

Racial Equity Analysis: Land Use Procedures

Focusing on equity is critical in helping the town promote positive outcomes for all. Town staff developed this racial equity analysis of land use procedures following our analysis of land use rules in April 2024.¹ This document assesses how land use procedures affect those most vulnerable to the negative impacts of land use decisions.

There are three areas of Land Use Management Ordinance (LUMO) procedures that can have a disproportionate impact on historically disadvantaged and vulnerable communities:

1. Administrative decisions by boards and commissions can introduce inappropriate discretion.
2. Conditional zoning public hearings can promote unbalanced public participation.
3. Mailed notice procedures for zoning changes do not reach renters.

LAND ACKNOWLEDGEMENT

We acknowledge that any plan, rule, or decision related to land implicates the Indigenous stewards of this area. The Occaneechi Band of the Saponi Nation offers a Land Acknowledgement for this purpose, adapted below.

We would like to acknowledge that we are on the land of the Eno, Tutelo, Saponi, Occaneechi, and Shakori Native people. This land was traditionally part of the territory of the Saponi people, in the Piedmont of what is now the state of North Carolina. This area is not far from the "Great Trading Path", used by both the native people of this area and non-native peoples during the early years of contact. The Saponi people, whose descendants include the Occaneechi Band of the Saponi Nation Indian Tribe still thrive and live in this region, officially recognized by the state government of North Carolina.

We pay respect to their elders past and present. The Occaneechi People (The Ye'sah), ask that you will keep these thoughts in mind, while here on their ancestral lands and treat it with the respect, love, and care that their Ancestors did, and as the Occaneechi Saponi people do so today.

- OBSN Tribal Council

ANALYSIS OF RACIAL IMPACTS

The Town is beginning to use a racial equity inquiry to assess practices, policies, and programs. Staff will continue to refine and expand this inquiry throughout the LUMO project. Based on the One Orange Racial Equity Framework², this section explores two questions:

1) "What are the racial impacts of our current land use procedures?"

The Town's land use procedures impact how land use rules are drafted and applied. As examined below, the Town relies heavily on legislative decisions made by the Town Council and administrative decisions made by appointed boards and commissions. The Town's notification practices for these decisions prioritize property owners over property occupants (renters).

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

² <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=5390141&GUID=E4E7D69C-ABDA-4398-8CC3-5DA89ED1E78F&Options=ID%7CText%7C&Search=%22one+orange%22>

2) “What are the root causes of these impacts?”

Many of the root causes that contribute to inequity in Chapel Hill’s land use rules apply to our land use procedures (see April 24, 2024 Racial Equity Analysis).³ This report highlights and expands on two of the root causes that are associated with land use procedure: (1) A smaller proportion of residents in our community are Black or African American, or Hispanic or Latino, compared to the State of North Carolina; and (2) Some people still lack voice, influence, and power in land use decisions, whereas those who own land and make decisions about how land is used continue to have the most power in our community.

Each of these topics is explored in further detail below.

³ Town of Chapel Hill Council Meeting, April 24, 2024. “Rewriting Our Rules: A LUMO Update”. Racial Equity Analysis. <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6636497&GUID=45D24D2F-25AA-4384-BD33-0E88466F0BAB&Options=&Search=>

1. What are the racial impacts of our current land use procedures?

The Town's land use procedures impact how land use rules are drafted and applied. Notable features of the Town's land use procedures include a heavy reliance on legislative decisions made by the Town Council and administrative decisions made by appointed boards and commissions. The Town's public notification practices for these land use decisions prioritize some community members over others.

Drafting and Public Hearing Procedures

Public meetings and hearings held by elected and appointed bodies create the opportunity for more subjective decision-making and can increase the likelihood for racially inequitable impacts.⁴ In contrast, administrative approvals granted by professional staff can promote objective decision-making and more equitable outcomes.

Administrative decisions by Council, boards, and commissions can introduce inappropriate discretion.

In an administrative decision, an approval must be granted if the applicant complies with the requirements stated in the Town's ordinances. While most administrative decisions are made by professional staff, some are made in public meetings by Town Council or by boards and commissions appointed by the Town Council.

