



Town Council Meeting:

Rewriting Our Rules – A Land Use Management Ordinance (LUMO) Update

Planning Staff:

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Town Council Work Session Date:

September 23, 2024

Overview

During the September 23, 2024, Council Work Session, staff will provide updates and seek input on the following:

1. Equity Analysis
2. Affordable Housing Incentives

1. Equity Analysis

Racial Equity Analysis of Land Use Procedures

Staff are conducting a racial equity analysis of the Town's land use rules, policies and procedures. We shared the first phase of this analysis (which focused on general land use and zoning rules) during the [April 24, 2024, Council meeting](#)¹. The second phase of the analysis focuses primarily on land use procedures and is attached for Council's review.

The attached Racial Equity Analysis includes three parts:

1. A Land Acknowledgement;
2. An analysis of the racial impacts and root causes of inequity related to land use procedures in Chapel Hill; and
3. An assessment of our current land use procedures based on the American Planning Association (APA) [Equity in Zoning Policy Guide](#)² and a set of recommendations for the draft LUMO. Many of the recommended reforms reflect or reinforce topics that Council has discussed over the last year.

Of particular note are recommendations related to the following topics:

1. **Administrative Approvals:** Staff recommend reassigning authority for the following administrative land use decisions to the Town Manager:
 - Major and minor subdivisions
 - Site plan reviews
 - Alternate buffers
2. **Mailed Notices:** Staff recommend modifying our procedures for mailed notices by:
 - Formalizing notification requirements for projects reviewed by Town Council;
 - Encouraging mailed notices to both property owners and occupants;;

¹ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6636497&GUID=45D24D2F-25AA-4384-BD33-0E88466F0BAB&Options=&Search=>

² <https://www.planning.org/publications/document/9264386/>

- Reducing the required notification radius for new development in the town’s Focus Areas; and
- Adopting state-approved mass-notification procedures for large-scale zoning map changes.

Updating Residential Occupancy Limits

Staff Recommendation: *Increase occupancy limits for unrelated individuals to be consistent with the State Building Code.*

The APA Equity in Zoning Policy Guide recommends that communities adopt more expansive and inclusive alternatives to the term “family” and avoid standards that may have a disproportionate impact on vulnerable communities.³ In our April 24, 2024, [memo to Council](#),⁴ we shared an analysis of how the current LUMO definitions of family and occupancy limits align with the APA policy guidance. Our recommendation to update residential occupancy limits is based on that analysis.

LUMO and the State Building Code both define “family” in relatively narrow terms that may not fully reflect the diversity of modern households. LUMO compounds the impact of this narrow definition by only allowing 4 people to live together if they do not meet the definition of a “family.” In contrast, the State Building Code allows up to 8 people to live together if they do not meet the definition of “family.”⁵

Difficulties in enforcing the Town’s occupancy limits also create a potential for disproportionate and inequitable impacts. The Town’s restriction was adopted to mitigate the impacts of university-oriented rental housing. However, Town code enforcement staff have consistently found that effectively enforcing this limit is almost impossible. Enforcement tends to be the most difficult for properties near campus. As a result, the homes that are the most likely priorities for enforcement are oftentimes the least likely to be impacted by the rules. Instead, the burden of this rule has the potential to fall on households that are not fully aware of the limitations on the Town’s enforcement abilities or – for a variety of reasons – are particularly averse to running afoul of the law or drawing the attention of authorities.

2. Affordable Housing

Staff Recommendation: *Replace the Town’s Inclusionary Zoning Ordinance with an incentive-based program that supports affordable housing development.*

This shift can place the Town on more solid legal footing, facilitate more by-right housing production, and allow the Town to secure affordable housing agreements from smaller developments that cannot bear the cost and risk associated with the conditional zoning process.

