



TOWN OF BLACK MOUNTAIN

160 Midland Avenue ♦ Black Mountain ♦ N.C. ♦ 28711

Phone: (828) 419-9300 ♦ Fax: (828) 669-2030

MEMORANDUM

To: Town of Black Mountain Planning Board
From: Jennifer Tipton, Zoning Administrator
Re: Agenda Packet for March 26, 2018
Date: March 20, 2018

The **Town of Black Mountain Planning Board** will meet on **Monday, March, 26, 2018 at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

Please find the following items for your information and use at the meeting:

1. The proposed agenda;
2. Draft minutes from February 26, 2018 and
3. Table of Permitted Uses.

Please let Jennifer Tipton know if you are **unable** to attend this meeting.
jennifer.tipton@townofblackmountain.org or (828) 419-9373.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9373 or by email at jennifer.tipton@townofblackmountain.org.

CC: Jessica Trotman, Planning Director
Matt Settlemyer, Town Manager



PUBLIC NOTICE

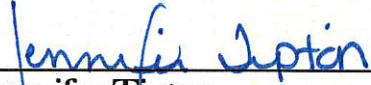
BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING

Monday, March 26, 2018 at 6:00 p.m.

The Black Mountain Planning Board will meet for their monthly meeting on **Monday, March 26, 2018 at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C.

The meeting is open to the public.



Jennifer Tipton
Zoning Administrator

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton at (828) 669-2030 or by email at Jennifer.tipton@townofblackmountain.org

Posted to the Town Bulletin Board 03/15/18

www.townofblackmountain.org



**Planning Board Regular Meeting
March 26, 2018**

PROPOSED AGENDA

- I. CALL TO ORDER**
 - Welcome
 - Roll Call
- II. ADOPTION OF AGENDA**
 - **Motion:** To adopt the agenda as presented [or as amended]
- III. ADOPTION OF MINUTES**
 - **Motion:** To adopt the minutes of February 26, 2018 as written [or as amended]
- IV. OLD BUSINESS**
 - None
- V. NEW BUSINESS**
 - Table of Permitted Uses
- VI. COMMUNICATION FROM PARTNERING AGENCY**
 - None
- VII. COMMUNICATION FROM PLANNING BOARD**
- VIII. COMMUNICATION FROM STAFF**
- IX. ADJOURNMENT**

4-1-1 Table of Permitted Uses

02/04/08;amended 04/07/08,05/03/10,07/11/11,08/05/13 04/07/14, 10/06/14			Ref.	Development	Zoning Districts														
					SIC	Standards	RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3	M1	M2
RESIDENTIAL USES																			
Single Unit Residential																			
Single-Family Detached Dwelling					0000		Z	Z	Z	Z	Z	Z	Z	Z					
Modular Home					0000		Z	Z	Z	Z	Z	Z	Z						
Manufactured Home, on individual lot (within MH Overlay District Only)					0000	Sec. 4-7.3 A					CC								
Patio Home Dwelling					0000	Sec. 4-7.3 B						CC	CC						
Multiple Unit Residential																			
Condominium, less than 2 acres in area					0000	Sec. 4-7.3 C							D	D					
Condominium, 2 or more acres in area					0000	Sec. 4-7.3 C							CC	CC					
Manufactured Home Park (within MH Overlay District Only)					0000	Sec. 4-7.3 D					CC								
Multifamily Dwelling, less than 2 acres in area					0000	Sec. 4-7.3 E							D	D					
Multifamily Dwelling, 2 or more acres in area					0000	Sec. 4-7.3 E							CC	CC					
Townhouse Dwelling, less than 2 acres in area					0000	Sec. 4-7.3 F							D	D					
Townhouse Dwelling, 2 or more acres in area					0000	Sec. 4-7.3 F							CC	CC					
Two-Family Dwelling (duplex)					0000								Z	Z					
Group Residential																			
Boarding and Rooming House					7021	Sec. 4-7.3 G									D	D			
Family Care Home					8361	Sec. 4-7.3 H	D	D	D	D	D	D	D						
Group Care Facility					8361	Sec. 4-7.3 I									D				
Temporary Emergency Shelter					0000	Sec. 4-7.3 L	D	D	D	D	D	D	D	D	D	D	D	D	D
Nontraditional Residential Developments																			
Live/Work Combination Dwelling & Nonresidential Use					0000	Sec. 4-7.3 M							D	D	D	D	D		
Planned Unit Development					0000	Sec. 4-7.3 N	CC	CC	CC	CC	CC	CC	CC	CC	CC	CC			
Residential Cluster Development					0000	Sec. 4-7.3 O	CC	CC	CC	CC	CC	CC	CC	CC					
Traditional Neighborhood Development					0000	Sec. 4-7.3 P	CC	CC	CC	CC	CC	CC	CC	CC					
ACCESSORY USES AND STRUCTURES																			
Accessory Dwelling Unit (on single-family lots)					0000	Sec. 4-7.4 A	D	D	D	D	D	D	D	D					
Accessory Dwelling Unit to an Office Use					0000	Sec. 4-7.4 B									BA	Z			
Accessory Uses and Structures (customary)					0000	Sec. 4-1 G	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
Automatic Teller Machine					6099														
Caretaker Dwelling					0000	Sec. 4-7.4 C	D	D	D	D	D	D	D	D	D	D	D	D	D
Communication Tower Under 50' in Height					0000	Sec. 4-7.4 D	D	D	D	D	D	D	D	D		Z	Z	Z	Z
Fence, Wall					0000	Sec. 4-2 C	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
Home Occupation					0000	Sec. 4-7.4 E	D	D	D	D	D	D	D	D					

Z=Allowed by right

D=Allowed if development standards are met

E= Exempt

BA=Special use permit required from Board of Adjustment

CC=Special use permit required from City Council

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02/04/08; amended 04/07/08, 05/03/10, 07/11/11, 08/05/13 04/07/14, 10/06/14	Ref.	Development Standards	Zoning Districts													
	SIC		RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3	M1	M2	
Satellite Dish Antenna	0000	Sec. 4-7.4 F	D	D	D	D	D	D	D	Z	Z	Z	Z	Z	Z	
Signs	0000	Sec. 6-6	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	
Swimming Pool	0000	Sec. 4-2 B	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
RECREATIONAL USES																
Amusement or Water Parks, Fairgrounds	7996															
Athletic Fields	0000	Sec. 4-7.5 A	CC	CC	CC	CC	CC	CC	CC			CC		CC	CC	
Auditorium, Coliseum or Stadium	0000	Sec. 4-7.5 B										CC	CC			
Batting Cages, Outdoor	7999	Sec. 4-7.5 C	D									D			D	
Batting Cages, Indoor	7999											Z				
Billiard Parlor, Pool Hall	7999											Z	Z			
Bingo Parlor	7999											Z	Z			
Bowling Center	7933											Z		Z	Z	
Campground/RV Park	7033	Sec. 4-7.5 D		BA										BA	BA	
Civic, Social and Fraternal Clubs and Lodges	8641	Sec. 4-7.5 E	BA	BA	BA	BA	BA	BA	BA	BA	D	D				
Coin-Operated Amusement, except Adult Arcade & Video Gaming Arcade	7993											Z	Z	Z		
Community Center	7999	Sec. 4-7.5 F	BA	BA	BA	BA	BA	BA	BA	BA						
Country Club with Golf Course	7997	Sec. 4-7.5 G	BA	BA	BA	BA	BA	BA	BA	BA			BA	BA		
Dance School, Music Instruction	7911											Z	Z	Z		
Fishing Lake	7999													Z	Z	
Fortune Tellers, Astrologers	7999											Z				
Go-Cart Raceway	7999													Z		
Golf Course	7992	Sec. 4-7.5 H	BA	BA	BA	BA	BA	BA	BA			BA	BA			
Golf Course, Miniature	7999											Z			Z	
Golf Driving Range	7999											Z			Z	
Physical Fitness Center, Training Center	7991											Z	Z	Z	Z	
Private Club or Recreational Facility, Other	7997	Sec. 4-7.5 I	D	D	D	D	D	D	D	D	Z	Z	Z	Z	Z	
Public Park or Recreational Facility, Other	7990	Sec. 4-7.5 I	D	D	D	D	D	D	D	D	Z	Z	Z	Z	Z	
Race Track Operation	7948	Sec. 4-7.5 J												CC		
Riding Academy, Riding Stables, Equestrian Facility	7999	Sec. 4-7.5 H	CC													
Shooting Range, Indoor	7999	Sec. 4-7.5 L												D	D	
Skating Rink	7999											Z			Z	
Sports and Recreation Club, Indoor	7997											Z	Z	Z		
Swim and Tennis Club	7997											Z	Z	Z		
EDUCATIONAL AND INSTITUTIONAL USES																
Ambulance Service	4119	Sec. 4-7.5 N	BA	BA	BA	BA	BA	BA	BA	BA				Z	Z	

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		SIC		RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3	M1	M2	
Cemetery, Columbarium or Mausoleum (Principal Use) Cemetery, Columbarium or Mausoleum on Same Property as Church or Other Place of Worship Church Or Other Place of Worship College, University, Technical Institute Day Care Center, Adult and Child, 5 or Less Clients (accessory use)		0000	Sec. 4-7.6 A	CC	CC	CC	CC	CC							Z	Z	
		0000	Sec. 4-7.6 B	D	D	D	D	D	D	D	D	D	D	D	D	Z	Z
		8661	Sec. 4-7.6 C	D	D	D	D	D				CC		Z		CC	CC
		8220	Sec. 4-7.6 D														
		8322	Sec. 4-7.6 F	D	D	D	D	D	D	D	D	Z	Z	Z	Z	Z	Z
Day Care Center, Adult and Child, 6 -12 Clients (principal use) Day Care Center, Adult and Child, 13 or More Clients (principal use) Elementary or Secondary School Fire Station/Emergency Medical Service Government Office Hospital Library		8322	Sec. 4-7.6 G	CC	CC	CC	CC	CC	CC	CC	Z	Z	Z	Z	Z	Z	
		8322	Sec. 4-7.6 G.1	CC									Z	Z	Z		
		8211	Sec. 4-7.6 H	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA		
		9224	Sec. 4-7.6 I	D	D	D	D	D	D	D	D	Z	Z	Z	Z	Z	Z
		9000										Z	Z	Z	Z	Z	Z
Hospital Library Museum or Art Gallery National Guard /Military Reserve Center Nursing and Convalescent Home, Rest Home Orphanage Police Station Post Office Retreat/Conference Center School Administration Facility		8062									Z						
		8231	Sec. 4-7.6 J	D	D	D	D	D	D	D	D	Z	Z	Z	Z		
		8412										Z	Z	Z		Z	Z
		0000															
		8050	Sec. 4-7.6 K	D	D	D	D	D	D	D	D	Z		Z	Z		
		8361	Sec. 4-7.6 L	D	D	D	D	D	D	D	Z		Z	Z	Z	Z	
		9221									Z	Z	Z	Z	Z	Z	
		0000									Z	Z	Z	Z	Z	Z	
		0000	Sec. 4-7.6 M	D								Z		Z			
		9411										Z		Z		Z	Z
BUSINESS, PROFESSIONAL and PERSONAL SERVICES																	
Advertising, Outdoor Services Automobile Parking (Commercial) Automobile Rental or Leasing Automobile Repair Services Automobile Towing and Storage Services Bank, Savings and Loan, or Credit Union Barber Shop, Beauty Shop, Cosmetic Tattoos Bed and Breakfast or Tourist Home Bicycle, Motorcycle Repair Blacksmith Boat Repair		7312										Z		Z	Z	Z	
		7521											Z	Z	Z	Z	Z
		7510											Z	Z	Z	Z	Z
		0000	Sec. 4-7.7 A										CC	Z	CC	Z	Z
		7549														Z	Z
		6000										Z	Z	Z	Z		
		7241	Sec. 4-1.G									Z	Z	Z	Z	Z	
		7011	Sec. 4-7.7 B	D	D	D	D	D				Z		Z	Z		
		3751											Z	Z			
		7699												Z			Z
		3730													Z	Z	

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			RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3					
Car Wash, Auto Detailing	7542											Z	Z					Z
Clothing Alteration or Repair	0000										Z	Z	Z					
Contractor Office with Outside Storage Yard	0000	Sec. 4-7.7 C												D				
Computer Maintenance and Repair	7378										Z	Z	Z				Z	
Equipment Rental and Leasing (no outside storage)	7350											Z		Z			Z	
Equipment Rental and Leasing (with outside storage)	7350	Sec. 4-7.7 D												D				
Equipment Repair	7690											Z						Z
Funeral Home, Crematorium	7261										Z	Z	Z					
Furniture Refinishing and Repair, Upholstery Shops	7641													Z			Z	
Furniture Display and Showrooms	0000																	
Hotel or Motel, except Adult Motel**	7011										Z	Z	Z					
Insurance Agency, no On-site Claims Inspections	6411										Z	Z	Z					
Insurance Agency, with On-site Claims Inspections	6411											Z						Z
Kennels, with Outside Runs	0752																CC	
Kennels, with No Outside Runs	0752	Sec. 4-7.7 E										Z					Z	Z
Landscape and Horticultural Services	0780												Z					Z
Laundromat, Coin-Operated	7215										Z	Z	Z					
Laundry or Dry Cleaning Plant	7211																Z	
Laundry or Dry Cleaning, Retail Facility	7212										Z	Z	Z				Z	
Locksmiths, Gunsmiths	7699										Z	Z	Z					
Marital Arts Instructional School	7999										Z	Z	Z					
Medical or Dental Laboratory	8071										Z	Z	Z					
Offices, General	0000										Z	Z	Z					
Office Uses Not Listed Elsewhere	0000										Z	Z	Z					
Pest or Termite Control Services	7342										Z	Z						
Photocopying and Duplicating Services	7334										Z	Z	Z				Z	
Photofinishing Laboratory	7384																Z	
Photography, Commercial Studio	7335										Z	Z	Z				Z	
Refrigerator or Large Appliance Repair	7623																Z	Z
Research, Development or Testing Services	8730																Z	Z
Roofing Shop	1761																	Z
Services, Miscellaneous Not Listed Elsewhere	7699											Z						
Shoe Repair or Shoeshine Shop	7251											Z	Z	Z				
Stock, Security, and Commodity Brokers	62										Z	Z	Z					
Television, Radio or Electronics Repair	7620											Z	Z	Z			Z	Z
Theater (Indoor), except Adult Theater**	7832										Z	Z	Z					

