

New Limits on Down-Zoning in North Carolina

S.L. 2024-57 (S.B. 382)

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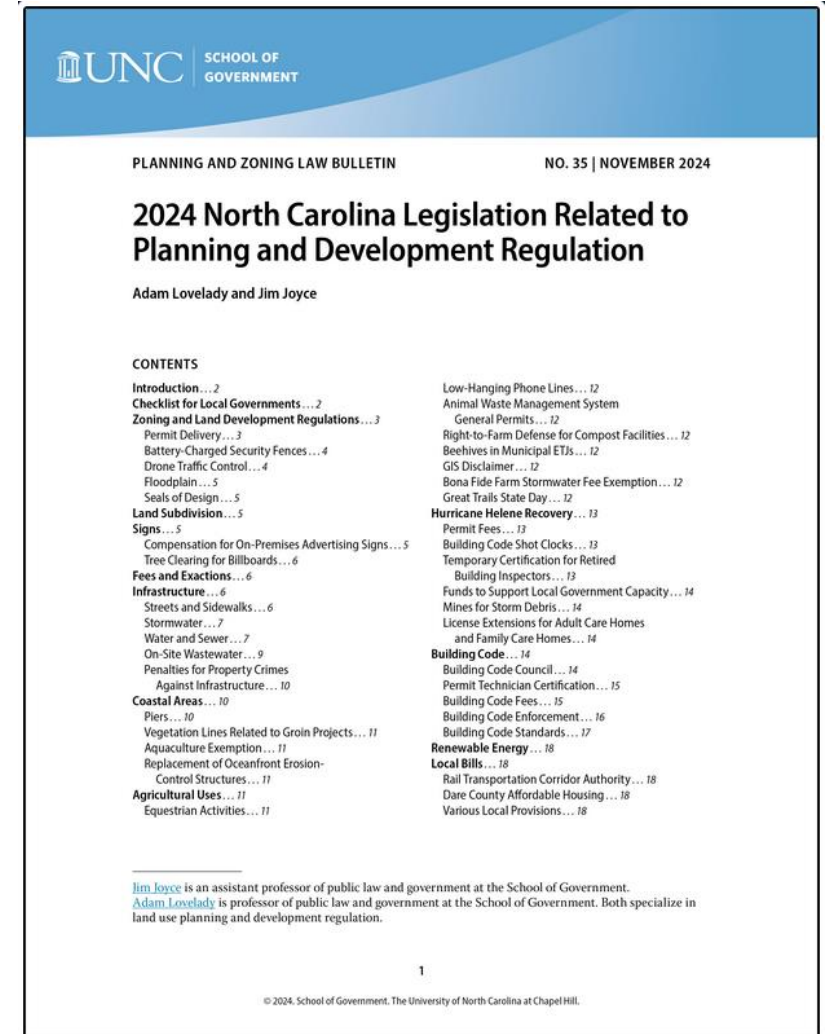
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The North Carolina General Assembly amended state law to greatly restrict local government discretion to amend local zoning ordinances. The statutory provision, amended as part of the Disaster Recovery Act of 2024 – Part III, Session Law 2024-57 (S.B. 382), broadly defines “down-zoning” and provides that local governments cannot adopt a down-zoning without written consent from all impacted owners.

The precise interpretation and breath of impact of this law are not perfectly clear. There are many questions. One thing is clear: the law dramatically alters the authority for local governments to amend local zoning

Additional Resources Related to Planning and Zoning

- Publications
 - Coates' Canons Local Government Law Blog
 - 2024 Legislative Bulletin
 - Quasi-Judicial Handbook (2024 edition)
- Courses
 - Legislative Update Webinar (on-demand)
 - Planning and Zoning 101 (March)
 - Quasi-Judicial Board Workshops (April & May)
 - PDR Zoning Certification Course (Fall 2025)
- Office Hours (alternating Thursdays, 1-2)



Property Rights and Ordinances Changes

Owner Protections Against Ordinance Changes

- Vested Rights
- Permit Choice Rule
- Nonconformities
- Third-Party Down-Zonings

New Law

No “Down-Zoning” Without Consent

SESSION LAW 2024-57 (SB382)

SUBPART III-K. LOCAL GOVERNMENT

NO LOCAL GOVERNMENT INITIATED DOWN-ZONING WITHOUT CONSENT OF AFFECTED PROPERTY OWNER

SECTION 3K.1.(a) G.S. 160D-601(d) reads as rewritten:

"(d) Down-Zoning. – No amendment to zoning regulations or a zoning map that down-zones property shall be ~~initiated nor is it enforceable~~ initiated, enacted, or enforced without the written consent of all property owners whose property is the subject of the down-zoning ~~amendment, unless the down-zoning amendment is initiated by the local government.~~ amendment. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

- (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.
- (2) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
- (3) By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element."

