



Council Work Session: Rewriting Our Rules – A Land Use Management Ordinance (LUMO) Update

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Town Council Meeting Date: February 21, 2024

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## Overview

During the February 21, 2024, work session, staff will provide updates and seek Council's input on the following:

1. [Schedule of Policy Discussions and Outreach](#)
2. [Process Overview and Background Information](#)
  - A. [State Legislature and Local Zoning Authority](#)
  - B. [Connection Between LUMO Update and Rezoning](#)
  - C. [Development Review Processes](#)
3. [Housing Policy](#)
  - A. [Student Housing](#)
  - B. [Housing Needs Analysis](#)
4. [Small-Scale Commercial Uses](#)
5. [Regulation of Specific Uses](#)
  - A. [Drive-Throughs](#)
  - B. [Shelters](#)
  - C. [Commercial-to-Residential Conversions](#)
  - D. [Housing and Places of Worship](#)
6. [Environmental Protection](#)
  - A. [Resource Conservation District](#)
  - B. [Tree Protection and Landscaping](#)
  - C. [Stormwater](#)

### 1. Schedule of Policy Discussions and Outreach

The attached Schedule of Policy Discussions and Outreach highlights the topics that Council will discuss during upcoming work sessions. The schedule also includes Planning Commission meetings and other public outreach events. This is not a final schedule. Additional discussion topics may be added per Council's request or as needed to guide staff and consultant efforts.

Staff will strive to create a strong relationship between public outreach events and Council work sessions. During public information meetings and other outreach events, staff will share information related to work session topics and Council discussions. Likewise, during work sessions, staff will share with Council what we hear at public outreach events.

These efforts will inform the full draft LUMO, which staff expects to share by the end of the summer. Once the draft is available, staff will host multiple public workshops and attend several meetings with Council and the Planning Commission to receive feedback and share revisions before Council considers adopting the new LUMO.

## 2. Process Overview and Background Information

### A. State Legislature and Local Zoning Authority

Local governments in North Carolina derive their planning and land use authority from the state. Most of the rules governing this authority are found in [Chapter 160D](#) of the North Carolina General Statutes. The North Carolina General Assembly also occasionally passes local acts that expand or restrict the authority of specific municipalities. These local acts are found in the General Assembly's [Session Laws](#). A large body of caselaw (i.e., decisions made by courts) adds detail – and sometimes complexity – to many of the laws concerning local government authority.

Because Chapel Hill's planning and land use authority is tightly controlled by the state, it is always subject to change. The General Assembly can – either through a local act or amendment to the General Statutes – limit or expand the Town's authority. Bills such as [S.B. 317](#) (which would limit local government regulation of workforce housing) are regularly debated by the General Assembly and closely tracked by organizations like the N.C. League of Municipalities and the North Carolina Chapter of the American Planning Association.

Throughout the upcoming policy discussions, staff will advise Council on the extent of the Town's authority under state law.

### B. Connection between LUMO Update and Rezoning

Chapel Hill's land use policy is governed by the Land Use Management Ordinance and the zoning map.

If Council adopts a new LUMO, there will be no immediate changes to the zoning map. However, the procedures, development standards, and permitted uses for existing zoning districts may change in the new LUMO. The LUMO may also contain new zones that haven't yet been applied to property in town.

After LUMO adoption, the Council may consider updating the zoning map to rename zoning districts, adjust boundaries, or apply new zones. The most significant changes will likely occur in the Focus Areas identified by the [Future Land Use Map](#).

### C. Development Review Processes (By-Right Development)

Determining what scale of development can occur by-right will be one of the most important questions for Council to tackle as part of the LUMO rewrite. Council and staff can start by exploring the general interests that will inform the specific decisions that come later in the process (e.g., residential development with fewer than "x" units can occur by-right).

By-right development was first discussed with Council during the October 18, 2023, work session. At that time Councilmembers generally noted that the Town should allow as many by-right projects as possible so long as they deliver the outcomes and community benefits the Town expects.

