



Town Council Meeting:

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

Planning Staff:

Britany Waddell, Judy Johnson, Charnika Harrell, Katherine Shor, and Tas Lagoo

Planning Commission Meeting Date:

November 19, 2024

Overview

During the November 19, 2024, Planning Commission Meeting, staff will provide updates and seek input on the following:

1. Equity Analysis
2. Improving Land Use Decision-Making

1. Equity Analysis

Staff continue to analyze the Town's land use rules, policies, and procedures with a racial equity lens. We shared our initial analysis (which focused on general land use and zoning rules) during the [April 24, 2024, Council meeting](#)¹. The next phase of our analysis focuses on land use procedures and is attached for Planning Commission's review.

We recommend a variety of changes to LUMO that respond to Council goals, stakeholder feedback, and best practices for equitable development. With an updated LUMO, Council has the opportunity to advance racial equity, streamline the development review process, and remove barriers to entry in our land use procedures.

The attached Equity Analysis presents several recommendations, including:

- Formalize a requirement for public information meetings related to zoning map amendments.
- Use plain language when it will not compromise the legal integrity of the ordinance.
- Use clear and objective administrative review criteria.
- Remove mention of "character" as a criterion for applying land use rules.
- Limit the use of qualifiers like "where necessary" and "as appropriate."
- Authorize Town staff to make administrative decisions regarding: Major and Minor Subdivisions, Site Plan Reviews, and Alternate Buffers.
- Clarify the role of Community Design Commission to review and comment on building elevations and lighting plans.

2. Improving Land Use Decision-Making

A key element of updating the LUMO will be improving how land use decisions are made. As identified by the APA's Equity in Zoning Policy Guide, there are clear equity-driven reasons to promote more efficient and predictable decision-making. There are also significant

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

practical and organizational benefits from improving Town processes. As discussed below, the Town has an opportunity to improve land use decision-making in multiple ways.

A. Special Use Permits

Staff Recommendation: *Give the Board of Adjustment authority to review and approve all new applications for Special Use Permits.*

Special Use Permits (SUP) are granted through a quasi-judicial process that tightly controls the types of conditions that can be imposed on new development and limits the factors that can be considered when judging a development application.

For several decades, SUPs were one of the Town's only mechanisms for approving projects that were considered inappropriate for an administrative approval. However, SUPs have become far less common since the Town formally adopted Conditional Zoning in 2017. The LUMO rewrite is an opportunity to be more deliberate about what types of projects go through the SUP process and what types of projects go through the Conditional Zoning process. It is also an opportunity to rethink who makes the final decisions in each of the two processes.

Unlike Town Council, the Board of Adjustment (BOA) only makes quasi-judicial decisions. The BOA is staffed with its own attorney and is well-versed in the procedural and substantive limitations of quasi-judicial decision-making. Since the BOA never has to switch between legislative and quasi-judicial decision-making, there is little risk of "cross contamination" between the two very different sets of rules that govern each type of process.

Neighboring communities vary in determining the final decisionmaker for SUPs. In Raleigh, Cary, and Apex, the BOA is responsible for all SUPs. Morrisville and Durham give their governing boards authority over SUPs. Meanwhile, Carrboro uses a tiered system in which the BOA and Town Council are each responsible for some types of SUPs. Chapel Hill currently employs a tiered system.

If the BOA takes on responsibility for all new SUPs, the Town Council will still be responsible for reviewing and approving major modifications to previously approved SUPs.

B. Concept Plan Review

Staff Recommendation: *Eliminate Concept Plan Reviews.*

Chapel Hill's Concept Plan Review process is unusual. Neighboring jurisdictions do not have similar procedural requirements and the process is not explicitly authorized under State law.

Rethinking Concept Plan Review is an opportunity to advance a Complete Community goal of moving away from project-by-project decision-making. The Town Council could consider scaling back Concept Plans by eliminating them altogether, narrowing the range of projects that require them, or making them an optional step.

Concept Plans give the public and Town Council an additional role in the development review process but there is not clear consensus on whether this extra involvement is to the Town's benefit or detriment. Concept Plans can allow Council and the community to learn about projects early on and flag potential shortcomings. In doing so, they can also allow developers to get an early sense of the level of support a project has among Town Council members and the public. However, Concept Plans increase the cost of developing in Chapel

Hill and reinforce the notion that Town Council and the public *should* play a major role in project-by-project decision making.

Ongoing improvements to the Conditional Zoning process will likely make Concept Plans less helpful in the future. The Town has been steadily working to right-size the Conditional Zoning process by requiring less detailed site plans and other application materials from developers. As a result, the level of detail expected at the earlier Concept Plan stage is also likely to decrease. As Concept Plans become more abstract, they will likely become less helpful tools for vetting projects and sharing information with the public.

Informal staff consultations already provide developers with an early and high-level assessment of their projects. Developers have shown a willingness to consult with Town staff when there is a clear value-add. In recent years, Town staff – particularly the Town’s Urban Designer – have taken on a larger role in advising developers during the very early stages of a project. Staff involvement can help to improve a project’s site design and overall alignment with the Comprehensive Plan, Future Land Use Map, and other high-level expectations set by the Town.

C. Administrative Approvals

Staff Recommendation: *Shift responsibility for most administrative land use decisions to Town staff.*

Administrative land use decisions are designed to be almost mechanical in nature. If an applicant meets the criteria set out in the LUMO and other applicable regulations, the applicant *must* receive an approval from the Town. Whether it is staff, Council, Planning Commission, or the Community Design Commission (CDC), the entity making the final decision on the application is not supposed to make subjective decisions or consider public opinion or broader policy objectives that are not directly related to LUMO requirements.