Applicability

SECTION 3K.1.(c) This section is effective when it becomes law and applies to local government ordinances adopted on or after that date and any local government ordinance enacting down-zoning of property during the 180 days prior to the date this section becomes effective. Ordinances adopted in violation of this section shall be void and unenforceable.

- Retroactive to any “down-zoning” adopted after June 14, 2024
- Ordinances adopted in violation are “void and unenforceable”

Defining “Down-Zoning” Density

“By decreasing the development density of the land to be less dense than was allowed under its previous usage.”

- Residential density: from 10 units per acre to 5 units per acre
- “development density” is not limited to residential
- Other possible “down-zonings”
 - Increasing setbacks for solar farms
 - Increasing buffer requirements for commercial development
- Questions
 - How does density averaging fit into this?
 - Does vertical density resolve the issue?

Defining “Down-Zoning” Uses

“By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.”

- Substantive limit or numeric limit on uses?

R-1, Residential	NC, Neighborhood Commercial	HC, Highway Commercial
Single-family residential	Retail and restaurant	Gas station
Two-family residential	Multifamily residential	Truck stop
Bed and Breakfast	Religious assembly	Large format retail
Religious assembly	Gas station	
Short-term rental		
[Three-unit residential]		
[Four-unit residential]		

“By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.”

- Questions
 - “permitted uses”? Special use, temporary use, accessory use?
 - “previous usage”? Actual use of the site or uses permitted under zoning?



Defining “Down-Zoning” Nonconformities

“By creating any type of nonconformity on land not in a residential zoning district, including a nonconforming use, nonconforming lot, nonconforming structure, nonconforming improvement, or nonconforming site element.”

- “land not in a residential zoning district”
 - Can still create nonconformities in residential district (though density and use limits still apply)
 - Is a mixed-use district a residential district?
- Non-residential districts
 - Cannot create nonconformities
 - Applicability to vacant land?
(May necessitate parallel zoning: existing and future development)



Implications for Zoning Administration

Implications for Zoning Administration

GOING FORWARD

- Rezoning Requested by Property Owners
 - Get clear written consent, legislation may push local govs toward conditional zoning
- Addressing New Uses
 - Likely will be down-zoning and require consent
- Amending Development Standards (parking, setbacks, design, etc.)
 - Likely will be down-zoning and require consent
 - May push local govs towards parallel regulations (some for existing development and some for new development)

Implications for Zoning Administration

GOING FORWARD

- Changes in Jurisdiction (annexation, ETJ, General Assembly)
 - Likely will be down-zoning and require consent
 - Manageable in voluntary annexation, but problematic for others
- New Ordinances and New Maps
 - Consent is impractical
 - Parallel zoning regulations, but that is challenging
- Incorporating Maps by Reference
- Compliance with Federal and State Requirements

Implications for Zoning Administration

IMPACTS ON PRIOR ACTIONS

- Actions between June 14, 2024 and now
 - Get consent
 - Otherwise “void and unenforceable”
- Vested rights?
- Permit choice?

§ 143-755. Permit choice.

(a) If a development permit applicant submits a permit application for any type of development and **a rule or ordinance is amended**, including an amendment to any applicable land development regulation, between the time the development permit application was submitted and a development permit decision is made, the development permit applicant may choose which adopted version of the rule or ordinance will apply to the permit and use of the building, structure, or land indicated on the permit application. If the development permit applicant chooses the

Related Development Ordinances

Zoning Only?

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Decision Tree

Is it a “down-zoning”?

ZONING, DENSITY, USE

- Is the change an amendment to the zoning text or map?
 - If yes, continue to next question. If no, evaluate if the amendment is effectively a zoning amendment (like in the case of floodplain ordinances).
- Does the text or map amendment reduce development density?
 - If yes, it’s a “down-zoning.” If no, continue to next question.
- Does the text or map amendment limit a use that was previously permitted and/or reduce the number of uses allowed?
 - If yes, it’s a “down-zoning.” If no, continue to next question.

Is it a “down-zoning”?

NONCONFORMING SITUATIONS

- Does the text or map amendment affect property in a nonresidential zoning district?
 - If yes, continue to next question. If no, it likely is not a “down-zoning.”
- For text or map amendments affecting nonresidential zoning districts, does the text or map amendment create a nonconforming situation?
 - If yes, it’s a “down-zoning.” If no, it likely is not a “down-zoning.”

If it is a “down-zoning”

CONSENT

- Can the local government get written consent from all affected property owners?
 - If yes, then the amendment may proceed with proper written consent.
 - If no, then the amendment cannot be initiated, enacted, or enforced.

