

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 four areas of Land Use Management Ordinance (LUMO) procedures that can impact 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. Conditional zonings give Council discretion to negotiate for commitments not otherwise required by LUMO.
4. Mailed notice procedures for zoning changes do not reach renters.

Council can consider the proposed changes listed below as part of updating the LUMO:

- 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 the Community Design Commission (CDC) to review and comment on building elevations and lighting plans.

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

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

ANALYSIS OF RACIAL IMPACTS

The Town is using 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 (e.g., renters or other residents that do not own the property).

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.

Both questions are explored in further detail below.

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 Town Council and appointed boards/commissions. State statute mandates public notification practices for these land use decisions that prioritize some community members over others.

A. Procedures for Public Hearings and Land Use Decisions

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.

i. 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,

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

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=>

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

public comment may influence members of boards and commissions, introducing inappropriate discretion for administrative reviews. Public meetings for administrative decisions can therefore contribute to inequitable outcomes.

ii. 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

⁵ Town of Chapel Hill Gap Analysis and Engagement Study, page 13. Accessed at <https://www.townofchapelhill.org/government/departments-services/affordable-housing-and-community-connections/get-involved/gap-analysis-and-engagement-study>

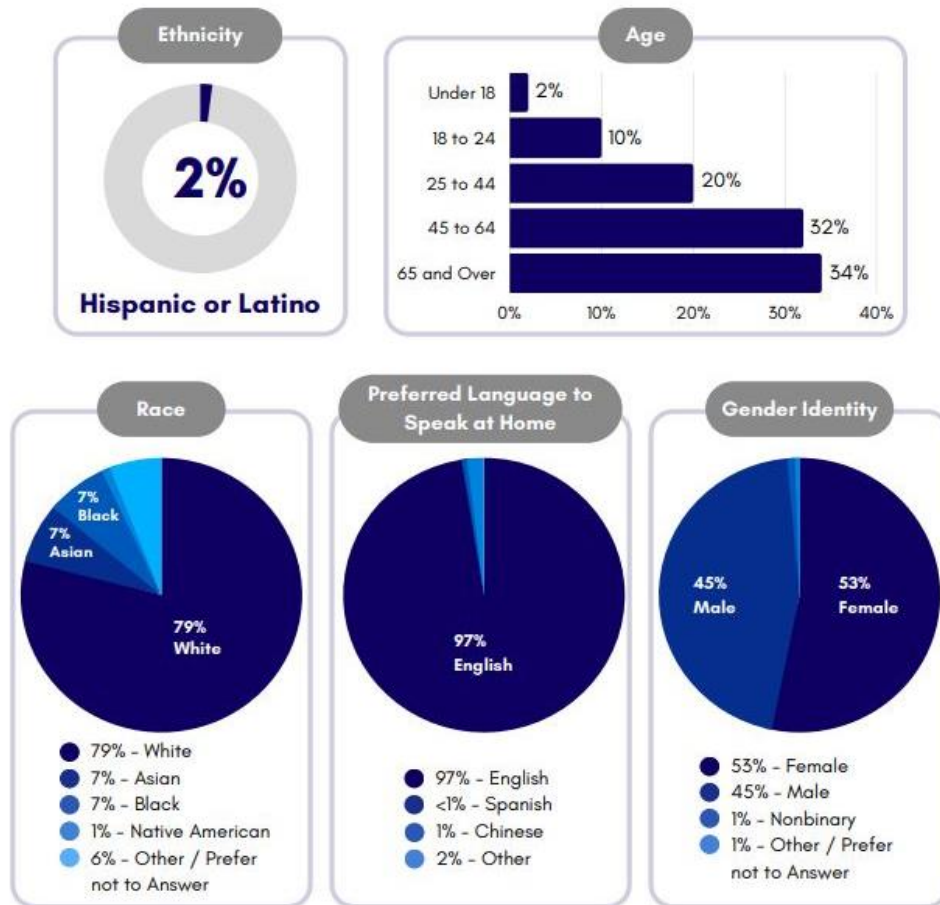


Figure 1 - Attendees at Town Meetings are majority white, speak English, and over 45. This survey is voluntary and not a representative sample of attendees at Town Meetings.

iii. 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.