The public nature of the meeting can incorrectly suggest that public opinion or the discretion of board members are relevant to the decision-making process. Despite their best efforts to act objectively, members of boards and commissions may be influenced by public comments and introduce inappropriate discretion for administrative reviews. Public meetings for administrative decisions can therefore contribute to inequitable outcomes.

Conditional zoning public hearings can promote unbalanced public participation.

All legislative land use decisions are made by Town Council. The Council has wide discretion - within the limits of State and federal law - to evaluate proposed development.

Conditional zonings are legislative land use decisions that require a public hearing. The public hearing can provide members of historically disadvantaged and vulnerable communities the opportunity to voice their opinions on a proposed zoning map amendment. However, members of these communities often do not or cannot participate in public hearings. Attendance and involvement in public hearings is overwhelmingly from white residents over age 45, illustrated by a voluntary demographic survey completed by attendees of Town Meetings (Figure 1).

The 2023 Gap Analysis and Engagement Study identified several factors that may contribute to why members of historically disadvantaged and vulnerable communities do not or cannot participate in public hearings.⁵ Those factors include but are not limited to:

- Feelings of not being heard or welcome
- Reluctance to trust government given the history of local government perpetuating racism through policies and practices
- Language and literacy barriers
- Transportation, childcare, limited digital access

⁴ <https://www.urban.org/research/publication/influencers-bias-and-equity-rezoning-cases>, p. 8

⁵ <https://www.townofchapelhill.org/government/departments-services/affordable-housing-and-community-connections/get-involved/gap-analysis-and-engagement-study>