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			RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3	M1	M2
Theater (outdoor)	7833											Z			
Tire Recapping	7534													Z	Z
Truck Driving School	8249													Z	Z
Truck and Utility Trailer Rental and Leasing	0000													Z	
Truck Washing	7542													CC	
Veterinary Clinic	0742											Z			Z
Vocational, Business or Secretarial School	8240								Z			Z			Z
Watch, Clock, and Jewelry Repair	7631									Z		Z	Z		
Welding Shop	0000													Z	
RETAIL TRADE															
ABC Store (packaged liquor)	5921											Z	Z		
Antique Store	5932											Z	Z		
Apparel and Accessory Store	5600											Z	Z	Z	
Appliance Store	5722											Z	Z	Z	
Arts and Crafts	0000											Z	Z	Z	
Auto Supply Sales	5531											Z	Z		
Bakery	5461											Z	Z		
Bar, Night Club, Tavern, Brewpub	5813	Sec. 4-7.8 A										Z	Z	D	
Bicycle, Motorcycle Sales	5571											Z	Z		
Boat Sales	5551												Z		Z
Bookstore, except Adult Bookstore**	5942									Z		Z	Z	Z	
Building Supply Sales	5211	Sec. 4-7.8 B											D		D
Convenience Store, no Gas Pumps	5411											Z	Z	Z	Z
Convenience Store, with Gas Pumps	5411	Sec. 4-7.8 C									BA	Z	Z	BA	Z
Department, Variety or General Merchandise	5300											Z	Z		
Drugstore or Pharmacy	5912											Z	Z	Z	
Farm Supplies and Equipment	0000													Z	Z
Floor Covering, Drapery or Upholstery	5710											Z	Z		Z
Florist	5992									Z		Z	Z	Z	
Food Stores	54	Sec. 4-7.8 D										Z	Z	Z	Z
Fuel Oil Sales	5980												Z		Z
Furniture Sales	5712											Z	Z		
Garden Center or Retail Nursery	5261												Z	Z	Z
Hardware Store	5251											Z	Z	Z	
Home Furnishings, Miscellaneous	5719											Z	Z		
Manufactured Home Sales	5271	Sec. 4-7.8 E											CC		CC

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			RA20	R20	R15	R12	R10	R8	R6	CI	B1	B2	B3					
Miscellaneous Shopping Goods Stores, not listed elsewhere	594										Z	Z	Z					
Motor Vehicle Sales (new and used)	5511										Z	Z	Z				Z	
Newsstand	5894										Z	Z	Z					
Office Supplies and Equipment	5999										Z	Z	Z					Z
Optical Goods Sales	5995										Z	Z	Z					
Paint and Wallpaper Sales	5231										Z	Z	Z					
Pawnshop or Used Merchandise Store	5932										Z	Z	Z					
Pet Store	5999										Z	Z	Z					
Radio, Television, Consumer Electronics, and Music Stores	5731										Z	Z	Z					
Retail Sales, Miscellaneous not listed elsewhere	5999										Z	Z						
Recreational Vehicle Sales	5561										Z	Z					Z	Z
Restaurant (drive-in or take out window only)	5812	Sec. 4.7.8 F									D	D	D				Z	Z
Restaurant (with drive-through)	5812	Sec. 4.7.8 G									D	D	D				Z	Z
Restaurant (without drive-through)	5812										Z	Z	Z				Z	Z
Service Station, Gasoline Sales	5541	Sec. 4.7.8 H									BA	Z	BA				Z	Z
Shopping Center	0000	Sec. 4.7.8 I									CC							
Superstore	0000	Sec. 4.7.8 J									DD						Z	Z
Tire Sales	5531											Z						
Truck Stop, Travel Plazas	5541	Sec. 4.7.8 K															CC	
Video Tape Rental and Sales, except Adult Video Store**	7841										Z	Z	Z					
WHOLESALE TRADE																		
Farm Product Raw Materials	515																Z	
Hardware	5072											Z					Z	Z
Petroleum and Petroleum Products, Bulk Storage	517	Sec. 4.7.9 B															BA	BA
Wholesale Trade, not listed elsewhere	0000																Z	Z
TRANSPORTATION, WAREHOUSING AND UTILITIES																		
Airport or Air Transportation Facility	4500	Sec. 4.7.9 A															CC	CC
Bulk Mail and Packaging	4212																Z	Z
Bus Terminal	4100																Z	Z
Communication or Broadcasting Facility	4800																	
Communications Tower, Public Safety	0000	Sec. 4.7.9 C	D	D	D	D	D	D	D	D	D	D	D				D	D
Communications Tower and All Other Radio, Television Towers Over 50' in Height	0000	Sec. 4.7.9 D	CC														CC	CC
Counter Service	4215																Z	Z
Farm Product Warehousing and Storage	4221																Z	Z

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			RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3	M1	M2
Moving and Storage Service	4214													Z	Z
Outside Storage	0000													Z	
Public Works and Public Utility Facilities Essential to the Immediate Area	0000	Sec. 4-7.9 F	CC	CC	CC	CC	CC	CC	CC	CC	CC	CC	CC	CC	CC
Railroad Station	4010												Z		
Recycling Collection Station or Point	0000													Z	Z
Sewage Treatment Plant	4952	Sec. 4-7.9 G												CC	CC
Solar Farms		Sec. 4-7.9 E	CC											CC	CC
Taxi Terminal	4121										Z	Z			
Telephone Exchange	0000	Sec. 4-7.9 I	BA	BA	BA	BA	BA	BA	BA		BA	BA		BA	BA
Transformer Stations	0000	Sec. 4-7.9 I	BA	BA	BA	BA	BA	BA	BA			BA		BA	BA
Trucking or Freight Terminal	4213													Z	
Warehouse (general storage, enclosed)	4220													Z	Z
Warehouse (self-storage)	4225													Z	Z
Water Treatment Plant	0000	Sec. 4-7.9 J												CC	CC
MANUFACTURING and INDUSTRIAL USES															
Apparel and Finished Fabric Products	2300													Z	Z
Bakery Products	2050													Z	Z
Batteries	3691													Z	
Beverage Products	2086											Z		Z	Z
Cabinet and Woodworking Shops	2434													Z	Z
Carpets, Bedding	0000													Z	
Chemicals, Paints and Allied Products	2800													Z	
Computer and Office Equipment	3570													Z	Z
Concrete, Cut Stone and Clay Products	3200													Z	
Dairy Products	2020													Z	Z
Drugs and Pharmaceuticals	283													Z	Z
Electronic and Other Electrical Equipment	36													Z	
Food Preparation and Related Products, Miscellaneous	209													Z	Z
Furniture and Fixtures	2500													Z	
Glass	3200													Z	
Hardware and Housewares	0000													Z	
Heating, Equipment and Plumbing Fixtures	3430													Z	
Ice	2097											Z		Z	Z
Industrial and Commercial Machinery	3500													Z	
Jewelry and Silverware Fabrication, No Plating	3915														

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			RA20	R20	R15	R12	R10	R8	R6	CI	B1	B2	B3					
Machine Shop	3599																Z	Z
Manufactured Housing and Wood Buildings	2450																Z	Z
Metal Fabricating	0000																Z	Z
Millwork, Plywood and Veneer	2430																Z	
Paper Products	2670																Z	
Printing and Publishing	2700																Z	Z
Printing and Publishing, Incidental to a Newspaper Office	2700											Z	Z					
Rubber and Plastics, Miscellaneous	3000																Z	Z
Sheet Metal Shop	0000																Z	Z
Signs	3993																Z	Z
Soaps and Cosmetics	2840																Z	Z
Sporting Goods and Toys	3940																Z	Z
Textiles	2200																Z	
Tobacco Products	2110																Z	
Manufacturing or Industrial, not listed elsewhere	0000																Z	
AGRICULTURAL USES																		
Bona fide farm operation except commercial feeder/breeder operation	0000	Sec. 1-5	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E
Commercial Feeder/Breeder Operation*	0000	Sec. 4.7.11 A	CC															
MINING USES																		
Mining, Quarrying, Sand Pits, and Mineral Extraction	1000	Sec. 4.7.12 A															CC	
TEMPORARY USES																		
Arts and Crafts Show	0000																	
Carnivals and Fairs	7999	Sec. 4.7.13 A	CC														CC	CC
Christmas Tree, Pumpkin, and Similar Seasonal Sales	0000																Z	Z
Concerts, Stage Show	7920	Sec. 4.7.13 B															CC	
Convention, Trade Show	0000																Z	Z
Corn Maze, Hay Rides, and Similar Temporary Uses Associated with a Bona Fide Farm Operation	0000	Sec. 4.7.13 C	D															
Fireworks Stand	0000	Sec. 4.7.13 D															D	
Horse Show, Rodeo	7999																	
Outdoor Fruit and Vegetable Market, Seasonal	5431	Sec. 4.7.13 F	D														D	D
Outdoor Religious Event	0000	Sec. 4.7.13 G															CC	CC
Temporary Construction, Storage or Office; Real Estate Sales or Rental Office (with concurrent building permit for permanent building)	0000																	

Z=Allowed by right
D=Allowed if development standards are met
E= Exempt

BA=Special use permit required from Board of Adjustment
CC=Special use permit required from City Council

4-1-1 Table of Permitted Uses

02/04/08;amended 04/07/08,05/03/10,07/11/11,08/05/13 04/07/14, 10/06/14	Ref.	Development	Zoning Districts													
			RA20	R20	R15	R12	R10	R8	R6	OI	B1	B2	B3	M1	M2	
Standards	SIC															
Temporary Construction Office or Security Residence	0000	Sec. 4-7.13 H	D	D	D	D	D	D								
Temporary Portable Storage Containers	0000	Sec. 4-7.13 K	D	D	D	D	D	D	D	D	D	D	D	D	D	
Temporary and Special Events not Listed Elsewhere	0000	Sec. 4-7.13 I							D	D	D	D	D	D	D	
Turkey Shoot	0000	Sec. 4-7.13 J											D	D	D	
Yard Sale	0000		Z	Z	Z	Z	Z	Z								
MISCELLANEOUS USES																
Adult Establishment**	0000	Sec. 4-7.14 B												CC		
Animal Shelter	0752													Z	Z	
Billboard, Outdoor Advertising Sign	0000	Sec. 4-7.14 A												D	D	
Planned Multiple Occupancy Group (Commercial, Office or Industrial)	0000	Sec. 4-7.14 C							CC	CC	CC	CC	CC	CC	CC	

* Chapter 4 of the City of Mebane Ordinances regulates the keeping of certain animals within the corporate limits of the City of Mebane. Consequently, some animal operations may not be permissible within zoning districts that are located within the corporate limits.

** Adult Establishment includes adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, massage parlor, adult motion picture theater, adult theater, escort agency, sexual encounter studio, or any combination of the foregoing. See Definition in Article 12

Z=Allowed by right

D=Allowed if development standards are met

E= Exempt

BA=Special use permit required from Board of Adjustment
CC=Special use permit required from City Council

Permitted Use Schedule

Development Standards Section	Use Type	Ref	SIC	AG	RS40	RS30	RS 20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LI*	HI	PI	LUC	
Agricultural Uses																											
	Agricultural Production (crops)			0100	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	1
	Agricultural Production (Livestock) (county)			0200	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	1
	Agricultural Production (livestock)			0200	P																						1
	Animal Feeder/Breeder	6-4.5		0210	D																						1
	Animal Services (Livestock)			0751	P																			P	P		3
	Animal Service (other)	6-4.6		0752	P									D	D	D	D	D	D	D	D	D	D	P	P		3
	Fish Hatchery			0920	P																			P	P		4
	Forestry			0810	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	1
	Horticultural Specialties			0180	P															P				P	P		2
	Veterinary Service (Livestock)			0741	P																			P	P		3
	Veterinary Service (Other)	6-4.65		0742	P									D	D	D	D	D	D	D	D	D	D	P	P		3
Mining Uses																											
	Mining and Quarrying	6-4.42		1000	S																			S			5
Residential Uses																											
	Boarding and Rooming House			7021	S							S	P	P	P	P			P	P							2
	Common Recreation & Service Facility			0000	P						P	P	P	P	P	P											1
	Congregate Care Facility	6-4.22		0000								D		D	D					D					D	D	2
	Family Care Facility			0000	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		1
	Group Care Facility			0000																P						P	2
	Manufactured Dwelling (Class AA)	6-4.39		0000	P	Z	Z	Z	Z	Z	Z	Z															1
	Manufactured Dwelling (Class A, B, C)	6-4.39		0000	P	Z																					1
	Manufactured Dwelling Park	6-4.39		0000	S						S																2
	Multifamily Dwelling (including Condo)			0000							P	P		P	P					P							2
	Private Dormitory	6-4.47		0000										D	D											P	2
	Single Family Detached Swelling			0000	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				1
	Townhouse Dwelling			0000							P	P		P	P					P							2
	Two Family Dwelling (Twin Home or Duplex)			0000	P						P	P	P	P	P	P	P	P	P	P	P	P	P				1
Accessory Uses and Structures																											
	Accessory Dwelling Unit			0000	D	D	D	D	D	D	D	D	D	D	D	D	P				D						
	Accessory Uses and Structures (customary)			0000	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Caretaker Dwelling	6-4.16		0000										D	D	D	D	D	D	D	D	D	D	D	D	D	
	Home Occupation (including room rental)	6-4.36		0000	D	D	D	D	D	D	D	D								D							
	Junked Motor Vehicle	6-4.37		0000	P	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
	Migrant Labor Housing	6-4.41		0000	D																						

Permitted Use Schedule

Use Type	Development Standards Section	Ref SIC	AG																							
			RS40	RS30	RS20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	L*	HI	PI	LUC		
Accessory Uses and Structures Cont.																										
Rural Family Occupation	6-4.54	0000	S																							
Satellite Dish/Communication Tower	6-4.56	0000	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	
Swimming Pool	6-4.61	0000	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D		
Yard Sale (no more than 2 per year)		0000	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Recreational Uses																										
Amusement or Water Parks, Fairgrounds	6-4.4	7996	S																							4
Athletic Fields	6-4.8	0000	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	D	P	P	D	P	P	P	P	1
Auditorium, Coliseum, or Stadium		0000																								3
Batting Cages		7999																								3
Billiard Parlors		7999																								3
Bingo Games		7999																								3
Bowling Center		7933																								3
Club or Lodge	6-4.20	8640	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	S	P	P	P	P	P	3
Coin Operated Amusement		7993																								3
Country Club with Golf Course	6-4.25	7997	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S		S	S						1
Dance School		7911																			S					3
Equestrian Facility	6-4.30	7999	S	S																	P	P	P	P		2
Fortune Tellers, Astrologers		7999																			P	P	P	P		3
Go-cart Raceway		7999	S																							4
Golf Course, Miniature		7999																								3
Golf course	6-4.34	7992	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S									1
Golf Driving Range	6-4.35	7999	S																							3
Marital Arts Instructional Schools		7999																								3
Physical Fitness Center		7991																P	P		P	P	P	P		3
Private Club or Recreation Facility, Other		7997	S																P	P						3
Internet Sweepstakes		0000																								
Public Park	6-4.48	7990	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	1
Public Recreation Facility	6-4.49	7990	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	2
Shooting Range, Indoor	6-4.58	7999	S																							3
Shooting Range, Outdoor	6-4.59	7999	S																							5
Skating Rink		7999																								3
Sports Instructional Schools	6-4.60	7999	S																							3
Sports & Recreation Clubs, Indoor		7997																								3
Swim & Tennis Club	6-4.25	7997	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	D	D							3