The policy guidance that Council has provided since the October 18<sup>th</sup> work session – and will continue to provide in upcoming work sessions – will directly impact the outcomes the Town can expect from by-right development. For example, Council’s guidance will help to answer questions like:

- How much affordable housing can the Town expect from by-right development?
- What sort of design can the Town expect from by-right development?
- What level of environmental protection can the Town expect from by-right development?

During the March 13 work session, staff expect to provide Council additional information regarding the sorts of community benefits that can be mandated through regulation and those that can only be secured through either incentives or negotiations.

Exploring these and other topics will empower Council to provide well-informed and specific guidance on the scale of development that should be permitted by-right.

### 3. Housing Policy

#### A. Student Housing

Student housing is a perennial issue in Chapel Hill and was a significant part of the conversation around last year’s Housing Choices text amendments. Two major questions commonly arise around student housing:

1. How can the Town minimize potential negative impacts of off-campus student housing?
2. How can the Town and/or UNC provide sufficient housing for students?

While working on the Housing Choices text amendments, Town staff extensively reviewed potential options to address perceived negative impacts of student housing. Staff found that the Town’s land use authority is likely not the appropriate tool. The Town’s land use rules cannot regulate who lives where or impose specific conditions on a property based on who may live there. Instead, programs such as the Good Neighbor Initiative can promote better relationships between off-campus students and their neighbors.

According to UNC, budget constraints severely limit the university’s ability to build more on-campus housing. University officials have also explained that UNC expects on-campus enrollment to grow slightly from year to year. Therefore, staff do not expect demand for off-campus student housing to decrease in the foreseeable future.

The [Future Land Use Map \(“FLUM”\)](#) provides guidance on how to address demand for off-campus student housing. It notes that developments that are likely to attract students should be located near transit corridors and have convenient access to shopping and campus. The FLUM notes that this sort of development would be most appropriate along the Martin Luther King Jr. Blvd corridor.

B. Housing Needs Analysis

The [Projected Housing Needs](#) report (“the Housing Report”) found that Chapel Hill needs to add an average of about 485 new housing units per year to keep up with growing demand. Because applications for new developments and actual construction starts are impacted by a wide range of factors outside of the Town’s control, the estimated future need identified by the Housing Report is not used as a quota or official annual target. No single year of over- or under-production should be seen as a “failure.” Instead, the estimated future need can be used to judge general progress over many years.

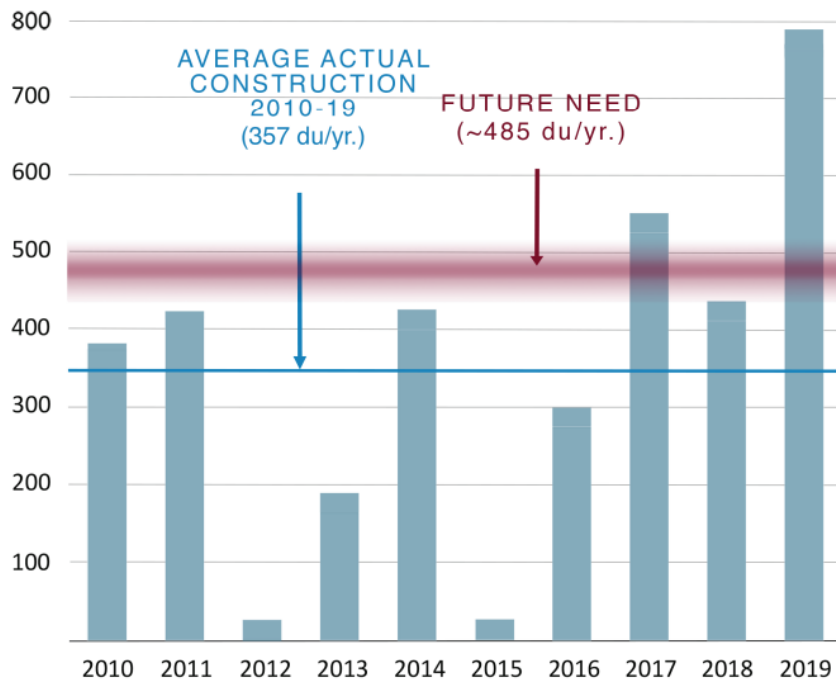


Figure 1: Future projected housing need compared to actual housing production between 2010-2019 (Credit: [Projected Housing Needs Report](#), p8)

Since the Housing Report was published in October 2021, Town Council has approved 11 new residential developments with a total of 3,076 potential new dwelling units.