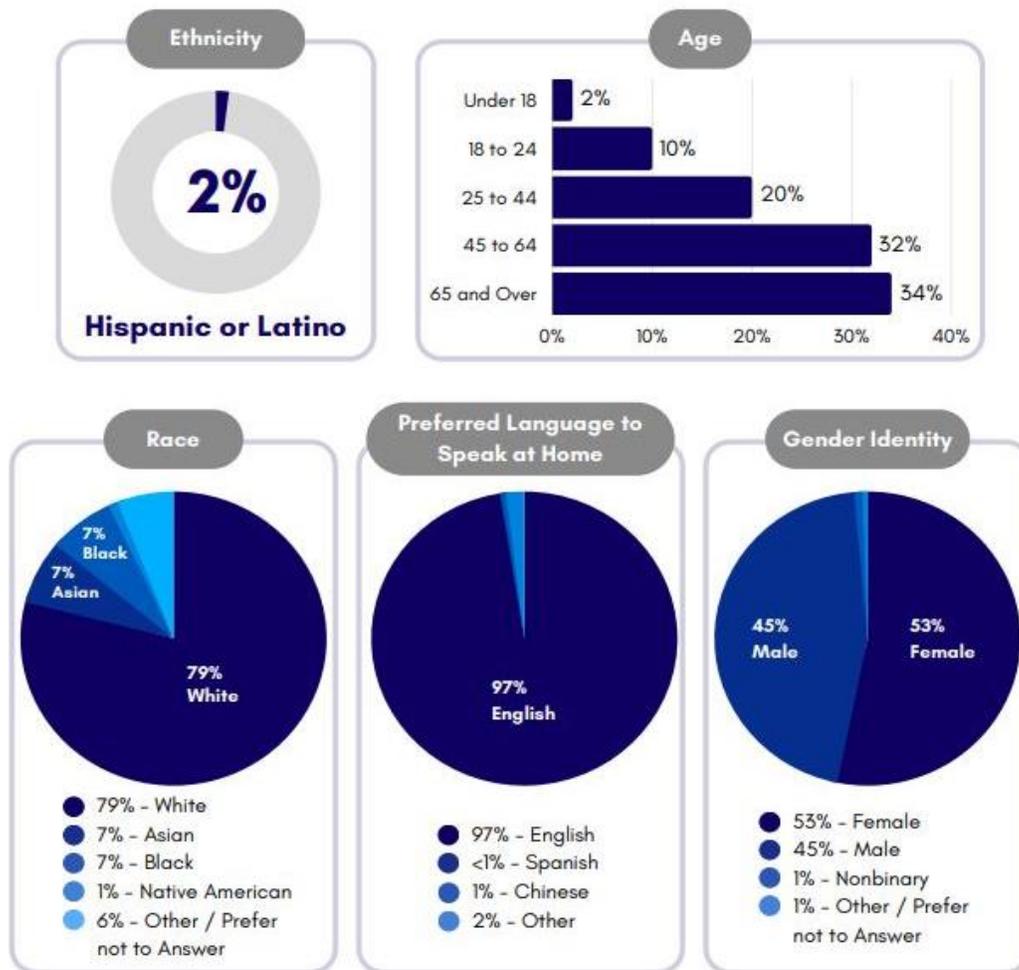


Figure 1 - Attendees at Town Meetings are majority white, speak English, and over 45. This survey is voluntary and not a representative sample of attendees at Town Meetings.

Conditional zonings give Council discretion to negotiate for commitments not otherwise required by LUMO.

The conditional zoning process offers Council the authority to create site-specific requirements to mitigate the impacts of new developments. This authority can be a powerful tool to benefit historically disadvantaged and vulnerable community members. For example, past conditional zonings have included requirements to mitigate environmental risks, anticipate tenant displacement, or go “above and beyond” the base requirement for stormwater management to control for the 100-year storm event.

Historically disadvantaged and vulnerable communities are more likely to live near locally unwanted land uses (LULU)⁶ and are oftentimes less equipped to respond to environmental hazards like extreme heat and flooding. Based on U.S. Census estimates, there are several areas of Town where a majority of community members report low or extremely low-income.⁷ The Future Land Use Map indicates that these communities experience frequent flooding and excessive high heat⁸. Four of these communities are manufactured home parks designated as “sensitive displacement

⁶ Bullard, R.D. (2000). *Dumping In Dixie: Race, Class, And Environmental Quality*, Third Edition (3rd ed.). Routledge. <https://doi.org/10.4324/9780429495274>

⁷ U.S. American Community Survey (ACS) 2018-2022 5-Year Estimate

⁸ <https://online.flippingbook.com/view/26191/72-73/>; <https://online.flippingbook.com/view/26191/70-71/>

areas” in the Future Land Use Map.⁹ In these and other areas, the discretion of a legislative process for future redevelopment may be beneficial.

Zoning Notification Procedures

Mailed notice procedures for zoning changes do not reach renters.

Public notice is required for all legislative land use decisions. State law and a 1995 Council policy govern notification procedures of pending development applications. At a minimum, staff:

- Send a mailed notice to owners of property abutting the proposed development;
- Send a mailed notice to property owners within 1,000 feet of the proposed development;
- Post a sign on the site of proposed development; and
- Distribute a legal advertisement in a newspaper.

Because of racial disparities in homeownership, only mailing notices of public hearings to property owners means that the notices are reaching a disproportionately white audience. The 2021 U.S. Census Bureau American Community Survey (ACS) estimates demonstrate a significant racial disparity between owner and renter households in Chapel Hill (Table 1).

Race and Hispanic or Latino Origin of Household	Total number of occupied housing units	Renter-occupied	Owner-occupied
White	14,625	46%	54%
Black or African American	2,118	82%	18%
Asian	2,273	40%	60%
American Indian and/or Alaskan native	30	14%	86%
Native Hawaiian and Other Pacific Islander	0	0%	0%
Some other race	239	80%	20%
Two or more races	829	77%	23%
Hispanic or Latino origin	1,024	65%	35%

Table 1: Residents who are Black, Hispanic, or Latino are more likely to rent than own.¹⁰

⁹ <https://online.flippingbook.com/view/26191/46-47/>

¹⁰ <https://data.census.gov/table/ACSST5Y2021.S2502?q=chapel%20hill%20renters%20by%20race>

2. What are the root causes of these impacts?

Many of the root causes of inequity in Chapel Hill's substantive land use rules also impact our land use procedures (see April 24, 2024, Racial Equity Analysis).¹¹ This report highlights and expands on two of the root causes that are associated with land use procedures.