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P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
 *= Indicates additional District requirements (See Section 4-4.3[B])

Permitted Use Schedule

Use Type	Development Standards Section	Ref	AG	RS40	RS30	RS 20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LI*	HI	PI	LUC
Educational and Institutional Uses																									
Ambulance Service		4119	P																						
Cemetery/ Mausoleum	6-4.18	0000	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	3
Church	6-4.19	8661	P	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	2
College or University		8220																							3
Correctional Institution		9223	S																						3
Day Care Center, Adult (5 or less, Hom. Occ)	6-4.26 (A)	8322	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	4
Day Care Center, Adult (6 or more)	6-4.26 (B)	8322	S																						1
Day Care Center, Child (5 or less, Hom. Occ)	6-4.26 (A)	8351	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	3
Day Care Center, Child (6 or more)	6-4.26 (B)	8351	S																						1
Elementary or Secondary School		8211	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	3
Fire Station	6-4.29	9214	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	3
Fraternity or Sorority (Univ or College)		0000																							3
Government Office		9000																							3
Hospital		8062																							3
Library		8231																							3
Museum or Art Gallery		8412																							3
Nursing and Convalescent Home		8050																							3
Orphanage		8361	S																						3
Police Station, Neighborhood		9221	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	3
Post Office		0000																							3
Psychiatric Hospital		8063																							3
Retreat Center		0000	S																						3
School Administration Facility		9411																							3
Specialty Hospital		8069																							3
Business, Professional & Personal Services																									
Accounting, Auditing or booking		8721																							
Administrative or Management Services		8740																							
Adult Entertainment	6-4.1.1	0000																							3
Advertising Agency or Representative		7310																							3
Advertising, Outdoor Services	6-4.2	7312																							4
Automobile Rental or Leasing		7510																							4
Automobile Repair Services, Major		0000																							4
Automobile Repair Services, Minor		0000																							3
Automotive Towing and Storage Services	6-4.9	7549																							3

P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
 *=- Indicates additional District requirements (See Section 4-4.3[B])

Use

[illegible]

*= Indicates additional District requirements (See Section 4-4.3[B])

Permitted Use Schedule

Development Standards Section	Ref	SIC	AG	RS40	RS30	RS 20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LI*	HI	PI	LUC
Business, Professional & Personal Services																									
Pest or Termite Control Services		7342																P				P	P		3
Office Uses Not otherwise classified		0000											P	P	P	P	P	P	P	P	P	P			3
Photocopying and Duplicating Services		7334											P	P	P	P	P	P	P	P	P	P			3
Photofinishing Laboratory		7384															P	P	P	P	P	P			3
Photography Commercial		7335															P	P	P	P	P	P			3
Photography Studio		7221											P	P	P	P	P	P	P	P	P				3
Real Estate Office		6500										P	P	P	P	P	P	P	P	P	P				3
Recreational Vehicle Park or Campsite	6-4.39 (A) 2)	7033 S																D							4
Refrigerator or Large Appliance Repair	6-4.51	7623															D	D	D			P	P		3
Rehabilitation or Counseling Services		8300										P	P	P	P	P	P	P	P	P	P	P	P		3
Research, Development or Testing Services		8730																				P	P		3
Septic Tank Services		7699																					P		4
Shoe Repair or Shoeshine Shop	6-4.57	7251														P	P	P	P	P	P				3
Stock, Security or Commodity Broker		6200										P	P	P	P	P	P	P	P	P	P	P			3
Taxidermist		7699															P	P	P	P	P				3
Television, Radio, or Electronic Repair		7620															P	P	P	P	P				3
Theater (outdoor)		7833 S																							4
Theater (indoor)		7832															P	P	P	P					3
Tire Recapping		7534																					P		4
Tourist Home (Bed & Breakfast)	6-4.62	7011 S	S	S	S	S	S	S	S	S	D		D	D	D	D	P	P	P	P	P				2
Travel Agency		4720										P	P	P	P	P	P	P	P	P	P	P	P		3
Truck Driving School		8249																				P	P		3
Truck & Util. Trailer Rent & Leasing, Light		0000															P	P	P	P					4
Truck & Util. Trailer Rent & Leasing, Heavy		0000																				P	P		5
Truck Wash		7542																					P		5
Vocational, Business or Secretarial School		8240										P	P	P	P	P	P	P	P	P	P	P	P		3
Watch or Jewelry Repair Shop	6-4.68	7631													P	P	P	P	P	P	P				3
Retail Trade																									
ABC Store (Liquor)		5921															P	P	P	P	P				3
Antique Store		5932													P		P	P	P	P	P				3
Appliance Store		5722															P	P	P	P	P				3
Arts & Crafts		0000													P		P	P	P	P	P				3
Auto Supply Sales		5531															P	P	P	P	P				3
Bakery		5461													P		P	P	P	P	P				3

4-13

P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
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Permitted Use Schedule

Use Type	Development Standards Section	Ref SIC	Development Standards																LUC							
			AG	RS40	RS30	RS20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*		CB	SC	CP*	L*	HI	PI	
Retail Trade (Cont.)																										
Bar	6-4.11	5813															D	D	D	D				P		3
Bar (capacity 50 or less persons)	6-4.12	5813															S	S	S	S				P		3
Boat Sales		5551															P	P						P		4
Bookstore		5942															P	P	P	P	P					3
Building Supply Sales (no storage yard)		5211																P	P	P	P					3
Building Supply Sales (with storage yard)	6-4.15	5211															D	D	D	D				P		4
Camera Store		5946															P	P	P	P	P					3
Candy Store		5441															P	P	P	P	P					3
Clothing, Shoe and Accessory Store		5600															P	P	P	P	P					3
Computer Sales	6-4.21	5734															P	P	P	P	P					3
Convenience Store (with gasoline pumps)	6-4.23	5411															P	P	P	P	P	D	P	P		4
Convenience Store (without gasoline pumps)	6-4.24	5411															P	P	P	P	P	D	P	P		3
Dairy Products Store		5451															P	P	P	P	P					3
Department, Variety or General Merchandise		5300															P	P	P	P	P	P				3
Drugstore	6-4.28	5912															P	P	P	P	P	D				3
Fabric or Piece Goods Store		5949															P	P	P	P	P	P	P			3
Floor Covering, Drapery or Upholstery		5710																P	P	P	P	P		P		3
Florist		5992															P	P	P	P	P	P				3
Food Store		5400															P	P	P	P	P	P				3
Fuel Oil Sales		5980																					P			4
Furniture Sales		5712															P	P	P	P	P	P				3
Garden Center or Retail Nursery	6-4.33	5261																P	P	P	P	D		P		3
Gift or Card Shop		5947															P	P	P	P	P	P				3
Hardware Store		5251															P	P	P	P	P	P				3
Hobby Shop		5945															P	P	P	P	P	P				3
Home Furnishings, Miscellaneous		5719															P	P	P	P	P	P				3
Jewelry Store		5944															P	P	P	P	P	P				3
Luggage or Leather Goods Store		5948															P	P	P	P	P	P				3
Manufactured Home Sales		5271																					P			4
Miscellaneous Retail Sales		5999																								3
Motor Vehicle Sales (new and used)		5511																					P			4
Motorcycle Sales		5571																						P		4
Musical Instrument Sales		5736															P	P	P	P	P	P				3
Newstand	6-4.44	5954															P	P	P	P	P	D				3
Office Machine Sales		5999															P	P	P	P	P	P	P	P		3

4-14

P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
 *= Indicates additional District requirements (See Section 4-4.3[B])

Permitted Use Schedule

Use Type	Development Standards Section	Ref	AG	RS40	RS30	RS 20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LI*	HI	PI	LUC
Retail Trade (Cont.)																									
Optical Goods Sales	6-4.45	5995												D	D	P	P	P	P	P	P				3
Paint and Wallpaper Sales		5231																P	P	P	P		P		3
Pawnshop or Used Merchandise Store		5932																P	P	P	P				3
Pet Store		5999															P	P	P	P	P				3
Record and Tape Store		5735														P	P	P	P	P	P				3
Recreational Vehicle Sales		5561															P	P	P	P	P		P	P	4
Restaurant (with drive-thru)		5812															P	P	P	P	P				3
Restaurant (no drive-thru)	6-4.52	5812														P	D	P	P	P	P	P	P	P	3
Restaurant (serving mixed alcoholic bev.)	6-4.53	5812															D	P	P	P	P	P	P	P	3
Service Station, Gasoline		5541															P	P	P	P	P		P	P	4
Sporting Goods		5941														P	P	P	P	P	P				3
Stationery Store		5943														P	P	P	P	P	P				3
Television, Radio, or Electronic Sales		5731														P	P	P	P	P	P				3
Tire Sales		5531															P	P	P	P	P		P		3
Tobacco Store		5993														P	P	P	P	P	P				3
Truck Stop		5541															P	P	P	P	P		P	P	4
Video Tape Rental and Sales		7841														P	P	P	P	P	P				3
Wholesale Trade																									
Agricultural Cem./Pesticides/Fertilizers	6-4.69	5191	D																						5
Agricultural Products, Other	6-4.69	5159	D																				P	P	4
Ammunition		5099																							4
Animals and Animals Products, Other	6-4.69	5159	D																						5
Apparel, Piece Goods and Notions		5130																P	P	P	P	P	P	P	4
Beer/Wine/Distilled Alcoholic Beverages		5180																				P	P	P	4
Books, Periodicals and Newspapers		5192																P	P	P	P	P	P	P	4
Chemicals and Allied Products		5169																							5
Drugs and Sundries		5122																P	P	P	P	P	P	P	4
Durable Goods, Other		5099																P	P	P	P	P	P	P	4
Electrical Goods		5060																P	P	P	P	P	P	P	4
Farm Supplies, Other	6-4.69	5191	D																						4
Flowers, Nursery Stock & Florists Supplies		5193																P	P	P	P	P	P	P	4
Forest Products		5099																							5
Furniture and Home Furnishings		5020																P	P	P	P	P	P	P	4
Grain and Field Beans	6-4.69	5153	D																						5
Groceries and Related Products		5140																P	P	P	P	P	P	P	4

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P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
 *= Indicates additional District requirements (See Section 4-4.3[B])

Use

4-16

*= Indicates additional District requirements (See Section 4-4.3[B])

Permitted Use Schedule

Use Type	Development Standards Section	Ref SIC	AG	RS40	RS30	RS 20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LI*	HI	PI	LUC
Wholesale Trade (Cont.)																									
Telecommunication Towers	6-4.50																								
Free Standing	6-4.50 (C) 1)		S										S	S				S			S	S	S	S	3
Concealed/Camouflaged	6-4.50 (C) 2)			P	P	P	P	P	P	P	P		P	P				P			P	P	P	P	
Roof-Top Communication Tower	6-4.50 (C) 3)												D	D				D			D	D	D	D	
Railroad Terminal or Yard		4010																P			P	P	P	P	4
Reuse and Raw Material Hauling		4212																							4
Sewage Treatment Plant		4952																							5
Solid Waste Disposal (non-hazardous)		4953	S																						5
Taxi Terminal		4121																P	P		P	P	P	P	4
Trucking or Freight Terminal		4213																							5
Utility Company Office		0000											P	P				P	P	P	P	P	P	P	3
Utility Equipment and Storage Yards	6-4.64	0000																							5
Utility Lines and Related Appurtenances	6-4.64	0000	P	P	P	P	P	P	P	P	P		P	P				P	P	P	P	P	P	P	
Utility Service Facility (no outside storage)	6-4.64	0000																P			P	P	P	P	4
Utility Substation	6-4.64	0000	D	D	D	D	D	D	D	D	D		D	D				D	D	D	D	D	D	D	4
Warehouse (general storage/enclosed)	6-4.66	4220																D			P	P	P	P	4
Warehouse (self-storage)	6-4.67	4225																D			P	P	P	P	4
Water Treatment Plant		0000																							4
Manufacturing and Industrial Uses																									
Aircraft and Parts		3720																							5
Animal Feeds (including dog & cat)		2048																					S	S	5
Animal Slaughter or Rendering		0000																					S	S	5
Apparel and Finishing Fabric Products		0300																			P	P	P	P	4
Arms and Weapons		3480																				P	P	P	4
Asbestos, Abrasive and Related Products		3290																				P	P	P	5
Asphalt Plant	6-4.7	2951	S											P							P	P	S	S	5
Audio, Video and Comm. Equipment		3600																				P	P	P	4
Bakery Products		2050							P	P	P	P							P	P	P	P	P	P	4
Batteries		3691																				P	P	P	5
Beverage Products (alcoholic)		2080	D	D	D	D	D	D	D	D	D		D	D				D	D	D	D	D	D	D	5
Beverage Products (nonalcoholic)		2086																				P	P	P	4
Bicycle Assembly		3751																				P	P	P	4
Bicycle Parts and Accessories		3751																				P	P	P	4
Boat and Ship Building		3730																				P	P	P	4
Brooms and Brushes		3991																				P	P	P	4

Permitted Use Schedule

Use Type	Development Standards Section	Ref. SIC	AG	RS40	RS30	RS20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	L*	HI	PI	LUC
Manufacturing and Industrial Uses Cont.																									
Burial Caskets		3995																				P	P	P	4
Chemicals, Paint, and Allied Products		2800																				P	P	P	5
Coffee		2095																				P	P	P	4
Computer and Office Equipment		3570																				P	P	P	4
Concrete, Cut Stone and Clay Products		3200																				P	P	P	5
Contractors (no outside storage)		0000																P	P		P	P	P	P	3
Contractors, General Building		1500																				P	P	P	4
Contractors, Heavy Construction		1600																				P	P	P	5
Contractors, Special Trade		1700																				P	P	P	4
Costume Jewelry and Notions		3960																				P	P	P	4
Dairy Products		2020																				P	P	P	4
Drugs		2830																				P	P	P	5
Electrical Industrial Apparatus, Assembly		3620																				P	P	P	4
Electrical Industrial Apparatus, Manufac.		3620																				P	P	P	5
Electrical Components		3670																				P	P	P	5
Electrical Equipment		3600																				P	P	P	5
Explosives	6-4.32	2892 S																							5
Fabricated Metal Products		3400																					P	P	5
Fabricated Valve and Wire Products		3490																				P	P	P	4
Fats and Oils, Animals		2077																				P	P	P	5
Fats and Oils, Plant		2070																				P	P	P	4
Fish, Canned, Cured or Frozen		2091																					S		5
Floor Coverings (excluding carpet)		3996																					P	P	5
Food and Related Products, Miscellaneous		2090																				P	P	P	4
Furniture Framing		2426																				P	P	P	4
Furniture and Fixtures Assembly		0000																				P	P	P	4
Furniture and Fixtures		2500																				P	P	P	4
Glass		3200																					P	P	5
Glass Products from Purchased Glass		3231																				P	P	P	4
Grain Mill Products		2040																				P	P	P	4
Heating, Equipment and Plumbing Fixtures		3430																				P	P	P	4
Household Appliances		3630																				P	P	P	4
Ice		2097															P	P				P	P	P	4
Industrial and Commercial Machinery		3500																				S	P		4
Jewelry and Silverware (no plating)		3910																				P	P	P	4

