairness
- Due process limits for quasi-judicial do not apply
- May continue to a subsequent meeting




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## Governing Board Statement (153A-341; 160A-383)

- Must adopt a statement about the consistency between the amendment and the comp plan
- Prior to adopting or rejecting any zoning amendment
- May not require any additional application for plan amendment
- Three options for the statement (next page)




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## Options for Consistency Statement

1. Approving the amendment and describing its consistency with the comp plan
  2. Rejecting the amendment and describing its inconsistency with the comp plan
  3. Approving the amendment and the following
    - Comp plan is deemed amended
    - Explanation of changed circumstances warranting amendment
- All statements must also state why the action is reasonable and in the public interest




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## Conflicts of Interest

Member may not participate if they have a . . .

“Direct, substantial, and readily-identifiable financial interest” in the outcome of the zoning decision




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## Questions

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Coates' Canons Local Government Blog  
<http://canons.sog.unc.edu/>



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