A smaller proportion of residents in our community are Black or African American, or Hispanic or Latino compared to the State of North Carolina.

This disparity is both a root cause of certain inequitable outcomes and an inequitable outcome in and of itself. Most land use decisions in Chapel Hill—including adopting or amending land use rules and procedures—are made by people who are white and non-Hispanic or Latino.

Some people still lack voice, influence, and power in land use decisions, whereas those who own land and make decisions about how land is used, continue to have the most power in our community.

Speaking at a public hearing is a display of influence and power. Current land use procedures that require public hearings and meetings perpetuate this power imbalance. White, non-Hispanic or Latino property owners are more likely to be notified of and attend Council meetings. Members of historically disadvantaged or vulnerable communities - particularly Black or African American residents, low-income residents, renters, immigrants, refugees, and students - express feeling that there is no place for them at these meetings.¹²

¹¹ Town of Chapel Hill Council Meeting, April 24, 2024. "Rewriting Our Rules: A LUMO Update". Racial Equity Analysis. <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6636497&GUID=45D24D2F-25AA-4384-BD33-0E88466F0BAB&Options=&Search=>

¹² <https://www.townofchapelhill.org/government/departments-services/affordable-housing-and-community-connections/get-involved/gap-analysis-and-engagement-study>

Staff assessed our current ordinance against the American Planning Association (APA) Equity in Zoning Policy Guide.¹³ The Guide recommends policies for equity in land use rules, procedures, and the zoning map. The APA defines Equity in Zoning as taking “clear steps to avoid or ‘undo’ unfair outcomes and mitigate the unequal ability to participate in or influence all parts of the zoning process.” This analysis focuses on the APA’s recommended policies for equity in land use **procedures**.

Equity in Land Use Procedures

The highlighted rows in the table below list eight recommended policies for land use procedures from the APA Equity in Zoning Guide. Following each highlighted row is staff’s assessment of whether our current ordinance is aligned with those recommended policies and a recommendation for the draft LUMO.

<p>Drafting Policy 1 and 2</p>	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>“Those framing, writing, and/or reviewing the zoning rules should reflect the demographic composition of the community and should include representatives from historically disadvantaged and vulnerable communities.</i></p> <p>Input from these groups should occur at least twice: once before amended language is being drafted, and again before that language is presented to a decision-making body. If changes are not incorporated based on public input prior to the hearing, discussion of that input and the reasons for not reflecting it in the proposed rules should become part of the public hearing.” (Equity in Zoning Policy Guide p. 35)</p> <p><i>“Ensure that drafting efforts include business and residential tenants, as well as property owners.</i></p> <p>This is important because historically disadvantaged and vulnerable communities generally have a higher percentage of renters than the overall population, and because the zoning changes can lead to gentrification and displacement that particularly impact tenants.” (Equity in Zoning Policy Guide p. 36)</p>
	<p>Staff Assessment and Recommendation</p> <p>A current LUMO procedure for framing, writing, or reviewing zoning rules is a zoning map amendment, or “rezoning”. When a zoning map amendment is proposed, North Carolina law allows a local zoning regulation to “require communication by the person proposing the map amendment to neighboring property owners and residents” (N.C.G.S. 160D-602). As standard practice, Planning Department staff host a public information meeting and mail notices about this meeting to nearby residents.</p>

¹³ American Planning Association (APA) Equity in Zoning Policy Guide, Accessed at <https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Equity-in-Zoning-Policy-Guidev2.pdf>