Although Council approved a significant number of potential new units over the last few years, there appears to be a major slowdown in new applications. As of February 12, 2024, there is only one pending application for Council approval of a new multifamily development. Staff do not expect to receive more than a handful of applications for multifamily developments in 2024.

Analysis conducted as part of the Shaping Our Future planning effort conservatively estimated that the FLUM’s Focus Areas have the capacity for at least 5,600 new housing units (see page 75 of the [Shaping Our Future](#) Plan).

## 4. Small-Scale Commercial Uses

The Town has a strong interest in promoting small-scale commercial uses. These small businesses can foster more walkable/bikable neighborhoods and help to develop a more resilient local economy. The new LUMO can support small-scale commercial uses but likely should not require them.

In practice, zoning rules that require new developments to include a minimum amount of commercial space have not been particularly successful in Chapel Hill. For example, the Town's "Mixed-Use Village Conditional Zoning District (MU-V-CZD)" requires that at least 25% of a project's floor area is used for office/commercial uses. However, projects that seek a conditional rezoning to this district oftentimes receive modifications to regulations that significantly reduce the requirement for office/commercial uses.

In previous LUMO-related work sessions, Council has voiced support for measures that could support small-scale commercial uses. These measures include **eliminating parking minimums** and establishing more **mixed-use zoning districts** in which small-scale commercial uses can be located. Other measures such as creating exemptions from certain permitting requirements could also support small-scale commercial uses by simplifying the regulatory hurdles associated with some building or landscaping updates.

## 5. Regulation of Specific Uses

Council's discussion of the specific uses below will guide staff's development of the draft LUMO. Staff request Council's guidance on the following four questions regarding how certain uses should be regulated:

- A. Should the Town further restrict drive-throughs?
- B. Should the Town ease restrictions on shelters for people experiencing homelessness?
- C. Should the Town facilitate commercial-to-residential conversions?
- D. Should the Town facilitate new housing development alongside places of worship?

### A. Drive-Throughs

*Question for Council: Should the Town further restrict drive-throughs?*

Drive-throughs are allowed in a limited number of zoning districts after securing either a Special Use Permit from the Board of Adjustment or a conditional zoning approval from the Town Council.

Because they are a car-dependent use, some community members have argued that new drive-throughs should be further restricted or prohibited outright. However, as was seen during the COVID-19 pandemic, drive-throughs can meet the needs of a diverse range of people including those caring for young children, people with disabilities, and people with compromised immune systems. Drive-throughs also helped businesses remain more resilient through the pandemic-era shutdowns.

Staff do not recommend further restrictions on where drive-throughs are allowed.

## B. Shelters

*Question for Council: Should the Town ease restrictions on shelters for people experiencing homelessness?*

Shelters for people experiencing homelessness are permitted in only a limited number of zoning districts and must receive a special use permit from the Town Council. This can pose a significant burden for organizations attempting to serve vulnerable members of the community. Shelters and other supportive services have routinely faced strong opposition from prospective neighbors.

Options for taking a more permissive stance towards this use include:

1. Designating shelters as a permitted use (rather than a special use) in certain zoning districts.
2. Expanding the number and diversity of zoning districts in which shelters are allowed (either as permitted or special uses).

## C. Commercial-to-Residential Conversions

*Question for Council: Should the Town adopt zoning rules that facilitate commercial-to-residential conversions?*

The changing commercial real estate market brought on by the COVID-19 pandemic has increased interest in converting underutilized office and/or commercial space into residential uses.

The building code, rather than zoning, is typically the most significant regulatory barrier for commercial-to-residential conversions.

From a zoning perspective, the most likely hurdles for conversions are limitations in existing special use permits or conditional zoning districts. In most cases, the only allowed uses are those that are explicitly granted in the permit. It is unlikely, for example, that a special use permit for an office building would include residential uses. If such an office building were deemed suitable for a conversion, it would likely need to return to Town Council for a modification to its special use permit or a conditional rezoning.