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P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
 *= Indicates additional District requirements (See Section 4-4.3[B])

Permitted Use Schedule

Development Standards Section	Ref SIC	AG	RS40	RS30	RS 20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LI*	HI	PI	LUC
Manufacturing and Industrial Uses Cont.																								
Leather and Leather Products (no tanning)	3100																			P	P	P		4
Leather and Leather Products (tanning)	3100																					S		5
Light and Wiring Equipment	3640																				P	P		4
Logging and Wood, Raw Materials	2411	S																						1
Manufactured Housing and Wood Buildings	2450																				P	P		4
Measurement, Analysis & Control Instruments	3800																			P	P	P		4
Meat/ Poultry, Packing & Process (no rendering)	2010																					P		5
Medical, Dental and Surgical Equipment	3840																			P	P	P		4
Metal Coating and Engraving	3470																					S		5
Metal Fasteners (screws, bolts, etc.)	3450																				P	P		4
Metal Processing	3350																				P	P		4
Millwork, Plywood and Veneer	2430																			P	P	P		4
Motor Vehicle Assembly	3710																					P		5
Motor Vehicle Parts and Accessories	3714																				P	P		4
Motorcycle Assembly	3751																				P	P		4
Musical Instruments	3930																			P	P	P		4
Paper Products (no coating or laminating)	2670																					P		4
Paper Products (coating or laminating)	2670																					P		4
Paperboard Containers and Boxes	2650																			P	P	P		4
Pens and Art Supplies	3960																			P	P	P		4
Petroleum and Related Products	2900																					S		5
Pharmaceutical Preparations	2834																			P	P	P		4
Photographic Equipment	3861																			P	P	P		4
Photographic Supplies	3861																			P	P	P		5
Pottery and Related Products	3260																				P	P		4
Preserved Fruits & Vegetables (no can mfg.)	2030																				P	P		4
Primary Metals Products and Foundries	3300																					P		5
Printing and Publishing	2700																			P	P	P		4
Pulp and Paper Mills	2610																					S		5
Rubber and Plastics, Miscellaneous	3000																				P	P		4
Rubber and Plastics, Raw	3000																					S		5
Salvage Yards, Auto Parts	5015	S																				S		5
Salvage Yards, Scrap Processing	5903	S																				S		5
Sawmill or Planing Mills	2420	P																				P		5

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P= Use of Right D= Development Standards S= Special Use Permit Required Z= Overlay Zoning Required
 *= Indicates additional District requirements (See Section 4-4.3[B])

Permitted Use Schedule

Manufacturing and Industrial Uses Cont.

Use Type	Development Standards Section	Ref. Sec	AG	RS40	RS30	RS20	RS15	RS12	RS09	RM5	RM8	LO	GOM	GOH	NB*	LB*	GB*	HB*	CB	SC	CP*	LF*	HI	PI	LUC
Signs	6-1.	3993																	S		P	P	P		4
Soaps and Cosmetics		2840																			P	P	P		4
Sporting Goods and Toys		3940																			P	P	P		4
Sugar and Confectionery Products		2060																			P	P	P		4
Surface Active Agents		2843																			P	P	P		5
Textile Products (no dyeing & finishing)		2200																			P	P	P		4
Textile Products (with dyeing & finishing)		2260																				P	P		5
Tires and Inner Tubes		3011																					S		5
Tobacco Products		2110																					P		5
Wood Containers		2440																					P		4
Wood Products, Miscellaneous		2490																					P		5

Other Uses

Automotive Parking	6-2.5	0000	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	3
Mixed Development	6-4.43	0000																		D	D	D	3	
Temporary Construction, Storage or Office; Real Estate Sales or Rental Office (with concurrent building permit for permanent building)		0000	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		
Temporary Events (including but not limited to):	3-3.3																							
Arts and Crafts Shows		0000											P	P	P	P	P	P	P	P	P	P		
Carnivals and Fairs		7999	P														P	P	P	P	P	P		
Christmas Tree Sales		0000	P														P	P	P	P	P	P		
Concerts, Stage Shows		7920	P														P	P	P	P	P	P		
Conventions, Trade Shows		0000																	P	P	P	P		
Outdoor Retail Sales		5000																		P	P	P		
Outdoor Religious Events		0000	P	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	P		
Turkey Shoots	6-4.63	0000	D																					
Billboards	6-4.14.1	0000															D				D	D	1	

TABLE II-1 DIMENSIONAL REQUIREMENTS

(NOTE—REQUIREMENTS PERTAIN TO INDIVIDUAL LOT DEVELOPMENT AND SUBDIVISIONS AS MINIMUM STANDARDS)

Zoning District	Lot Size Minimum	Density per Acre	Width Minimum	Depth Minimum	Front Setback (min.)	Side Setback (min.)	*** Rear Setback (min.)	** Height (max)
AR	30,000 SF (well/septic) 20,000 SF (public water/septic) 15,000 SF (public water/sewer)	1.45 2.18 2.9	100 FT (well/septic) 100 FT (public water/septic) 80 FT (public water/sewer)	200 FT (well/septic) 150 FT (public water/septic) 125 FT (public water/sewer)	30 Feet	10 Feet	25 Feet	35 Feet
RL	30,000 SF (well/septic) 20,000 SF (public water/septic) 15,000 SF (public water/sewer)	1.45 2.18 2.9	100 FT (well/septic) 100 FT (public water/septic) 80 FT (public water/sewer)	200 FT (well/septic) 150 FT (public water/septic) 125 FT (public water/sewer)	30 Feet	10 Feet	25 Feet	35 Feet
R	30,000 SF (well/septic) 20,000 SF (public water/septic) 15,000 SF (public water/sewer)	1.45 2.18 2.9	100 FT (well/septic) 100 FT (public water/septic) 80 FT (public water/sewer)	200 FT (well/septic) 150 FT (public water/septic) 125 FT (public water/sewer)	30 Feet	10 Feet	25 Feet	35 Feet
GC	15 Acres	30 persons per acre	N/A	N/A	200 Feet	200 Feet	100 Feet	35 Feet
TC	15 Acres	30 persons per acre	N/A	N/A	50 Feet	50 Feet	50 Feet	35 Feet
LB	1 Acre (43,560 SF)	*	100 Feet	200 Feet	50 Feet	50 Feet	50 Feet	40 Feet
NB	1 Acre (43,560 SF)	*	100 Feet	200 Feet	50 Feet	35 Feet (corner lot=50 Feet)	50 Feet	40 Feet
HB	1 Acre (43,560 SF)	*	100 Feet	200 Feet	50 Feet	50 Feet	50 Feet	50 Feet
LI	2 Acres (87,120 SF)	*	200 Feet	400 Feet	100 Feet	70 Feet (corner lot=100 Feet)	100 Feet	75 Feet
HI	4 Acres (174,240 SF)	*	400 Feet	800 Feet	200 Feet	150 Feet (corner lot=200 Feet)	200 Feet	75 Feet

*ALL PROPERTIES SHALL COMPLY WITH THE APPROPRIATE ZONING DISTRICT DENSITY AND IMPERVIOUS SURFACE REQUIREMENTS AS SPECIFIED IN THIS ORDINANCE AND TABLE II-1 ABOVE.

** FOR BUILDING HEIGHT AS NOTED IN TABLE II-1 ABOVE THE HEIGHT SHALL BE MEASURED AT THE FRONT ELEVATION OF THE STRUCTURE.

*** FOR PROPERTIES ZONED RL (RESIDENTIAL LAKESIDE) AND RECORDED ON A LOT OF RECORD IN THE WARREN COUNTY REGISTER OF DEEDS FOR PLATS PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE, THE REAR SETBACK OF TWENTY FIVE (25) FEET SHALL NOT APPLY TO THE SIDE OF THE PROPERTY ABUTTING KERR LAKE AND LAKE GASTON. ALL OTHER REGULATIONS AS WRITTEN IN THIS ORDINANCE SHALL APPLY AS OF ITS EFFECTIVE DATE.

NOTE – AT A MINIMUM, APPROPRIATE SILT FENCES (TO RETAIN SEDIMENT IN PLACE WHERE SOIL IS BEING DISTURBED DURING CONSTRUCTION) SHALL BE REQUIRED AND MAINTAINED FOR ALL NEW CONSTRUCTION AS OF THE EFFECTIVE DATE OF THIS ORDINANCE.

TABLE II-2 PERMITTED USES

P = Permitted, CU = Conditional Use Permit Required (pages 20 - 32), X = Prohibited

(NOTE: "ALL APPLICABLE GOVERNMENT REQUIRMENTS" PERTAINS TO COUNTY, STATE AND FEDERAL)

USES	AR	RL	R	GC	TC	LB	NB	HB	LI	HI	NOTES PER DISTRICT
ABC stores	X	X	X	X	X	X	P	P	P	X	
Accessory buildings and uses secondary to permitted uses	P	P	P	P	P	P	P	P	P	P	
Accessory retail uses (e.g. cafeterias, gift and souvenir shops, drink/snack bars for employees, patients, patrons, visitors in the principle building -no exterior advertising).	X	X	X	X	X	X	X	X	P	P	
Adult entertainment establishments	X	X	X	X	X	X	X	CU	CU	CU	2,000 linear foot separation from the adjacent property line per CU.
Agricultural equipment sales and service	P	X	X	X	X	X	X	P	P	P	Buffering required per Paragraph I.E of this ordinance.
Agricultural supply sales	P	X	X	X	X	X	P	P	P	P	Buffering required per Paragraph I.E of this ordinance.
Airports, landing field, heliports and helipads	CU	X	X	X	X	X	X	X	P	P	
Amusement parks with outdoor rides, bowling, trampolines, miniature golf, concessions, swimming pools, arcades, and drive-in movie theaters	X	X	X	X	X	CU	CU	CU	X	X	
Animal hospitals and kennels (no animal storage/runs shall be closer than 50 feet to any property line)	P	X	X	X	X	X	P	P	P	P	Distance from wells shall be maintained at a minimum of 100 feet per all applicable Government requirements
Apparel sales	X	X	X	X	X	P	P	P	P	X	
Appliance distributors for wholesale	X	X	X	X	X	X	X	X	P	P	
Appliances, sales/service	X	X	X	X	X	X	P	P	X	X	
Assembly halls, coliseums, stadiums, gymnasiums and similar structures, grounds-facilities for open air games/sports	CU	X	X	P	X	X	P	P	P	P	Buffering required per Paragraph I.E of this ordinance. Hours of operation shall be compatible with adjacent land uses, noise levels shall comply with Warren County's Noise Ordinance.

[illegible]

USES	AR	RL	R	GC	TC	LB	NB	HB	LI	HI	NOTES PER DISTRICT
Building Supply Sales	X	X	X	X	X	X	P	P	X	X	
Business and professional offices	X	X	X	X	X	P	P	P	P	P	
Camps with sites for tents, camping trailers, and recreational vehicles (RV).	X	X	X	X	P	X	X	X	X	X	Buffering required per Paragraph I.E of this ordinance.
Cemeteries, church association	P	P	P	X	X	X	CU	CU	CU	CU	
Cemeteries, commercial	CU	X	X	X	X	X	CU	CU	CU	CU	
Cemeteries, family	P	P	P	X	X	X	X	X	X	X	
Cemeteries, pet (commercial only)	CU	X	X	X	X	X	CU	CU	CU	CU	
Churches (see Section VI for definitions)	P	P	P	P	P	P	P	P	P	P	
Clothing manufacture includes leather manufacturing	X	X	X	X	X	X	X	X	P	P	
Commercial cleaning operations	X	X	X	X	X	X	X	X	P	P	
Commercial livestock production (beef, poultry, pork, and dairy operations for keeping, breeding, raising livestock for commercial purposes - this use includes petting zoos).	P	X	X	X	X	X	X	X	X	P	Buffering required per Paragraph I.E of this ordinance.
Commercial marinas for launching/storage, rental, sale or repair of boats.	X	X	X	X	X	P	X	X	X	X	No new commercial marinas within one (1) linear mile measured on the same shoreline and ½ mile radius measure across from existing marinas.
Community (private), county or municipal sewage treatment plants, water treatment plants, water pumping stations, sewage pumping stations.	P	P	P	P	X	X	X	P	P	P	Stations, plants and, facilities shall comply with all applicable Government requirements
Convenience store with no petroleum (gas) sales.	P	X	X	P	P	P	P	P	P	P	
Crematoria	X	X	X	X	X	X	CU	CU	P	P	
Daycare and pre-school (daycare facilities shall include those for seniors and handicapped persons)	P	P	P	P	X	P	P	P	P	P	Facilities shall comply with all applicable Government requirements.