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. Our ability to impose these requirements through conditional zonings has benefits for the Town as a whole. In some cases, conditional zonings can have outsized benefits for historically disadvantaged and vulnerable communities because of the disproportionate impact on those populations of environmental hazards like extreme heat, flooding,⁶ and locally unwanted land uses (LULU).⁷

B. Zoning Notification Procedures

i. Mailed notice procedures for zoning changes do not reach renters.

⁶ EPA. 2021. Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts. U.S. Environmental Protection Agency, EPA 430-R-21-003. www.epa.gov/cira/social-vulnerability-report. p.6.

⁷ Bullard, R.D. (2000). *Dumping In Dixie: Race, Class, And Environmental Quality*, Third Edition (3rd ed.). Routledge. <https://doi.org/10.4324/9780429495274>. p 21-22.

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
- Publish a legal advertisement in a newspaper.

Because these notification requirements are tied to property ownership, people that do not own their home or the building in which they do business may not receive mailed notifications. In light of well-documented racial disparities in property ownership across the country, notice requirements that focus on property owners are likely to reach a racially disproportionate audience.⁸

State law does not authorize the Town to address this issue through the land use ordinance. We are exploring opportunities outside of the LUMO to expand notifications beyond property owners.

⁸ <https://www.brookings.edu/articles/the-devaluation-of-assets-in-black-neighborhoods-the-case-of-commercial-property/>; https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/12/BPC_Racial-Disparities-Brief_RV2-3.pdf

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). 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.

Estimates of Population by Race⁹						
	Town of Chapel Hill		Durham-Chapel Hill MSA		State of North Carolina	
	Total	Percent	Total	Percent	Total	Percent
White	40,055	68%	379,541	58.6%	6,800,458	65%
Black or African American	6,161	10.5%	163,535	25.2%	2,192,455	20.9%
American Indian and Alaska Native	228	0.4%	2,947	0.5%	109,600	1.1%
Asian	9,305	13.4%	30,202	4.7%	325,670	3.1%
Native Hawaiian and other Pacific Islander	1	0%	411	0.1%	6,948	0.1%
Some other Race Alone	1,648	2.8%	29,851	4.6%	421,954	4%
Two or more races	2,926	5%	41,579	6.4%	613,129	5.9%
Total	58,919	100%	648,066	100%	10,470,214	100%

Speaking at a public hearing is a display of influence and power. Current land use procedures that require public hearings and meetings perpetuate imbalances in how this influence and power are wielded. Attendees of public meetings and recipients of public meeting notices are predominantly white.¹⁰ Members of historically disadvantaged or vulnerable communities - particularly Black or African American residents, low-income residents, renters, immigrants, refugees, and students – often express feeling that there is no place for them at these meetings.¹¹

⁹ U.S. Census Bureau American Community Survey 5-year estimates, 2017-2022

¹⁰ Town of Chapel Hill Gap Analysis and Engagement Study, page 20. Accessed at <https://www.townofchapelhill.org/government/departments-services/affordable-housing-and-community-connections/get-involved/gap-analysis-and-engagement-study>

¹¹ Town of Chapel Hill Gap Analysis and Engagement Study, page 13. Accessed at <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.¹² 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 five 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.

Drafting Policy 1 and 2	<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 help the applicant host a public information meeting and mail notices about this meeting to nearby residents.</p> <p>Council should consider updating the LUMO to formalize a requirement for public information meetings related to zoning map amendments.</p>

¹² 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>

Drafting Policy 4	<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, including staff, struggle to interpret.</p> <p>Council should consider updating the LUMO to use plain language when it will not compromise the legal integrity of the ordinance.</p>
Drafting Policy 5	<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 difficult 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 understanding necessity, making it difficult for staff to determine when it applies.</p> <p>Council should consider updating the LUMO to: have clear and objective administrative review criteria; remove mention of “character” as a criterion for applying land use rules; and limit the use of qualifiers like “where necessary” and “as appropriate.”</p>
Public Hearing Policy 1	<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 Council and Commissions consider several types of administrative development decisions that do not provide a genuine opportunity to use discretion. These decisions are made in open meetings with public comment. Administrative decisions that are currently considered in open meetings with public comment 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) <p>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.</p> <p>Council should consider updating the LUMO to:</p> <ul style="list-style-type: none"> • Authorize Town staff to make administrative decisions regarding: <ul style="list-style-type: none"> ○ Major and minor subdivisions ○ Site plan reviews ○ Alternate buffers • Clarify the CDC’s role in reviewing building elevations and lighting plans. • Maintain the current procedure for Blue Hill Certificates of Appropriateness