Depending on the scope of work involved, sites may also need extensive reconfiguration to meet modern site design requirements.

Options for facilitating commercial-to-residential conversions include:

1. Creating a streamlined approval process for conversions.
2. Exempting conversions from certain site design requirements.

## D. Housing & Places of Worship

*Question for Council: Should the Town facilitate new housing development alongside places of worship?*

Some places of worship are located on relatively large parcels with space to add some amount of residential development. Non-profit organizations routinely express interest in building tiny homes, small apartments, or other affordable housing on

property owned by places of worship. Like commercial-to-residential conversions, limitations in existing special use permits are a common barrier to adding housing to sites with existing places of worship.

Options for making it easier to add housing to existing places of worship include:

1. Creating a streamlined approval process.
2. Designating a range of residential uses as accessory to places of worship.

## 6. Environmental Protection

Council's discussion on the environmental protection topics below will guide staff's preparation of the draft LUMO. To meet the Complete Community objective of "Be Green and Provide Housing," the Town may need to reconsider and recalibrate its Resource Conservation District, tree protection requirements, and landscaping standards.

### A. Resource Conservation District (RCD)

*Question for Council: Should the Town adjust its RCD standards?*

The RCD establishes buffers around streams and is one of the Town's most widely used tools to protect water quality, tree canopy, and habitat corridors. Depending on the type of stream, the associated RCD buffer can extend 50 to 150 feet from either side of the stream. The buffer is divided into distinct zones as shown in Figure 2 below.

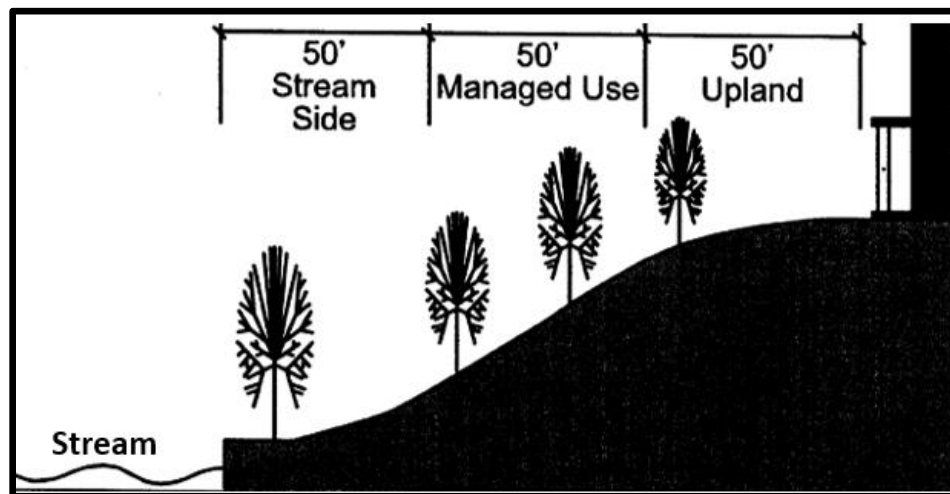


Figure 2: RCD Buffer Zones

Options for updating the RCD buffer regulations include:

1. Allowing more intense use of – and/or reducing the size of – the Upland and/or Managed Use zones if the development provides other environmental benefits; if the impacted site is not located in an area deemed suitable for preservation; or if the impacted site falls below an agreed upon size threshold.