[illegible]

USES	AR	RL	R	GC	TC	LB	NB	HB	LI	HI	NOTES PER DISTRICT
Fuel oil/ kerosene or other Class III (National Board of Fire Underwriters) flammable liquids: the incidental sale in containers provided they comply with applicable codes Fuel oil/kerosene for heating purposes in above ground containers provided they comply with applicable codes	X	X	X	X	X	X	X	X	P	P	Buffering required per Paragraph I.E of this ordinance.
Funeral Homes	X	X	X	X	X	X	P	P	P	P	
Furniture Sales	X	X	X	X	X	X	P	P	X	X	
Garbage and waste incinerators	X	X	X	X	X	X	X	X	P	P	Buffering required per Paragraph I.E of this ordinance.
Gases or liquefied petroleum gases, for commercial sale and storage, provided the same comply with applicable codes combine with class III Gasoline storage, underground, provided the same comply with applicable State of North Carolina and Federal Codes.	X	X	X	X	X	X	X	X	P	P	Buffering required per Paragraph I.E of this ordinance.
Government buildings - buildings used exclusively by government entities for public purposes	CU	CU	CU	CU	CU	CU	CU	CU	CU	CU	Buffering required per Paragraph I.E of this ordinance.
Greenhouses, cultivation facilities and warehousing for wholesale and related retail trade	P	X	X	X	X	X	P	P	P	P	
Group camp facilities (profit or non-profit basis) if such camps use only permanent buildings rather than tents/trailers. Non-profit youth organizations (Boy Scouts, Girl Scouts, and 4-H Clubs) may use land in Lakeside Group Camp District for a temporary camp using tents.	X	X	X	P	X	X	X	X	X	X	

USES	AR	RL	R	GC	TC	LB	NB	HB	LI	HI	NOTES PER DISTRICT
Group Home (also Halfway House See Section VI Terms and Definitions)	CU	CU	CU	X	X	X	CU	CU	X	X	
Hardware stores	X	X	X	X	X	X	P	P	X	X	
Homes for the aged including retirement communities	P	P	P	X	X	X	P	P	X	X	Facilities shall comply with all applicable Government requirements.
Home occupations (see Section VI Terms and Definitions)	P	P	P	X	X	X	X	X	X	X	
Hunting and fishing lodges (and related retail sales)	P	X	X	X	X	P	P	X	X	X	
Jewelry sales, watch repair	X	X	X	X	X	X	P	P	X	X	
Laboratories for research and testing	X	X	X	X	X	X	X	X	P	P	
Landfill (see Section VI Terms and Definitions)	X	X	X	X	X	X	X	CU	CU	CU	Facilities shall comply with all applicable Government requirements. Buffering required per Paragraph I.E of this ordinance
Locksmiths and gunsmiths	P	X	X	X	X	X	P	P	P	P	Gunsmiths shall comply with all applicable Government requirements.
Machine shops	P	X	X	X	X	X	X	X	P	P	Buffering required per Paragraph I.E of this ordinance
Manufactured-Mobile home parks	CU	CU	CU	X	X	X	X	X	X	X	Parks shall comply with the County's Manufactured-Mobile Home Park Ordinance
Manufactured home sales lot	X	X	X	X	X	X	X	P	P	P	
Manufacturing - HEAVY - or processing not otherwise named herein which are in compliance with all local, state and federal environmental regulations	X	X	X	X	X	X	X	X	X	P	Buffering required per Paragraph I.E of this ordinance.
Manufacturing - LIGHT - or processing not otherwise named herein which are in compliance with all local, state and federal environmental regulations	X	X	X	X	X	X	X	X	P	P	Buffering required per Paragraph I.E of this ordinance.

USES	AR	RL	R	GC	TC	LB	NB	HB	LI	HI	NOTES PER DISTRICT
Mini-Storage Warehouses	X	X	X	X	X	X	P	P	P	P	No sales, service, or repair activities other than the rental of storage units are permitted on the premises and storage of hazardous materials shall be prohibited
Motels	X	X	X	X	X	P	P	P	X	X	Facilities shall comply with all applicable Government requirements. Buffering required per Paragraph I.E of this ordinance
Night Clubs and Bars	X	X	X	X	X	X	CU	CU	CU	CU	Facilities shall comply with all applicable Government requirements.
Optical and scientific instrument, jewelry and clock, musical instrument manufacture	X	X	X	X	X	X	X	X	P	P	
Pharmaceutical products manufacturing	X	X	X	X	X	X	X	X	P	P	
Planned Unit Development (PUD)	CU	CU	CU	X	X	X	X	X	X	X	
Public parks, picnic area, public swimming pools, and locations for public access-boat launches (Lake Gaston, Kerr Lake)	CU	CU	CU	CU	CU	X	X	X	X	X	Facilities shall comply with all applicable Government requirements.
Public and private clubs, golf courses (exclusive of miniature golf courses and three par golf courses) and fishing clubs	CU	CU	CU	X	X	CU	CU	CU	X	X	
Radio, television, microwave towers, electric substations, high voltage power lines, transmission towers cell towers, relay stations, office and studios in conjunction with these.	P	X	X	P	P	CU	CU	CU	CU	CU	Required fall zone buffer - A land buffer around a tower base to provide for containment of the tower to the site in the event that it falls.
Restaurants and catering establishments	X	X	X	X	X	P	P	P	P	P	

USES	AR	RL	R	GC	TC	LB	NB	HB	LI	HI	NOTES PER DISTRICT
Repair and servicing of office and household equipment	P	X	X	X	X	X	P	P	P	P	
Riding stables	P	CU	CU	P	P	X	X	X	X	X	Facilities shall comply with all applicable County and State regulations. Buffering required per Paragraph I.E of this ordinance
Schools, public and private	P	CU	CU	CU	X	CU	CU	X	X	X	
Shoe sales, repair	X	X	X	X	X	X	P	P	X	X	
Shopping centers (see Section VI Terms and Definitions)	X	X	X	X	X	X	CU	P	X	X	
Signs, only in compliance with Section V of this Ordinance	P	P	P	P	P	P	P	P	P	P	
Sign painting, and sign manufacturing	X	X	X	X	X	X	P	P	P	P	
Solar Farm - Photovoltaic Systems and related equipment-structures for this use.	CU	X	X	X	X	CU	CU	CU	CU	CU	Impervious surface requirements shall be met per the respective zoning district.
Solar Farm - Thermal System and related equipment-structures for this use.	X	X	X	X	X	X	X	P	P	P	
Storage warehouses	X	X	X	X	X	X	X	X	P	P	
Swimming clubs	CU	CU	CU	CU	CU	CU	CU	CU	CU	CU	
Temporary camp by a non-profit organization (see Section VI Terms and Definitions)	CU	X	X	P	P	X	X	X	X	X	
Textile manufacture	X	X	X	X	X	X	X	X	P	P	
Timeshare	X	CU	CU	X	X	X	X	X	X	X	
Tobacco processing and storage	P	X	X	X	X	X	X	X	P	P	
Trash/garbage collection facilities, County convenience sites (recycling)	P	P	P	P	X	X	X	P	P	P	Facilities shall comply with all applicable County and State regulations and Paragraph I.E of this ordinance.
Water tanks and towers, but not service or storage yards or warehouses.	P	P	P	P	P	P	P	P	P	P	Required fall zone buffer - A land buffer around a tower base to provide for containment of the tower within the site.
Woodworking shops, mill work	P	X	X	X	X	X	P	P	P	P	

Coates' Canons Blog: Does Zoning Have to Provide a Place for Everything?

By David Owens

Article: <https://canons.sog.unc.edu/does-zoning-have-to-provide-a-place-for-everything/>

This entry was posted on May 10, 2010 and is filed under Land Use & Code Enforcement

Folks in the small town of Maycomb are riled up. The state recently funded construction of a new expressway that passes near the town. Most everyone in town likes that, as the new road will cut time off the trip up to Raleigh. What has them riled up is a proposed asphalt plant. A big out-of-town company got the contract for the expressway, along with several other substantial repaving projects in the area. Word has gotten out that they want to build a large new asphalt plant and construction staging yard on a vacant parcel out on the edge of town. The parcel is just outside the city limits, but in the town's extraterritorial planning area and subject to town zoning. The residents of the neighborhoods around this parcel are aghast at the prospect of all the trucks, noise, odors, and commotion associated with such an operation. A large group of these folks showed up at the town council meeting last night, all wearing big buttons saying "NO ASPHALT PLANT." The hastily organized group, Citizens for Preservation of Maycomb, presented a petition to the council requesting that the town amend its zoning ordinance to ban asphalt plants throughout the town and its small extraterritorial area. The petition was signed by nearly 1,500 persons, an impressive number considering that the town only has 6,000 residents. When the petition is presented, the Mayor turns to the staff and asks, "Can we even think about doing this?"

They can.

Many zoning ordinances were drafted with the maxim in mind, "A place for everything and everything in its place." Larger municipalities set aside land that would be available for a full range of expected uses – residential, commercial, industrial, institutional, and so forth. A couple of older zoning cases from other states held that it would be inappropriate to totally exclude an otherwise lawful use from the entire jurisdiction. The notion of some place being available for all lawful uses became part of many folks' understanding of underlying principles of land use law. A place for everything. But is that really legally required?

North Carolina does not have a case that directly addresses this question. We almost did. In a situation not too far off the example above, the Town of Hillsborough amended its ordinances to ban asphalt plants. The Court of Appeals proposed a rule that if a jurisdiction applies a total ban on an otherwise lawful use, that should remove the legal presumption of validity for the ordinance and the burden should shift to the town to establish that a legitimate public purpose adequately supports the ban. This case presented some complex legal issues regarding a moratorium, vested rights, and the procedures required by the town's own ordinance to process permit applications. When the case got to the Supreme Court, the court decided the case on those other issues and vacated the portion of the Court of Appeals decision that addressed our question. So our courts have not resolved this question.

A variety of land uses do have statutory protection that prevents a total exclusion. In North Carolina the legislature has, for example, prohibited a total exclusion of manufactured housing (codifying the holding of *Town of Conover v. Jolly*, 277 N.C. 439 (1970), a case ruling that the general police power could not be used to ban this use as it was neither a nuisance nor inherently a threat to the public health, safety, or general welfare). Other uses with statutory protection include family care homes in residential districts, facilities with a state ABC license, and bona fide farm uses in county jurisdiction. Federal statutes protect a few uses as well, such as prohibiting a total ban on wireless telecommunication towers. Other uses have constitutional protection. Courts have held, for example, that a total prohibition of non-obscene adult entertainment would violate First Amendment free speech rights. A total exclusion of places of worship would run afoul of First Amendment rights of free exercise of religion, as well as potentially violating federal statutes.



But if the use in question is not protected by a statute or constitution, can it be excluded? There is no North Carolina or federal statute that says every jurisdiction has to make space for an asphalt plant. Starting a new asphalt plant at a specified site is hardly free speech, the exercise of religion, or some other constitutionally protected right.

In these instances courts defer to the legislative judgment of elected policy-making officials. The land use regulatory policy choice of whether and where to allow a particular use is presumed by the courts to be valid unless it is arbitrary and capricious. The courts have, for example, routinely upheld decisions by jurisdictions to completely ban off-premise commercial advertising signs. It is important however to consider context – the type of use involved, the scale of its impacts, the size and character of the regulated area, and so forth. If a small, largely residential town excludes a heavy industrial use because there is just no place in the jurisdiction it can fit without substantial harmful impacts on its neighbors, the decision to exclude such uses would not be an arbitrary policy choice. On the other hand, it may indeed be arbitrary for a large city with substantial industrial areas to totally exclude a particular industrial use. So the answer on whether a total exclusion of a particular use is lawful depends on the context and the need to have a plausible, legitimate land use objective supporting the exclusion.

Total exclusion of a particular land use is a powerful tool that should be applied quite carefully. There is sometimes a temptation to just ban any controversial use. Difficult land uses have always been with us. In the 1950s folks worried about pool halls, bowling alleys, and drive-ins. Today it may be an asphalt plant or an internet sweepstakes gaming room. Before a total ban is adopted, a local government needs to focus on the land use impacts of the use. Those impacts should be identified, alternative measures to prevent those impacts discussed, and the impacts of excluding the use explored. Only then should a potential total ban be considered. If that process of careful consideration is followed, it is likely that in most contexts an appropriately focused exclusion would be an option the town could lawfully consider.

Links

- appellate.nccourts.org/opinions/?c=2&pdf=25166
- appellate.nccourts.org/opinions/?c=1&pdf=616

Coates' Canons Blog: A Topless Bar in Our Fair Town?

By David Owens

Article: <https://canons.sog.unc.edu/a-topless-bar-in-our-fair-town/>

This entry was posted on June 15, 2010 and is filed under Land Use & Code Enforcement

Paul Proteus, the town manager of Maycomb, leaned back in his chair with a deep sigh. It was a quiet Friday afternoon. All of the week's crises had passed. The parks staff and chamber of commerce folks just reported that final arrangements for the weekend BBQ festival were complete. The weekend weather forecast was great. The pig cooking was about to commence. All was well with Paul's world.

His reverie was rudely interrupted by a frantic call from the Mayor. "Paul, I just ran into Malcolm Tucker as he was driving out of town for a meeting in Charlotte. He had some disturbing news. He says he is going to open another one of his topless bars, this time in Maycomb. He drove off before I could get any details. Times may be hard, but we don't need that kind of business here. Charlotte is one thing, but Maycomb is altogether different. I want an ordinance that keeps these places out of Maycomb and I want it on the books before Malcolm applies for a permit for his sleazy bar. Pull together some material on this and I'll be in your office first thing Monday morning for your report. Sorry to dump this on you, but we need to hustle on this."

As Paul senses his weekend of BBQ bliss quickly slipping away, his first thought is a simple one. Can we solve this by simply banning adult entertainment bars altogether? That is certainly what the Mayor wants to do. But Malcolm has sued the town before and surely won't hesitate to sue again. Would a ban hold up in court?

No. While a small town may be able to ban a particular land use that is incompatible with all of its potential neighbors, adult businesses present an additional legal issue that prevents the town from adopting a total ban. The First Amendment protects the freedom of speech. Sexually explicit but non-obscene books, magazines, and films fall into the category of protected speech. Dance is a form of expressive speech. The Supreme Court has held that performers of erotic dances in adult establishments have some modest degree of First Amendment protection – less than other types of speech, but some protection nonetheless.

How much protection do they have? Enough to prohibit the town from enacting a total ban. A regulation may not totally preclude location of a business offering constitutionally protected speech from the entire jurisdiction. The question of just how close a jurisdiction can get to a ban without crossing the constitutional line has, not surprisingly, been frequently litigated.

The initial question for a court reviewing these restrictions is what standard of judicial review should be applied. If a restriction is based on the content of the speech, it must be narrowly drawn to accomplish a compelling governmental interest. This is a very difficult burden that is met only in extraordinary situations and a typical land use regulation of adult businesses will fail to meet that burden. On the other hand, an ordinance that is "content neutral" can regulate the time, place, and manner of speech.

Two Supreme Court cases allow most land use regulations of adult businesses to be reviewed under this "content neutral" standard. In *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976), the Court upheld a Detroit ordinance that required adult theaters to be located at least 1,000 feet from any two other regulated uses and 500 feet from residential zoning districts. The city based this requirement on preventing adverse effects on property values, increases in crime, and locations of these theaters that would encourage residents and business to move elsewhere. The Court held that the city's interest in preventing the deterioration of urban neighborhoods justified the restriction on location of adult uses. In *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), the Court further refined this standard. Renton, a town near Seattle, required adult theaters to be located at least 1,000 feet from any residential zone, residence, church, park, or school. The Court held the ordinance was "content-neutral," reasoning that the content of the films was not the basis of the



ordinance since the city's "predominate concern" in adopting it was prevention of adverse secondary effects of adult theaters on the surrounding neighborhoods. In three cases dealing with regulation of nude and semi-nude dancing, the Court applied very similar standards for review of regulations of these businesses. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); and *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981).