	<p>The draft LUMO will</p> <ul style="list-style-type: none"> • Formalize a requirement for public information meetings related to zoning map amendments • Encourage mailed notices to property occupants as well as property owners.
<p>Drafting Policy 3</p>	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>“Ensure that there are multiple opportunities for review of potential zoning impacts on historically disadvantaged and vulnerable communities.</i></p> <p>This could include developing indicators of neighborhood vulnerability and modeling the impacts of potential developments against these indicators. These reviews need to happen with sufficient time to receive and incorporate meaningful and equitable input before public hearings on the proposed regulations begin.” (Equity in Zoning Policy Guide p. 36)</p>
	<p>Staff Assessment and Recommendation</p> <p>The current LUMO requires at least three opportunities for review of potential zoning impacts on surrounding community members for zoning map amendments: at concept plan review, Planning Commission review, and Town Council public hearing. These reviews do not distinguish historically disadvantaged and vulnerable communities from other communities.</p> <p>The draft LUMO will</p> <ul style="list-style-type: none"> • Define regulation for “sensitive displacement areas” that aligns with the “Equitable Development” guiding statement in the Future Land Use Map.¹⁴
<p>Drafting Policy 4</p>	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>“Avoid overly complicated regulations and legalistic language and speak to the community in the language(s) they understand.</i></p> <p>Complicated regulations, and those that require detailed supporting documentation, make it difficult for residents (particularly those with limited English proficiency) to engage effectively in the drafting process. They also discourage zoning applications from those who do not have the resources to hire professional help to get through the zoning process. Communities with significant populations of persons with limited English proficiency should provide zoning and application materials in commonly spoken languages as well.” (Equity in Zoning Policy Guide p. 36)</p>
	<p>Staff Assessment and Recommendation</p> <p>The current LUMO uses overly complicated standards and terms that all stakeholders struggle to interpret, including staff.</p>

¹⁴ <https://online.flippingbook.com/view/26191/16-17/>

	<p>The draft LUMO will</p> <ul style="list-style-type: none"> • Utilize plain language when it will not compromise the legal integrity of the ordinance. • Have companion resources and guides to make using the new LUMO easier for community members.
<p>Drafting Policy 5</p>	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>"Draft clear and objective, equity-based standards and review criteria.</i></p> <p>Similar to overly complicated regulations, vague and subjective standards are difficult and time-consuming to interpret and often allow historical biases to enter the decision-making process. Overly subjective standards also make it easier for individuals familiar with the public process (who are typically wealthier and often white) to oppose zoning text and map changes that could produce more equitable development. Draft zoning approval criteria that prevent or mitigate displacement or further fragmentation of historically disadvantaged and vulnerable communities. Because zoning criteria based on preserving neighborhood character and protecting property values have often been used to block the expansion of housing opportunity and variety in historically privileged neighborhoods, use of those terms and regulations related to them should be avoided. As alternative, define community character objectively so the term can be applied consistently across all neighborhoods. Outcomes from these changes should be periodically assessed to ensure that decision criteria are not perpetuating patterns of segregation." (Equity in Zoning Policy Guide p. 36-37)</p>
	<p>Staff Assessment and Recommendation</p> <p>Many elements of LUMO lack objectivity or clear review criteria. Subjective terms like "character" and qualifiers like "where necessary" are not easy for staff to review from a neutral position.</p> <p>"Neighborhood character" is not defined in LUMO. Yet, it is used frequently as justification for our land use rules. References to "neighborhood character" are often used when there are concerns about an area’s aesthetics rather than public health, safety, or welfare. Neighborhood character, or community character, can be a tool for inequitable land use practices if undefined.</p> <p>Some regulations for lot layout, lighting, and circulation can be applied "where necessary". However, there is not clear criteria for using discretion, giving staff inappropriate margin to determine the necessity.</p> <p>The draft LUMO will</p> <ul style="list-style-type: none"> • have 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."