³ APA Equity in Zoning Policy Guide, Permitted Use Policy 6 (p. 23)

⁴ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6636497&GUID=45D24D2F-25AA-4384-BD33-0E88466F0BAB&Options=&Search=>

⁵ See Chapter 2 of the North Carolina State Building Code: Residential Code (available at <https://codes.iccsafe.org/content/NCRC2018P2/chapter-2-definitions>)

Relationship to Earlier Analysis

In our April 24, 2024, [memo to Council](#)⁶, we explained that an incentive-based program could not effectively replace the Town's ability to negotiate for affordable housing through the conditional zoning process. That conclusion still stands. The incentives recommended here are intended for smaller development projects that do not meet the threshold to go through the conditional zoning process. As such, these incentives would complement – but not replace – conditional zoning.

Affordable Housing Incentives

The proposed incentive program is tiered to address different types of homebuilders. The specific affordability targets associated with each tier are still under consideration.

The lower target is consistent with current policy and is intended to address typical market-rate builders that may be able to include affordable units in their development.

The higher target is intended to address mission-oriented builders like Habitat for Humanity and EMPOWERment and builders that specialize in Low-Income Housing Tax Credit (LIHTC) projects. While these builders typically develop projects that are 100 percent affordable, setting the affordability target lower than 100 percent would allow for more flexibility to explore creative partnerships and development types.

Potential incentives for each affordability target are discussed below. Table 1 indicates the general type and magnitude of incentives being considered. However, the affordability targets and the specific values associated with each incentive are subject to change based on further analysis and engagement with homebuilders and affordable housing stakeholders.

Affordability Target	Lower Target	Higher Target
By-Right Unit & Floor Area Bonus	60% increase	150% increase
FAR Bonus	60% increase	100% increase
Height Bonus	60% increase *	60% increase *
Setback and Landscape Buffer Reductions	25% decrease	50% decrease
Resource Conservation District (RCD) Buffer Reduction	N/A	Exempt from Upland Zone Buffer* *
Units Per Lot Bonus	N/A	Up to 4 units allowed on any lot on which 2 units are permitted by-right.

Table 1: Potential Affordable Housing Incentives

* Not available in Downtown zoning districts

** Only available under certain circumstances detailed below

By-Right Unit and Floor Area Bonus

⁶ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6636497&GUID=45D24D2F-25AA-4384-BD33-0E88466F0BAB&Options=&Search=>

At baseline, the draft LUMO is likely to allow 30 units (or 30,000 square feet) of residential development by-right. A bonus related to this threshold would allow administrative approval of larger projects so long as they meet the affordability targets.

For projects that meet the lower affordability target, this bonus would allow up to 48 units (or 48,000 square feet) of residential development by-right. Allowing this size of development through an administrative approval would be well-aligned with the historical trends for conditional zoning in Chapel Hill. As outlined in our May 15, 2024, [memo to Council](#)⁷, of the 21 residential CZs approved by Council, 19 have included 47 or more units. The remaining two CZs (PEACH Apartments with 10 units and Gattis Court with 4 units) were fully affordable projects pursued by EMPOWERment and Habitat for Humanity. In this context, the lower affordability target would help to fill the gap between the proposed by-right threshold of 30 units and the historical lower limit of conditional zoning projects.

For projects that meet the higher affordability target, this bonus would allow up to 75 units (or 75,000 square feet) of residential development by-right. This scale of development is particularly well-suited for homebuilders that specialize in LIHTC projects. A typical LIHTC project is approximately 50 units, but that may increase as the state's LIHTC funding criteria are updated.

FAR Bonus

Floor Area Ratio (FAR) limits the amount of floor area that can be built on a site based on the size of the site⁸. Lower FARs generally result in low density, rural or suburban development patterns while higher FARs can support more urban development patterns.

With Chapel Hill's continued growth, the inventory of large undeveloped lots is limited. As a result, development and redevelopment of smaller lots is likely to become more common. However, FAR is often the limiting factor for new development on smaller lots. Constraints on small-lot development can often push developers to wait until they have assembled enough contiguous lots to support an economically feasible project. This dynamic can increase project costs and slow down the production of new housing. An FAR bonus could allow homebuilders that provide affordable housing to make more efficient use of smaller lots around town.