These decisions establish a rule, among others, that the regulation must not totally ban protected speech. It must allow for "reasonable alternative avenues of communication" of protected speech. Most larger North Carolina jurisdictions limit adult businesses to a small number of zoning districts (such as industrial districts) and require substantial setbacks from sensitive land uses (such as schools, places of worship, and residential zoning districts). Since many jurisdictions try to get as close to a ban as possible without crossing the constitutional line, these restrictions frequently leave a very limited "alternative avenue" available for adult businesses.

So how much of an "alternative avenue" is enough to pass constitutional muster? Rather than a set number, the answer has to be jurisdiction-specific. The tests that have emerged to determine if the sites potentially available under the regulation are "adequate" require an analysis of the detailed facts of each situation. Several dozen court cases indicate the following factors need to be considered in this analysis:

- 1) Do the sites suit some generic commercial venture? Can the public get to the sites? There is not a need to show that adult uses could be profitably operated at the sites, but some commercial use should be realistic.
- 2) Are the sites at least potentially developable for private commercial use? Do they have access to necessary infrastructure, especially if restricted to industrial areas?
- 3) Is it reasonable to believe the property would ever become available for any commercial use? If the land is permanently dedicated to other uses (such as a municipal airport or landfill), the fact that it is technically "available" under the ordinance is irrelevant. There is no need, however, to show that the sites are actually currently available to an adult business proprietor.
- 4) Is the number of potential sites reasonably related to the history of demand in the particular locality. For example, a handful of potential sites would suffice for a small town that has not previously had an adult business, but a larger city with a history of these uses would need to identify a larger supply of potential sites. The number of past and current adult businesses, as well as the number of past applications, should be considered in this supply-demand analysis.
- 5) The local government adopting the restrictions has an obligation to conduct this site availability analysis prior to adoption of the restrictions.

So what can Paul tell the Mayor on Monday?

Maycomb cannot totally ban adult establishments. If the town adopts a total ban and denies Mr. Tucker's permit application for a topless bar, a court would likely not only invalidate the ban and order the permit issued, it would probably require the town to pay for Mr. Tucker's lawyer. The town can adopt very restrictive location limits to prevent harm to adjacent neighborhoods. It will be important that the council and staff consider what harms need to be prevented, how restrictive the rules need to be to address those harms, and what locations would be left in town once the rules are applied. Careful advice from the city attorney and some background planning analysis is needed before the council acts. Only by doing this essential preparation can the town be assured of getting a regulation that meets its needs in a constitutionally acceptable way.

Links

- canons.sog.unc.edu/?p=2397



Coates' Canons Blog: Zoning Religious Land Uses

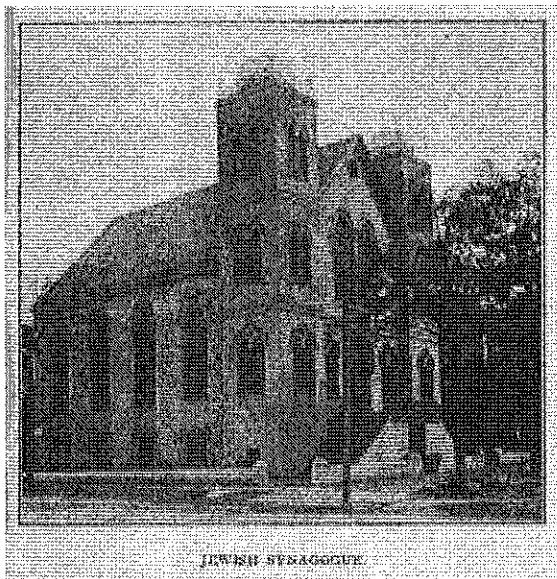
By David Owens

Article: <https://canons.sog.unc.edu/zoning-religious-land-uses/>

This entry was posted on August 17, 2010 and is filed under Land Use & Code Enforcement

From the nation's largest city to North Carolina's smallest towns, land use regulation of religious uses can be particularly contentious. While the siting a mosque in lower Manhattan morphed from a local zoning dispute into a national political and policy debate in the past few weeks, the town of Coats (population 2,126) in Harnett County found itself in federal court defending its zoning restrictions on locating places of worship in its small downtown area.

Religious uses have land use impacts, just as their secular counterparts. Large places of worship create the same traffic, noise, and congestion issues as do other places of assembly of comparable size. The fact that a community center, event space, school, daycare, homeless shelter, or food pantry is sponsored by a religious rather than a secular organization usually makes no difference in its land use impacts. So a basic proposition that religious land uses should be subject to the same land use regulations as their comparable secular counterparts makes sense and is noncontroversial, right?



Temple of Israel, Wilmington, completed in 1876 and North Carolina's first synagogue (1902 photo)

Not entirely. There are two difficulties with applying this basic proposition without qualification. First, persons have a constitutional right to the free exercise of their religious beliefs. Second, fear and distrust, particularly of minority religions, has led to discrimination that on occasion is reflected in governmental land use regulations. So how do we allow religious freedom, prevent religious discrimination masked as land use concerns, and still address the legitimate land use impacts of religious uses?

Dealing with overt religious discrimination in land use is simple in legal terms. Our laws clearly address the volatile mix of politics, government, and religion. It is both unconstitutional and a violation of statutory rights to discriminate on the basis



of religion. As discussed in a previous [post](#), it is unlawful to treat one religious land use on less than equal terms with other comparable religious and secular uses. This protects minority religions by assuring they get the same land use treatment as majority religions. In the past it may have been a proposed worship center for Catholics, Jews, or Mormons that generated community opposition. Today it may be a mosque, Buddhist temple, or an evangelical Christian outreach center located in an abandoned storefront. But regardless of the religion involved, the identity of the religion simply cannot be a factor in land use decisions. The current controversy over siting of mosques in some communities has a simple legal answer. If you would allow a church to be located on the site, you must also allow a mosque, synagogue, temple, or any other place of worship to be located there.

A more complicated issue arises when the concerns expressed are not religious discrimination, but land use impacts. When land is being rezoned or a special or conditional use permit considered, neighbors have land use concerns. How much traffic will be generated? Is there sufficient parking? Is the size and scope of the building compatible with its surroundings? Does the intensity of the use fit in the neighborhood? Is there adequate water, sewer, and stormwater control? All of these are legitimate land use concerns addressed through regulation. In this state, general land use regulations have been uniformly applied to religious uses for many decades to address these impacts.

But what if these concerns are merely pretexts for religious discrimination? After all, it is easier to stand up in a public hearing and profess a concern that increased traffic will be dangerous for children in the neighborhood than to ask that adherents of a particular religion be kept out of your neighborhood.

In addition to basic constitutional protection, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address this issue. It establishes a general rule that a zoning or landmarking regulation cannot impose a substantial burden on religious exercise (including religious assembly) unless it is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. A prevailing party making a successful RLUIPA challenge is entitled to reasonable attorney fees. This law has produced substantial litigation in the past decade, particularly on the critical question of when an ordinance imposes a 'substantial burden.'

The courts have found that most general land use regulations do not "substantially burden" religious exercise. The burden imposed must be more than an "inconvenience" or something that increases the costs for the religious user. The burden must be so significant that it renders the religious exercise effectively impractical. Courts find that it is not a substantial burden to require compliance with typical zoning regulations. These include requirements to locate large places of assembly outside of residential areas, prohibitions of noncommercial or institutional uses in industrial or redevelopment areas, limits on the size and heights of buildings and signs, provision of adequate parking and buffers, and maintenance of harmony with existing nearby uses and congruence within historic districts. The cost and time taken to apply for and go through the approval process (such as a rezoning or special use permit review) have likewise been held not to be a substantial burden. Among recent cases finding no substantial burden are: *World Outreach Conference Center v. City of Chicago*, 591 F.3d 531 (7th Cir. 2009) (upholding refusal to allow demolition of landmark building when sufficient vacant land for center was available onsite); *Petra Presbyterian Church v. Village of Northbrook*, 489 F.3d 846 (7th Cir. 2007) (upholding prohibition of religious uses in industrial area); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006) (upholding denial of variance for 100-child daycare center in a low density residential neighborhood); and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel of Baltimore County*, 962 A.2d 404 (Md. 2008) (upholding sign size limits applied to church).

The protection offered by RLUIPA is not entirely illusory though. Where a city or county is shown to be using its land use regulations to deliberately frustrate a religious land use without appropriate justification, the courts will step in. Multiple denials have prompted judicial intervention, especially when modifications in the applications have been made to address concerns raised in an initial review or when each application produces new and inconsistent justifications for the denials. Denials that are unsupported by showing any legitimate land use impacts, especially where the decision-maker seems to be ignoring relevant factual information, have also been invalidated. Among the recent cases where a substantial burden was found and the land use restrictions invalidated are: *Westchester Day School v. Village of Mamaroneck*, 504 F.3d 338 (2nd Cir. 2007) (denial of expansion plans at religious day school unsupported by facts); *Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006) (multiple denials at multiple sites); *Sts. Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005) (unjustified multiple denials of rezoning proposals). And it is important to remember that if actual religious discrimination or unequal treatment of religions is established, the action is illegal even if there is not a substantial burden.

So what steps should a local government take when applying land use regulations to religious land uses? Here are a few suggestions for starters to address these constitutional, RLUIPA, and zoning law considerations –

1. Use objective standards that apply equally to all comparable uses where possible. The same density standards, off-street parking requirements, buffer requirements, and the like should be applicable to all religious and comparable institutional uses. If there is any difference in standards, be sure there is a legitimate difference in land use impacts that supports that difference. Charlotte, for example, has differential standards for places of worship in residential areas that are based on the seating capacity in the largest assembly space.
2. When discretionary permit standards are applied to religious uses (such being in harmony with the neighborhood) or a highly discretionary decision such as a rezoning is involved, take particular care to assure that there is a solid land use justification for the decision. Do not assume the usual presumption of validity for land use regulations will be applied. Since the potential for abuse is higher with these discretionary decisions, the courts often look carefully for an appropriate justification. Recommendations from professional staff and the planning board often play a key role here. Cavalier disregard of those recommendations raises a very large red flag.
3. When crafting regulations, be sure that they leave reasonable alternatives available for religious expression. If you want to limit location of all religious uses in a redevelopment area or an industrial district, be sure there are ample places elsewhere within the jurisdiction that these uses can be undertaken. This was a key factor in a recent decision upholding Coat's prohibition of places of worship in a six-block commercial area, but allowing them elsewhere. *Dixon v. Town of Coats*, 2010 WL 2347506 (E.D. N.C. June 9, 2010). Documenting that the availability of alternative sites was thoughtfully considered prior to making a decision can defuse a substantial burden issue.
4. Educate board members, neighbors, and the public as to the very limited extent to which religion can be considered in land use decisions. If there is a public hearing on a controversial land use decision affecting a religious use, explicitly remind those attending that it is appropriate to raise legitimate land use concerns, but neither religious favoritism or intolerance is permissible. Make sure that all involved – the applicant, neighbors, and decision-makers alike – understand that support or opposition to the religious views of the applicant are irrelevant and the focus must be on addressing real potential land use impacts.

Taking these steps will not remove the emotion and controversy that sometimes arise when **religion** and land use regulation collide. They should, however, help produce a civil, respectful, and lawful consideration of legitimate public interests.

Links

- i2.wp.com/canons.sog.unc.edu/wp-content/uploads/2010/08/religious-Wilmington-Synagogue-1902.jpg?ssl=1
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Coates' Canons Blog: Yer Cheat'n Heart, Tattoos, the First Amendment, and Preemption

By Richard Ducker

Article: <https://canons.sog.unc.edu/yer-cheat%e2%80%99n-heart-tattoos-the-first-amendment-and-preemption/>

This entry was posted on September 28, 2010 and is filed under Land Use & Code Enforcement



"Where do you go in this town to get a tat, to find someone who

can sling some ink? I wanna find somebody like they have on L.A. Ink that can do some real work on me. You know, a real artist. Might try one with my woman Marlene sitting on a fire-breathing dragon. Maybe in the ditch of my elbows. . . . Whaddya mean there is no tattooing allowed around here? Well, that sure sucks. Isn't this supposed to be a free country? That's the kind of thing that violates my rights."

Well now, the federal 9th Circuit Court of Appeals may agree with you about one thing: a municipal ban on tattoo parlors can be an unconstitutional limitation of your rights and, by the way, also of the rights of the tattoo artist that you hope to find. Consider the situation of one such tattoo artist named Johnny Anderson, the co-owner of Yer Cheat'n Heart Tattoo in Gardena, California. Recently he has been repeatedly stymied in his bid to open a tattoo parlor in a building now housing a frozen yogurt store on a main street in the City of Hermosa Beach, a thriving southern California beach town in Los Angeles County. The Hermosa zoning ordinance, which allowed fortune tellers, adult businesses, and gun shops in several of its commercial zoning districts, did not, by implication, allow tattoo parlors, and city boards let die a proposal to add tattoo parlors to the list of permitted uses for certain districts. When sued, the city referred to various potential health hazards associated with tattoo parlors since many tattoo parlors in the area were never inspected. Los Angeles County's only tattoo parlor inspector acknowledged that some of the 850 tattoo artists working out of the 300 tattoo establishments in Los Angeles County were "unscrupulous or incompetent" and did not strictly follow proper sterilization processes.

The Ninth Circuit Court of Appeals, the consistently liberal federal circuit that serves the Pacific coastal states, held that both the display of tattoos and the art of tattooing itself were "forms of pure expression fully protected by the First Amendment." As a result, the Hermosa Beach prohibition of all tattoo parlors was unconstitutional on its face. The court held that tattooing and the display of tattoos were themselves forms of expressive activity and not conduct "imbued with elements of communication," which would be subject to less first Amendment protection. According to the 9th Circuit, "a

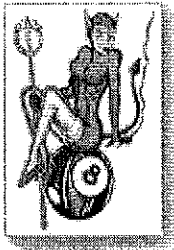




The court also alluded to a 2006 survey by the Pew Research Center finding that 36 % of Americans aged 18-25, 40% of those aged 26-40, and 10% of those aged 41-64 had at least one tattoo.

The Hermosa Beach case is at variance with over a half dozen federal and state court cases from around the country. One of those cases is *State v. White*, 348 S.C. 532, 560 S.E.2d 420 (2002), a South Carolina Supreme Court case in which a tattoo artist was convicted of violating a South Carolina statute prohibiting tattooing except by a licensed physician for cosmetic or reconstructive purposes. (At the time South Carolina was one of four states with a similar prohibition.) The South Carolina court concluded that tattooing was not a form of speech but instead was a form of conduct by the person applying the tattoo that was not sufficiently communicative in character to merit First Amendment protection.

What relevance does a federal case from California have for North Carolinians? Did the author of this blog spend too much time on vacation earlier this month on the southern California beaches? Tattooing has increased dramatically in North Carolina during the last decade. By one estimate the number of tattoo businesses in North Carolina increased 45% in 2009. Yet leaders and local government officials in some smaller towns remain uncomfortable with tattoo parlors and the culture that they represent. Hermosa Beach-style bans on tattooing are not uncommon in North Carolina.