However, when appointed or elected bodies make administrative decisions (which can only occur in a public hearing), it can create an expectation that public opinion or broader policy objectives *are* relevant to the decision at hand. This dynamic creates risk for a variety of problematic outcomes:

- As noted in the APA Equity in Zoning Policy Guide, making administrative decisions in public hearings can lead to inequitable decision-making by introducing discretion and bias into the process.
- Strongly voiced public opinion can make it difficult for decisionmakers to act impartially.
- Community members that attend public hearings under the reasonable assumptions that their opinions on an administrative decision should be considered can be left frustrated and with diminished trust in Town government.

Town staff are uniquely suited to handle administrative decisions because they have more technical proficiency with the relevant regulations and can conduct Town business outside of public hearings.

As explained below, we recommend shifting responsibility for the following administrative decisions to staff: **site plans, subdivisions, and alternate buffers.**

Site Plans

Many projects that do not need approval from the Town Council must still receive site plan approval from the Planning Commission. This requirement applies to:

- Residential development with 5 or more units;
- Commercial development expansion greater than 2,500 square feet or 15 percent of existing floor area;
- Addition of more than 10 parking spaces or 15 percent of existing parking spaces;
- Land disturbance of more than 10,000 square feet of land or 15 percent of existing cleared land;
- Some changes in use (regardless of whether physical changes are made).

Planning Commission is obligated to make its decision on a site plan application based solely on whether the application is compliant with the LUMO. In most cases, Planning Commission's decision is informed almost exclusively by Town staff analysis.

Giving Town staff authority over site plan reviews would allow the process to be folded into existing staff-led reviews that check for compliance with LUMO.

The Northside and Pine Knolls Neighborhood Conservation Districts (NCDs) require Planning Commission review of site plans for demolitions and some construction projects for single-family and multi-family development. At this time, staff are not recommending any changes to these NCD-based requirements.

Subdivisions

Town Council and Planning Commission are responsible for a wide range of subdivision approvals. When considering a subdivision application, both bodies are legally obligated to base their decision solely on whether the application complies with the LUMO.

Giving Town staff authority over all subdivision applications would bring Chapel Hill's practices in line with those of many similarly sized North Carolina communities. A 2018 survey conducted by the UNC School of Government found that, among municipalities with a population greater than 25,000 residents, **staff approval of subdivisions was the most commonly used approach**. As shown in the table below, heavy reliance on Planning board or Governing board approval of subdivisions tends to be higher in municipalities that are significantly smaller than Chapel Hill.

Population size	Total respondents	Individual staff person (%)	Technical-review committee (%)	Planning board (%)	Governing board (%)	Other (%)
Municipalities	211	18	13	17	44	7
1-999	38	18	5	18	50	8
1000-9999	106	21	11	18	46	4
10,000-24,999	36	11	14	11	47	17
25,000+	31	16	29	16	26	6
Counties	70	20	11	44	14	10
1000-24,999	16	19	0	50	25	6
25,000+	54	20	15	43	11	11
All jurisdictions	281	19	13	23	37	8

Source: UNC School of Government: <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/PZLB%2030.pdf>

Alternate Buffers

Currently, the CDC can allow developers to install alternatives to landscape buffers required by LUMO. The alternate buffers must provide a degree of buffering and screening equivalent to or exceeding that required by LUMO. Typically, an alternate buffer involves the use of fences or more dense plantings.

Town staff with expertise in urban design and landscape architecture are fully qualified to make the determinations required to approve an alternate buffer.

D. Minor Works Exemption for Single-Family and Two-Family Homes

Staff Recommendation: *For single-family and two-family homes subject to Resource Conservation District (RCD) rules, exempt small projects from impervious surface and land disturbance limits in the Managed Use and Upland Zones.*

Chapel Hill’s aging stock of single-family homes creates challenges for residents attempting to safely age in place, improve the resiliency of their homes, or attend to a growing backlog of deferred maintenance. These needs can lead to increased demand for relatively small improvements like mobility ramps, upgraded or modernized HVAC equipment, and whole-home backup generators. The permitting process for these types of small projects is generally straightforward and does not involve much time or expense.

For existing homes subject to RCD rules, however, the permitting process is more extensive because of additional application requirements driven by LUMO standards. Regardless of the size of the project, a professional land survey is required for almost any work in or near RCD buffers. The need for a professional survey can add significant cost and delay to small projects that may only require a single day of on-site work. The Building and Development Services Department notes that, although the application requirements for these types of projects are more extensive, they do not lead to materially different outcomes. Generally speaking, small projects within the RCD are no more or less likely to be approved than small projects outside the RCD.

A limited exemption for small projects will help to reduce unnecessary procedural barriers without sacrificing stream protection. Key parameters of the proposed exemption include:

- **Applicability:** The first 50 square feet of impervious surface, tracked cumulatively. The exemption will not apply to new *floor area* within the RCD.
- **Affected RCD buffer zones:** The exemption will only apply in the *managed use* and *upland zones*. The exemption will not apply in the streamside zone or in land subject to Jordan Lake Riparian Buffers.
- **Relief granted:** Exempt projects will not be subject to the RCD's impervious surface or land disturbance limits.
- **Remaining regulations:** Exempt projects will still be subject to RCD rules ensuring they are built in a way that minimizes environmental impact and protects property.

Appendix A: Prior Council Meetings and Materials

October 23, 2024 – [Council Regular Meeting](#)

- Meeting Topics
 - Project Check-In
 - Neighborhood-Scale Commercial Development
 - Stormwater Management
- [Meeting Recording](#) (Discussion begins at 00:57:53)
- Recommended documents to review:
 - [Staff Memo](#)

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](#)