Zoning Notification Policy 1	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>“Review, update, and expand traditional notification procedures to reach a wider range of possible participants.</i></p> <p>Where mailed notice is required, notices should be sent to tenants as well as property owners. If the neighborhood where the property is located has a significant population with limited English proficiency, notices should be sent in multiple languages, or should at least indicate how non-English speakers can follow up to learn more. Expand posted notice requirements to apply to more types of applications, including those that do not require a public hearing. Translate notices into languages commonly spoken in the neighborhood and make them accessible to persons with visual impairments. If responsibility for notices is placed on the applicant, the city or county should confirm that it has been done accurately and should periodically evaluate the effectiveness of notice procedures in reaching historically disadvantaged and vulnerable populations.” (Equity in Zoning Policy Guide p. 39)</p>
	<p>Staff Assessment and Recommendation</p> <p>In 1995, the Town Council adopted a resolution to increase the radius of mailed notifications from 500 feet to 1,000 feet for special use permits, major subdivisions, rezonings, and master plan approvals. This Council policy is still followed and drives the notification requirements for many types of development applications.</p> <p>The LUMO only defines the notification radius for a few types of development applications:</p> <ul style="list-style-type: none"> • Zoning Compliance Permits for development in some Neighborhood Conservation districts. The notification radius varies based on the NCD and ranges from 100 to 500 feet of the subject property. • Any permit for land disturbance or development within the Resource Conservation District. Notifications must be mailed to owners of properties within 500 feet of the subject property. <p>Like State law, current Town rules only require property owners to be notified about potential development decisions on nearby properties. Staff are developing a notification policy for development decisions and in the interim are notifying property owners and occupants of recent legislative hearings.</p> <p>The draft LUMO will</p> <ul style="list-style-type: none"> • maintain the current notification requirements for Zoning Compliance Permits in Neighborhood Conservation Districts • remove notification requirements for work within the Resource Conservation District. • support context-sensitive notification requirements • encourage notification to property owners and occupants • allow special notification procedures for mass rezonings to allow cost-effective communications when the Town updates the zoning map.
Zoning Notification Policy 2	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>“Formalize and expand requirements to use newer means of notification.</i></p>

	<p>The range of media where published notices appear should be expanded beyond newspaper notice to include new and expanding sources of information. This should certainly include notice on the city or county website, distribution by email to individuals who have signed up to receive notification, and the use of English and non-English language social media where those are in common use by the public. Every application should be available for review on the city or county website, even for administrative decisions that do not require a public hearing. When a public hearing will be held, the website should allow the public to submit project-related comments through the website, rather than requiring them to send a separate letter or email message. Staff should identify interested community members and groups (housing authorities, tenants unions, community activist groups) and maintain updated lists of their contact information. While not everyone can receive electronic notices, this is a valuable and increasingly widespread means of communication for many groups and individuals and should become a mandatory form of notice.” (Equity in Zoning Policy Guide p. 39-40)</p>
	<p>Staff Assessment and Recommendation</p> <p>Current rules require mailed notices, posted signs, and legal ads in the local newspaper for certain development decisions.</p> <p>The draft LUMO will encourage email notifications whenever the information is available as a type of notice for certain types of applications.</p>
<p>Public Hearing Policy 1</p>	<p>APA’s Equity in Zoning Policy Guidance</p> <p><i>“Only require public hearings when there is a genuine need to use discretion in applying zoning criteria and standards to the facts of a specific development proposal.</i></p> <p>Where a decision can be made based on clear and objective standards in the zoning ordinance, an administrative decision will often reduce opportunities for bias to enter the decision-making process. When discretionary decisions require a public hearing, draft objective standards and criteria that avoid unintended negative impacts on historically disadvantaged and vulnerable individuals and neighborhoods.” (Equity in Zoning Policy Guide p. 40)</p> <p>Staff Assessment and Recommendation</p> <p>LUMO currently requires public hearings for several types of administrative development decisions that do not involve a genuine need to use discretion. Administrative decisions that are currently subject to public hearings include:</p> <ul style="list-style-type: none"> • Major subdivisions (Town Council) • Minor subdivisions (Planning Commission) • Site plan reviews (Planning Commission) • Alternate buffers (Community Design Commission) • Blue Hill Certificates of appropriateness (Community Design Commission)

Meanwhile, the Community Design Commission is currently responsible for certain reviews that are not based on objective criteria or standards. These include reviews of building elevations and lighting plans for certain types of development.

The draft LUMO will

- Authorize Town staff to make administrative decisions regarding:
 - Major subdivisions
 - Minor subdivisions
 - Site plan reviews
 - Alternate buffers
- Clarify that the CDC may only review and comment on – but not delay or deny – building elevations and lighting plans.