If a zoning-based tattoo parlor ban were challenged in North Carolina, however, courts might not

need to base a decision on constitutional grounds. A local ban in North Carolina on tattooing would be invalid because such a ban would be preempted by state law. G.S. 160A-174, which establishes standards for preemption, lists situations in which an ordinance is inconsistent with North Carolina (or federal) law and is thus preempted. G.S. 160A-174(b)(2) provides that an ordinance is inconsistent with state law if the ordinance "makes unlawful an act, omission, or condition which is expressly made lawful by State or federal law." Does North Carolina law make tattooing expressly lawful in our state? It certainly seems to. G.S. 130A-283 establishes a limited regulatory framework administered through the Department of Environment and Natural Resources, acting through local health departments. Tattooing permits are required for anyone who engages in the activity of tattooing, as defined in G.S. 130A-283. Technical, non-discretionary standards are set forth in sections of the North Carolina Administrative Code for obtaining a tattoo permit. Such a permit is personal to the holder and allows that person to engage in tattooing only at a particular location. Also, G.S. 14-400 makes it a misdemeanor in this state for anyone to tattoo anyone else who is under 18 years of age.

North Carolina's public policy as reflected in its regulatory framework is not intended "to provide a complete and integrated regulatory scheme to the exclusion of local regulation." (G.S. 160A-174(b)(5)). That suggests a different basis for state preemption and a more ambitious role for the state. Instead the state's limited regulatory scheme is one of authorizes tattooing, subject to various restrictions. A complete ban on tattooing, however, is thus in conflict with state law. Virginia courts have reached virtually identical conclusions under that state's law. *Blue Horseshoe Tattoo, V, Ltd. V. City of Norfolk*, 72 Va. Cir. 388 (Cir. Ct. 2007); *Ancient Art Tattoo Studio v. City of Chesapeake*, 56 Va. Cir 210, 210 (2001) (holding that Virginia Code § 15.2-912 allows for the regulation, not the banning of tattoo studios and remarking that "(h)ad the legislature intended to allow localities to prohibit the existence of tattoo studios, the legislature would have stated such."). See *Lamar OCI South Corp. v. Stanly County Board of Adjustment*, 186 N.C. App. 44, 650 S.E.2d 37 (2007), *aff'd*, 362 N.C.670 (2008) (zoning regulation that would not allow the relocation of a nonconforming outdoor advertising sign to a particular site invalid where state regulation would expressly allow it).

So, our friend ought to be able to find a North Carolina community where he can get a tattoo of his girlfriend Marlene. Now all he has to worry about is what happens later when he gets hitched and starts a family with Rita instead.

Links



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- i0.wp.com/canons.sog.unc.edu/wp-content/uploads/2010/09/Dragon-Tattoo-33.jpg?ssl=1
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Coates' Canons Blog: Can a Group Home be Zoned Out of the Neighborhood?

By David Owens

Article: <https://canons.sog.unc.edu/can-a-group-home-be-zoned-out-of-the-neighborhood/>

This entry was posted on May 15, 2012 and is filed under Land Use & Code Enforcement, Miscellaneous, Social Services

Most zoning ordinances have residential zoning districts. One of these is usually a district where the primary permitted land use is single family detached housing. Multifamily housing and group living arrangements (as well as commercial and industrial land uses) are usually not allowed in these zoning districts.

Use of these zoning districts presents the question of where to draw the boundary between a "single family" residence and a "group" residence. This question is particularly important in determining how to treat small group homes for persons with disabilities, facilities that are designed to provide housing, personal care, and habilitation services in the quiet residential setting of a single family zoning district.

Suppose a zoning ordinance provides that no more than four unrelated individuals are allowed to reside in a "single family" home. Group homes, health care, and institutional uses are allowed in other zoning districts, but not in this district. Under this wording, which of the following group homes would be allowed to locate in that zoning district, assuming they secure the necessary social service license?

1. A regional mental health support organization owns a single-family ranch house. They use it to house six adults with moderate developmental disabilities, providing a structured living environment with a resident manager.
2. A local church owns a large Victorian home. They are using it as a group home for six teenage girls. They provide a safe living environment, counseling, remedial education, and other services for teenagers who have dropped out of school or been convicted of a criminal offense that did not result in incarceration.
3. A national nonprofit organization owns a large home and uses it for a residential program for persons recovering from substance abuse. The organization has a zero tolerance policy for substance abuse by the residents. There are nightly counseling sessions held in the home. The home currently has twelve residents.
4. A for-profit company provides residential treatment for emotionally disturbed teenage boys. The company is using a home to house six boys who have been diagnosed as emotionally disturbed. The home houses six of these boys and it just began operation across the street from the group home described in example one above.

Each of these group homes share common attributes. They provide needed social services. They are relatively small. They provide services in a residential setting, helping to integrate their clients into the community. Given their positive contributions and small scale, a local government could certainly choose as a matter of local policy to allow each of these as a permitted use in their most restrictive residential zoning district or perhaps to allow them as a special or conditional use with site-specific restrictions imposed as needed to assure neighborhood compatibility.

But in this case the city involved has decided to limit homes in this particular residential zoning district to no more than four unrelated residents. This may well reflect the city's balancing of the community need for these facilities with the interests of residents in the district for a quiet, stable, family neighborhood. After all, at some point the traffic, noise, and other land use impacts of congregate living facilities (be they rooming houses, fraternity houses, or group homes) can be incompatible with a low density residential neighborhood. Here the city set that dividing point between a "single family" residence and an institutional "group home" use at four unrelated persons. Since each of the group homes in our example has more than four unrelated residents, are they all in violation of the local zoning ordinance?

No. Even though each of the facilities is too large to be a "single family" home under the zoning ordinance, state and federal housing laws will in some of these situations override the local zoning restriction.

State statutory protection

North Carolina statutes recognize the important public service provided by group homes that provide health, counseling, or related services to a small number of persons in a family type of environment. The General Assembly recognized that there is often neighborhood opposition to these facilities and that some local governments may unduly restrict this socially desirable service. The General Assembly also recognized the social desirability of allowing local governments to maintain a quiet low-density residential character for some neighborhoods. The need to balance these two legitimate concerns is reflected in provisions added to the statutes in 1981 related to zoning of small group homes.

G.S. 168-22 provides that local zoning ordinances must treat certain "family care homes" as if they were single-family homes. They cannot be prohibited in a zoning district that allows single-family residences. They cannot be subject to any special review requirements, such as a special or conditional use requirement. G.S. 168-23 further provides that private restrictive covenants must also treat family care homes the same as a single family residence.

To qualify for this treatment under North Carolina law, the facility must be designed to provide room, board, and care for six or fewer disabled persons in a family environment. A disabled person for the purposes of this statute includes those with permanent or temporary physical, emotional, or mental disabilities but not those who have been deemed dangerous to themselves or to others (cross-referencing the statute for involuntary commitment to define "dangerous" for purposes of this statute). **G.S. 168-21**. The identity of the owner or operator of the home—be it a nonprofit organization, a for-profit business, an individual, or a religious entity—does not matter for zoning protection purposes.

The group home described in our first example meets this definition of a "family care home" and must be allowed without special review in any single family zoning district. It serves six or fewer residents who have a physical, mental, or emotional disability. While it will have to meet setback, height limit, and all other zoning requirements applicable to other residences in this district, it must not be treated any more restrictively than any other single family home.

The group home described in our second example – the home for troubled teenage girls – illustrates the limits of the protection offered by the state law. To be treated as the equivalent of a single family residence for zoning purposes, the group home must serve persons with a disability. Here the home serves girls who have a very real need, but one that is not a disability as defined by the state law. The residents have dropped out of school or been convicted of a criminal offense. The state zoning protection kicks in only if they have a permanent or temporary physical, mental, or emotionally disability. Unless such a diagnosis is part of the admissions process, this facility would be subject to treatment under the zoning ordinance as a "group home" rather than as a "single family residence."

Federal statutory protection

What about our third example, the home serving twelve persons who are recovering from substance abuse problems? To resolve the zoning status of this group home we must add consideration of federal law to our analysis.

The Fair Housing Act makes it unlawful to make a dwelling unavailable to a person because of race, color, national origin, religion, sex, familial status, or *disability*. A statutory violation is established by showing that a policy or practice of a local government has a disparate impact on a protected class. Prohibited discrimination includes failure to make reasonable accommodation in rules and policies when such is necessary to afford a protected person equal opportunity to use and enjoy a dwelling. **42 U.S.C. § 3604(f)(3) (2010)**. The protections afforded persons with disabilities by the Americans with Disabilities Act (ADA) closely parallel those provided under the Fair Housing Act.

As with our first two examples the initial question is whether the home is serving persons with qualifying disabilities. In the Fair Housing Act, the term "handicap" is used (in contrast with many federal statutes, which favor the word "disability") and it is defined to include persons with physical or mental impairments that substantially limit one or more major life activities. **42 U.S.C. § 3602(h)(1) (2010)**. The definition does not cover persons with either current illegal use of or addiction to a controlled substance, persons convicted of crimes involving the manufacture or sale of illegal drugs, or those who constitute a direct threat to the health or safety of others. However, recovering substance abuse patients are covered. So in our third example the persons residing on site are disabled and qualify for protection.



But the home in our third example has twelve residents. This takes the home out of the state statutory protection, as that is limited to homes with six or fewer residents. But that is not the end of the inquiry for federal statutory purposes, as that law requires local governments to make a "reasonable accommodation." Would allowing this home to have twelve rather than six residents be a reasonable accommodation mandated by federal law? The answer is unclear and depends in part on the particular facts of each situation. There has been a good deal of litigation around the country about just how much accommodation regarding the number of residents must be made. Is eight residents reasonable in a particular home and site, or must ten, twelve, or more residents be allowed? A federal court upheld Wilmington's limit of eight residents, finding there had been no showing that nine rather than eight residents was a necessity for the successful operation of the home. *Oxford House, Inc. v. City of Wilmington*, No. 7:07-CV-61-F, 2010 WL 4484523 (E.D.N.C. Oct. 28, 2010). But this inquiry is inherently fact specific. It is impossible to generalize beyond saying some accommodation is required, but only a reasonable amount.

Our fourth example raises the question of whether a local government can impose a minimum separation requirement between facilities in order to maintain the single-family, non-institutional character of a neighborhood. The state law, G.S. 168-22, allows a half-mile separation requirement, so that would allow a local government to prohibit a second family care home across the street from an existing home, provided that requirement is written into the zoning ordinance. But what about the requirement in federal law for reasonable accommodation? While some federal courts have upheld separation requirements, others have invalidated substantially similar requirements. As with the number of residents, the question of how much accommodation is "reasonable" depends on the particular facts involved. Nationally, the larger the minimum separation is, the less likely it is to be upheld. In North Carolina, the court in *Oxford House, Inc. v. City of Raleigh*, No. 5:98-CV-113-BO(2), 1999 WL 1940013 (E.D.N.C. Jan. 26, 1999), upheld the city's 375-yard minimum separation between "supportive housing residences," which included facilities serving disabled persons. While Wilmington's half-mile separation was upheld in the *Oxford House, Inc. v. City of Wilmington* case noted above, courts in other states have invalidated substantially similar restrictions. It is reasonable to conclude that some separation is allowed, but as that distance approaches a half mile, the need for some accommodation in individual cases needs to be given careful consideration.

Group homes that provide services to a relatively small number of persons with disabilities in a residential setting meet an important social need. Both state and federal statutes mandate that local zoning ordinances recognize and support these facilities. A North Carolina zoning ordinance may not keep all of them totally out of a single family zoning district. At a minimum, a group home providing care and services for six (and perhaps seven or eight) disabled persons must be treated just like a single family home. A local government may well decide to provide similar zoning treatment to a broader range of other group homes—those serving other populations or larger homes—the same way. But any local zoning restriction that attempts to exclude protected group homes will be invalidated if challenged. Therefore, North Carolina cities and counties must carefully consider and balance the needs of these protected group homes as they also consider the interests of single family neighborhoods.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=168-22
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=168-21
- www.law.cornell.edu/uscode/text/42/3604
- www.law.cornell.edu/uscode/text/42/3602



Coates' Canons Blog: Dealing with Land Uses Not Specifically Addressed in a Zoning Ordinance: The Saga Continues

By David Owens

Article: <https://canons.sog.unc.edu/dealing-with-land-uses-not-specifically-addressed-in-a-zoning-ordinance-the-saga-continues/>

This entry was posted on November 17, 2015 and is filed under General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

If a person is considering undertaking a particular land use, it is important that they know whether or not that would be allowed by the zoning ordinance.

It is usually a simple proposition to determine whether or not the use is allowed. The owner finds out how the property is zoned – what zoning district applies to this parcel – and then sees whether the intended use is listed as a permitted use on the property. The ordinance may provide that the use is always allowed in the applicable zoning district (often referred to as a "use by right" or "permitted use") or only allowed with a special review (a special or conditional use permit). If the intended use is prohibited, the person must find a different site or seek to have the property rezoned to a district that allows the intended use.

But what if the zoning ordinance does not specifically address the intended use? Perhaps it is a new type of land use that was not contemplated when the ordinance was adopted. If the ordinance is more than a few years old it likely does not address solar farms, sweepstakes parlors or other "new" land uses. Perhaps it is a use the local government did not anticipate would be proposed in their community, such as a tattoo parlor, race track, or shooting range. Or perhaps the local government tried to shorten and simplify the ordinance by deleting page after page with detailed listings of specific uses in a permitted use table.

Whatever the reason, from time to time someone will propose to undertake a type of land use that is not expressly addressed by the ordinance. What happens then? In recent years our court of appeals has dealt with this question in a series of cases, with the state Supreme Court recently weighing in with some important conceptual guidance.

Prior Cases

The first in this series of cases involved a private shooting range in Union County. Dr. Michael Land, a gun collector and enthusiast, created a private shooting range on a six acre parcel he owned in what was then a relatively rural area. The surrounding area gradually filled in as new subdivisions were created and built. The property became a part of the town of Wesley Chapel. Eventually neighbors objected to continued use of the range, particularly for the semi-automatic and fully automatic rifle fire that Dr. Land and his guests occasionally enjoyed. The town concluded the shooting range was not allowed in the applicable residential zoning district.