- When going through the conditional zoning process, developers commonly request and receive modifications to regulations that allow for more intense use of the Upland or Managed Use zones. Adding flexibility to the underlying RCD regulations could benefit smaller scale developments and bring more certainty to the development review process for all developments.
  - Changes to the Town’s RCD rules will not impact the State’s Jordan Buffer Rules which impose a 50-foot buffer on many streams in Town.
  - Examples of environmental benefits that could warrant reductions in RCD buffers include: treatment of existing impervious surface, heightened protection of the Stream Side zone, increased tree canopy coverage, preservation of mature trees, and stream restoration
  - As part of Complete Community implementation efforts, Town staff are developing analytical tools to better understand the Town’s environmental assets. These tools may be able to inform decisions on whether flexibility in RCD standards is warranted for a particular site.
2. Allowing certain stormwater infrastructure and passive recreation facilities in the RCD to maximize co-benefits and align with state regulations.
- State regulations allow properly designed stormwater control measures to be placed in the Stream Side zone and to discharge directly into stream channels. Both practices are prohibited under current Town standards. However, developments going through the conditional zoning process have received modifications to regulations to allow these practices.
  - Permitting certain types of recreation facilities in the RCD (e.g., walking trails, gardens, etc.) can promote more meaningful engagement with natural spaces and allow for more efficient use of land that is suitable for development.

B. [Tree Protection and Landscaping](#)

*Question for Council: Should the Town consider more stringent tree protection and landscaping standards if they are expected to increase development costs?*

The Town has landscaping and tree canopy requirements for essentially all new development except for single-family homes. The rewrite provides an opportunity to strengthen these requirements. Options include:

1. Incentivize or require the preservation of existing tree canopy.
  - LUMO standards do not prohibit clear-cutting prior to development. State law does not allow local governments to interfere with forestry practices.
  - For smaller sites, requiring preservation of mature trees or existing tree canopy may be overly proscriptive and could limit development options. For such sites, it may be more appropriate to incentivize preservation of



existing tree canopy. Updated regulations could adjust how existing tree canopy is counted towards a development's overall tree canopy requirement or ease other development standards if a certain amount of existing tree canopy is preserved.

- For larger sites, it may be appropriate to require preservation of a certain amount of existing tree canopy.
2. Adopt standards that give new trees and landscaping the best chance of surviving and providing long-term benefits.
    - Native or adapted species are more likely to provide long-term benefits without harming local ecosystems. The new LUMO could require that at least some native or adapted species are used in new landscaping and incentivize more extensive use of such species.
    - The Town's Public Works Engineering and Design Manual includes best practices for new landscaping including updated specifications for size, height, and other desired characteristics. The new LUMO could directly reference the Design Manual to make it easier for Town requirements evolve over time.
  3. Require diversity in new plantings.
    - Monoculture (i.e., the overplanting of a single species) is widely accepted to be harmful to the environment. LUMO standards could require a certain level of species diversity in new landscaping without being overly proscriptive and limiting design outcomes.

#### C. Stormwater

Staff is not requesting Council guidance on stormwater regulations at this time. The following points are provided for Council's awareness.

In March, staff will present to Council two significant updates to Town stormwater regulations. The updates will:

1. Require that new development accommodate the 100-year storm event and
2. Clarify Town standards for water quality treatment.

Staff will also consider additional stormwater updates as part of the LUMO rewrite including:

1. Requiring the use of green stormwater infrastructure;
2. Clarifying volume control requirements;
3. Requiring rate control that accommodates the 10-year storm event; and
4. Requiring analysis of downstream stormwater impacts in certain cases.

## **Attachments**

1. Appendix A: Prior Council Meetings and Materials
2. Appendix B: Planning Ambassador Demographics
3. Policy Discussions and Outreach Schedule
4. Engagement and Communications Report

## Appendix A: Prior Council Meetings and Materials

### January 17, 2024 – [Work Session](#)

- [Meeting Recording](#) (Discussion begins at 49:05)
- Recommend documents to review:
  - [Staff Memo](#)

### November 13, 2023 – [Work Session](#)

- [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 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](#)

## Appendix B: Planning Ambassador Demographics

The inaugural cohort of planning ambassadors represent a diverse cross section of the Chapel Hill community. The 12 ambassadors have self-identified in the following ways:

- 4 people identify as "Students"
- 4 people identify as "Young adult (age 45 or younger)"
- 4 people identify as "Renters"
- 4 people identify as "Senior on a fixed income"
- 3 people identify as "Resident living with low-income"
- 3 people identify as "Black or African American residents"
- 3 people identify as "Resident of Public Housing"
- 2 people identify as "Hispanic or Latinx"
- 1 person identifies as "Immigrant and refugee resident"
- 1 person identifies as "LGBTQIA+"