Height Bonus

⁷ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6659185&GUID=4FBB2F54-B4C7-4118-99C4-588AC3257690&Options=&Search=>

⁸ Floor Area Ratio controls building size based on the formula: **Buildable Floor Area = Lot Size x Floor Area Ratio**. For example, a 1-acre (43,560 square feet) lot subject to a floor area ratio of 1.97 (the FAR currently allowed in the Town Center-2 zoning district) would be able to support a building with a maximum floor area of 85,813 square feet. If the same lot were subject to a floor area ratio of .076 (the FAR currently allowed in the Residential-1 zoning district), it would be able to support a building with a maximum floor area of just 3,310 square feet.

Like an FAR bonus, a height bonus can help homebuilders make more efficient use of their land. Buildings that take advantage of a height bonus would still be subject to transitional height limitations that limit building heights near residential zoning districts and other proposed massing restrictions (like mandatory step backs of building facades) intended to address their visual impact and relation to neighbors.

Height bonuses would not be available in downtown because the height limits there are already relatively permissive.

Setback and Landscape Buffer Reductions

Setbacks define how close buildings can be to the street and property lines. Reducing setbacks can provide additional buildable area on a lot. Where a reduction in setback would conflict with land buffer requirements, the buffers can also be reduced accordingly.

RCD Buffer Reduction

Under the proposed incentive for projects meeting the higher affordability target, RCD buffers for perennial streams would be reduced from 150 feet to 100 feet if:

- The subject stream is not considered a high priority wildlife habitat or habitat corridor based on available state and regional conservation data;
- The RCD buffer is not associated with a regulatory floodplain; AND
- The homebuilder treats a portion of any existing impervious surface on the site.

This sort of context-sensitive approach to RCD buffers acknowledges that stream buffers and dense urban development are *both* critical tools to protecting the environment.

The RCD creates buffers around streams and waterbodies. The Town's RCD buffers for perennial streams are at least 150 feet wide. In contrast, state-mandated buffers for perennial streams range from 50 feet to 100 feet wide.

Habitat Impacts

State-mandated buffers are intended to protect water quality and stream health. The Town's larger RCD buffers have the same purposes and also aim to protect wildlife habitat. Therefore, it is important to consider where Chapel Hill has meaningful wildlife habitat that needs protection. Doing so can help to prioritize conservation of meaningful habitats within town while also facilitating the sort of dense urban development that reduces growth pressure on more pristine rural lands.

The NC Wildlife Commission's [Green Growth Toolbox](#)⁹ acknowledges that this sort of balanced approach may be necessary in some communities and recommends using data compiled by the [North Carolina Natural Heritage Program](#)¹⁰ to prioritize stream buffers. This data indicates that some perennial streams in Chapel Hill are not part of high priority wildlife habitats or corridors. For streams of this sort, reducing the RCD

⁹ <https://www.ncwildlife.org/conserving/ggthandbook2023medresfpdf/open>

¹⁰ <https://ncnhde.natureserve.org/content/map>

boundaries can help to support urban density while also maintaining necessary protections for water quality and stream health.

Stormwater Impacts

Allowing development in the outermost portion of the RCD buffer has the potential to increase stormwater runoff from a site. This risk can be mitigated using existing rules for stormwater controls and by incentivizing additional stormwater controls in some circumstances.

Because of limitations in state law, the Town can only require stormwater controls for new impervious surface on a property (i.e., the net increase of impervious surface caused by new development).

On development sites with no existing impervious surface, this limitation is not a major concern. All of the impervious surface created by new development – including impervious surface in the RCD – would need to be treated.

Development sites with a significant amount of preexisting impervious surface will need special consideration. State law limitations could result in untreated impervious surface being constructed in the RCD. To avoid this outcome, voluntary treatment of some preexisting impervious surface will need to be a precondition to qualifying for this incentive.