The ordinance in effect at the time the range was established did not specifically list shooting ranges as a permitted use, special use, or prohibited use. The ordinance did include a provision that uses not listed were prohibited, but that since the list of permitted uses could not be all-inclusive, the ordinance stated that permitted uses should be interpreted to include uses with similar impacts. The town contended that the listed use with most nearly similar impacts was a "privately-owned outdoor recreational facility." Since that use required a special use permit and Dr. Land did not secure such a permit when he built the shooting range, the town contended the use was not a lawful nonconformity. The court noted the approach of prohibiting uses that are not expressly permitted is problematic for two reasons: (1) it fails to put the public on notice as to how an unlisted use would be classified; and (2) it is the antithesis of the axiom that zoning ambiguity is to be construed in favor of free use of property. The court of appeals thus held in Land v. Village of Wesley Chapel, 206 N.C. App. 123, 697 S.E.2d 458 (2010), that absent a clear provision regulating shooting ranges, Dr. Land was not required to get a special use permit for this unlisted use. Richard Ducker has a post on that decision [here](#).

The next two cases involved a training facility for military, law enforcement, and security personnel proposed to be located on a nearly 1,000-acre site in a rural portion of Cumberland County. The proposed facility included multiple outdoor firing ranges. The ordinance did not specifically list this type of land use as permitted or prohibited. The property was in an Agricultural zoning district that included as a permissible use "School, public, private, elementary or secondary." The zoning administrator approved the plan, classifying the business as a "private school." Neighbors appealed. The court of appeals in Fort v. County of Cumberland, 218 N.C. App. 401, 721 S.E.2d 350, *review denied*, 366 N.C. 401 (2012), held the type of facility proposed was not a permitted use. The court concluded that inclusion of the terms "elementary or secondary" in the definition of "schools" was intended to exclude other types of schools.

The proposed project was back before the court of appeals in 2014. The zoning ordinance provided that all uses of property are prohibited if not permitted or otherwise allowed. It also provide that if a use was not specifically addressed in the ordinance, the standards for the land use that is "most closely related" to that use applied. As this particular use was not specifically addressed in the ordinance, the county this time around determined the use "Recreation/Amusement, Outdoor (with mechanized vehicle operations)" had the most similar impacts. As this was a permitted use, the project was approved. The neighbors again appealed. In Fort v. County of Cumberland II, 761 S.E.2d 744 (2014), the court held the intent of the adopting board was critical and in that context noted the ordinance expressly stated that all uses of property are allowed as a matter of right except where the ordinance specifically provides otherwise. The court held there was sufficient evidence to support a conclusion that this use was most nearly similar in impacts to an outdoor recreation activity with mechanized vehicles and was thus properly permitted.

The court of appeals also touched on this issue in Fairway Outdoor Advertising, LLC v. Town of Cary, 225 N.C. App. 676, 739 S.E.2d 579 (2013). The controversy was over a nonconforming billboard. The Cary ordinance had a provision on uses not specifically listed in the ordinance as permitted. The ordinance allowed the zoning administrator to permit unlisted uses upon making specified findings (click [here](#) for the Cary ordinance provision dealing with review of unlisted uses). Without addressing the conceptual issues regarding the ambiguity of unlisted uses, the court held that since the ordinance language was permissive rather than mandatory ("may" issue as opposed to "shall" issue), the administrator's decision not to approve this use would not be overturned absent showing an abuse of discretion.

Recent Decision

The most recent instance of the court wrestling with this issue again involved a shooting range. The ordinance in question, this time the zoning provisions in Franklin County's unified development ordinance, did not specifically address shooting ranges one way or another. The ordinance did include a provision that uses not specifically listed are prohibited. The staff first advised the owners to seek a zoning text amendment to include shooting ranges in the table of permitted uses in the applicable zoning district. The staff later concluded, however, that a shooting range could be considered as a "facility for open air games," which could be allowed as a special use. So the owners applied for a special use permit, which the county board of commissioners denied. The land owners appealed. The court of appeals in Byrd v. Franklin County, 765 S.E.2d 805 (2014), held it was improper to classify a shooting range as an "open air game" under the terms of the ordinance. The court construed the *Land* case narrowly, holding it applied only where the ordinance allowed unlisted uses if they had similar impacts to permitted uses. The majority on the court of appeals found the provision in this ordinance that uses not listed as permitted are prohibited was unambiguous. Since shooting ranges were not listed, they were prohibited. There was a dissenting opinion however that eventually carried the day. On November 6, 2015 the state supreme court reversed the court of appeals "for the reasons stated in the dissenting opinion." That dissenting opinion



read *Land* to "reject the notion that a zoning ordinance may prohibit uses not explicitly allowed." The dissent continued that *Land* "made it clear that the law favors uninhibited free use of private property over government restrictions."

So, while the court of appeals has in the past been sympathetic to an ordinance provision that unlisted uses are prohibited, the supreme court is clearly considerably less inclined to sanction this approach. The court does not favor interpretations or ordinance provisions that presume an otherwise lawful use of land is prohibited. The court has not said that every use must be allowed somewhere (see this [post](#) for more on that question). But the court has said prohibitions need to be clear and any uncertainty will be resolved against a prohibition.

Implications for Land Use Regulation

So what does this mean for zoning ordinances going forward?

As a practical matter, this issue does not arise frequently. For most types of land uses, ordinances are clear as to what is permitted and where it can be undertaken. But new land uses in unanticipated places arise from time to time. A recreational shooting range or go-cart track in a residential backyard. A sweepstakes parlor or adult cabaret in a vacant building in a small town. Some of these "disruptive uses" can be quite controversial, pitting the landowner's right to free use of their property directly in conflict with the neighbors' right to the peaceful use and enjoyment of their property.

While it is impossible to for a local government to foresee and address all of these controversies in advance, there are several measures a local government can consider that will minimize problems with unlisted uses.

First, clarity on uses that are not permitted is critical. While an ordinance cannot specifically list all conceivable land uses, it should include as much specificity as is feasible and should have clear general "catchall" categories for unlisted uses.

Second, a local government should periodically update the ordinance to list how the local government intends to address specific controversial or emerging land uses. It is one thing if an ordinance a decade ago had not addressed telecommunication towers, but something altogether different if it still does not do so. Keeping the ordinance clear and current will minimize these difficulties.

Third, the courts clearly favor a provision that unlisted uses should be treated the same as the most nearly similar use as opposed to a blanket prohibition of unlisted uses. This makes attention to the first two points all the more important. But it also means a zoning ordinance should give some definition and guidance to staff as to how to evaluate the similarity of uses to avoid placing an impermissible degree of discretion in the hands of the zoning administrator. It would be helpful for the ordinance to specify the factors to be considered, such as the type, density and intensity of development, environmental effects, and the anticipated amount traffic, noise, light, vibration, odor, and other impacts on neighbors and the community.

Taking these steps will provide clarity for landowners, neighbors, and the staff, which in turn makes for a better, and in these situations, a more legally defensible ordinance.

Links

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Coates' Canons Blog: Keep Your Distance: Requirements to Keep Certain Land Uses Apart

By Richard Ducker

Article: <https://canons.sog.unc.edu/keep-your-distance-requirements-to-keep-certain-land-uses-apart/>

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Keep your distance! Robert Frost said that good fences make for good neighbors. Maybe keeping potential neighbors physically apart is an even better way of making for good neighbors. Zoning is based on the idea of separating incompatible uses by including them in different zoning districts, thus indirectly keeping the pig out of the parlor. Use-separation requirements, however, typically ignore zoning district boundaries and try to distance certain potentially detrimental uses from certain protected uses more directly. This blog is about how such use-separation requirements may be used.

Use-separation requirements have a long and colorful history dating back to England in the Middle Ages. Today, such requirements even appear in the North Carolina General Statutes. G.S. § 168-22(a), which applies to the location of family care homes for the care of the handicapped (disabled), provides that a political subdivision may prohibit a family care home from being located within a one-half mile radius of an existing family care home. G.S. § 14-202.11(a), which restricts the location of "adult establishments," prohibits anyone from permitting "any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment." A third example of a statute separating land uses is the Swine Farm Siting Act. According to G.S. § 106-803(a)(1)-(4), swine houses and lagoons must be located at least 1,500 feet away from an occupied residence; 2,500 feet away from a school, hospital, or church; and 500 feet away from "any property boundary" or "well supplying water to a public water system."

Despite these statutes, use-separation requirements in North Carolina are most prevalent at the local level. They have served as simple forms of land-use regulation, sometimes predating zoning. In the case of *State v. Moye*, 200 N.C. 11, 1456 S.E. 130 (1930), the North Carolina Supreme Court upheld an Ahoskie ordinance making it unlawful for anyone to operate a gasoline filling station within 150 feet of the outside boundaries of a school. More recently, in *Tri-County Paving, Inc. v. Ashe County*, 281 F.3d 430 (4th Cir. 2002), a federal court upheld as a valid exercise of the county's general ordinance-making power the Ashe County's Polluting Industries Development Ordinance. That ordinance prohibited the location of a polluting industry within 1,000 feet of residence or within 1,320 feet of any school, daycare, hospital, or nursing home.

Use-separation requirements come in two general forms.

Requirements of the first type are those that are designed to separate "regulated" uses from "protected" uses. Regulated uses may include higher-impact, potentially nuisance-causing uses, such as sexually oriented businesses, junkyards, group homes, feed-lot operations, telecommunication towers, funeral homes, video sweepstakes operations, certain waste-disposal operations, even outdoor advertising signs. "Protected" uses often include residences, residential districts, churches, parks and playgrounds, public swimming pools, schools, day-care centers, and nursing homes. The justification for separating regulated uses from protected uses is based on the deleterious, detrimental, or blighting effects that the higher-impact, nuisance-like uses can have on residential areas and vulnerable populations gathering in other areas (e.g., school children, nursing patients, park visitors). These justifications are familiar ones in zoning circles and are typically accepted by courts, even when First Amendment issues are involved.

Requirements of the second type are designed to separate one regulated use from another regulated use. The purpose is to prevent the concentration of adult businesses, outdoor advertising signs, family-care homes, or video sweepstakes operations in one area. Presumably, preventing such a concentration of higher-impact, potentially nuisance-causing uses serves to disperse and mitigate the deleterious impacts more widely and to prevent the gradual blighting of surrounding areas. This idea of avoiding undue concentration of uses derives from attempts in the 1960s to control sexually oriented businesses in large cities to avoid the crime and nuisance problems associated with "combat zones" where such



businesses tended to cluster. In *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), the United States Supreme Court held that provisions of the Detroit zoning ordinance prohibiting the location of an adult theater within 1,000 feet of any two other "regulated uses" did not violate the First or Fourteenth Amendment. More recently, in the 2007 case of *Pitt County v. Dejavue, Inc.*, 185 N.C. App. 545, 650 S.E.2d 12 (2007), the North Carolina Court of Appeals upheld Greenville's prohibition on a sexually oriented business being located within 1,320 feet from another such business.

Use-separation requirements have gotten a favorable treatment from the courts. Nonetheless, planners, attorneys, and elected officials should still be careful when devising and adopting such standards. A few special considerations are listed below.

(1) Note that use-separation requirements can have implications beyond zoning district boundary lines. As a result, one "regulated" use may be treated differently from another "regulated" use in the same zoning district. There is no direct legal precedent for the notion that this violates the so-called uniformity provision of zoning statutes G.S. § 160A-382(c) and G.S. § 153A-342(c), but the argument could still be raised.

(2) Watch out for the anti-competitive effects that use-separation requirements can have. Such requirements can create a geographic monopoly. In other cases they may serve to exclude a regulated use from a jurisdiction entirely, making the justification of the regulation more difficult. This is particularly true if the use enjoys some protection under the First Amendment or a statute, such as certain adult establishments, churches, outdoor advertising signs, and housing for the disabled. In this regard note the case of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), in which the United States Supreme Court upheld the constitutionality of an ordinance that effectively reduced the permissible location of certain adult establishment to a little over 5% of the territorial jurisdiction of the city.

(3) Do not ignore the fact that the legal defensibility of G.S. § 168-22(a) is still uncertain. That statutory authorizes a local government to prohibit a family care home from being located within a one-half mile radius of an existing family care home. In *Oxford House, Inc. v. City of Raleigh*, No. 5:98-CV-113-BO(2), 1999 WL 1940013 (E.D.N.C. Jan. 26, 1999), a federal court upheld the city's 375-yard minimum separation between "supportive housing residences," which included facilities serving disabled persons. Wilmington's half-mile separation distance between family care homes was upheld by a federal court in *Oxford House, Inc. v. City of Wilmington*, No. 7:07-CV-61-F, 2010 WL 4484523 (E.D.N.C. Oct. 28, 2010). However, similar use-separation provisions have been held by courts in some other states to violate federal Fair Housing Act provisions prohibiting discrimination in housing on the basis of disability.

(4) Anticipate measurement problems that can hamper enforcement. Are distances measured in a straight line from one location to another? Or are distances measured along the streets that the land uses abut? Are distances measured from one property line to another? Or are they measured from building to building? How are uses handled in shopping centers and rented spaces. In the 2009 North Carolina Court of Appeals case of *Mangum v. Raleigh Board of Adjustment*, 196 N.C. App. 249, 674 S.E.2d 742 (2009), the court had to determine whether a karate school in a commercial center was a protected use for purposes of locating a proposed adult establishment and whether the distance was measured to the portion of the karate school premises closest to the adult use or to the edge of the entire property of which the karate school was a part.

(5) Make sure that your ordinance does not ignore the nonconformities created by the use-separation requirements. If two regulated uses are nonconforming, do restrictions on expansion or alteration apply to both? In the case of a protected use, may the protected use voluntarily violate the separation requirement that is designed to protect it? If so, how does this action affect the regulatory status of the regulated use? Some local governments apply amortization provisions to preexisting regulated uses that are closer than permitted to protected uses. The Charlotte provisions discussed in the 1998 N.C. Court of Appeals case of *South Blvd. Video & News, Inc. v. Charlotte Zoning Bd. Of Adjustment*, 129 N.C. App. 282, 492 S.E.2d 693 (1998), provided a period of eight years for such nonconforming adult establishments.



(6) Provide special standards for granting a variance from use-separation requirements. The version of the Gastonia ordinance litigated in 321 News 7 Video, Inc. v. City of Gastonia Bd. of Adjustment, 174 N.C. App. 186, 619 S.E.2d 865 (2005), authorized a variance from a requirement that certain adult establishments be located at least 500 feet away from certain protected uses. According to the ordinance, a variance could be granted if there were a "freeway or Interstate-type highway, traffic circulation patterns, structures, or other natural or man-made geographic or topographic features ... likely to provide an adequate means of protection for the protected zoning or use from any secondary effects of the adult establishment." Standards such as these can be particularly helpful.

Use-separation requirements are simple, easy to understand, and popular with elected officials. They also seem to be favorably received by our courts. However, administration of the requirements may not be as simple and straight-forward as it appears, and these standards also raise certain unresolved legal questions that await resolution. In any case use-separation requirements can be effective regulatory tools if ordinance provisions are carefully drafted and administered. Only then can governments justify telling the sponsors of certain activities to keep their distance.

Links

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