Units Per Lot Bonus

This bonus would allow construction of four dwelling units on any lot on which a duplex would be allowed. It is likely that the bonus would be used primarily to build 100 percent affordable projects. However, keeping the eligibility threshold for this bonus below 100 percent maintains some flexibility for homebuilders interested in pursuing novel development options.

A recent Habitat for Humanity project – Gattis Court – serves as a good example of how this bonus could clear the path for more *genuinely affordable* missing middle housing. Habitat for Humanity recently undertook a costly and time-intensive conditional zoning process to allow a development of just four units. With this bonus in place, more lots could be used to build affordable fourplexes by-right.

Monitoring Results

The proposed incentive program is among the most “experimental” elements of the new LUMO. Staff will need to closely monitor the program’s impacts and propose adjustments as necessary.

Staff will track metrics such as:

- Total development applications eligible for bonuses
- Number and location of applications claiming bonuses
- Type and magnitude of bonuses claimed by applications
- Number of affordable units attributed to the bonus program

Appendix A: Prior Council Meetings and Materials

June 17, 2024 – [Council Regular Meeting](#)

- Meeting Topics
 - Neighborhood Conservation Districts
 - Missing Middle Housing
 - Design and Dimension Standards
- [Meeting Recording](#) (Discussion begins at 00:52:10)
- Recommended documents to review:
 - [Staff Memo](#)

May 15, 2024 – [Council Regular Meeting](#)

- Meeting Topics
 - Administrative Approvals
 - Conditional Zoning Process Improvements
 - Update on WASMPBA Planning Process
- [Meeting Recording](#) (Discussion begins at 00:58:00)
- Recommended documents to review:
 - [Staff Memo](#)

April 24, 2024 – [Council Regular Meeting](#)

- Meeting Topics
 - Racial Equity Analysis
 - Affordable Housing Economic Analysis
- [Meeting Recording](#) (Discussion begins at 03:04:56)
- Recommended documents to review:
 - [Staff Memo](#)

March 13, 2024 – [Work Session](#)

- Meeting Topics
 - Community Benefits
 - Economic Constraints
- [Meeting Recording](#) (Discussion begins at 01:17:30)
- Recommended documents to review:
 - [Staff Memo](#)
 - [Typology Resource Guide](#)

February 21, 2024 – [Work Session](#)

- Meeting Topics
 - Local Zoning Authority
 - Student Housing
 - Drive-Throughs and Shelters
 - Environmental Policy
- [Meeting Recording](#) (Discussion begins at 03:25)
- Recommended documents to review:
 - [Staff Memo](#)

January 17, 2024 – [Work Session](#)

- Meeting Topics
 - Missing Middle Housing
 - Subdivision Standards
 - Flag Lots
- [Meeting Recording](#) (Discussion begins at 49:05)

- Recommended documents to review:
 - [Staff Memo](#)

November 13, 2023 – [Work Session](#)

- Meeting Topics
 - Proposed Zoning Districts
 - Building and Site Design Standards
 - Affordable Housing Incentives
- [Meeting Recording](#) (Discussion begins at 05:45)
- Recommended documents to review:
 - [Staff Memo](#)
 - [Draft Zoning District Proposal](#)
 - [Briefing Book: Feasibility of Density Bonuses to Support Community Benefits](#)

October 18, 2023 – [Work Session](#)

- Meeting Topics
 - By-Right Development
 - Development Intensity in FLUM Focus Areas
 - Mixed-Use Districts
 - Parking Minimums
 - Regulations for Single-Family Homes
- [Meeting Recording](#) (Discussion begins at 04:36)
- Recommended documents to review:
 - [Staff Memo](#)

June 21, 2023 – [Information Item](#)

- Recommended documents to review:
 - [Summary Report](#)
 - [Plan Alignment Memo](#)
 - [LUMO Audit Report](#)