

## **Town of Dallas Planning Board Meeting**

### **Agenda**

**Thursday, September 20, 2018**

**To be held at Fire Station Community Room at 7:00 pm**

*(after Board of Adjustment Meeting)*

The following agenda is proposed:

1. Call to Order
2. Roll Call of Members Present; Declaring a quorum as present
3. Approval of Agenda with Additions or Deletions
4. Approval of Minutes- August 16, 2018
5. Old Business
  - a) Appointment of Board Chair/Co-Chair
  - b) Possible Text Amendment: Curb and Gutter requirement added to Zoning Development Standards
6. New Business
  - a) Possible Text Amendment: Allowable locations of new mobile homes
7. Upcoming Topics
  - 1) Driveway and Encroachment Agreement- Drafts for Review
  - 2) Sign Regulations
  - 3) Commercial Fence Ordinance Updates
  - 4) Gaming Regulations (no current applicants)
8. Adjournment

## MINUTES

Town of Dallas

### PLANNING BOARD

Meeting of August 16, 2018

The meeting was called to order at 7:00 PM by Chairman Curtis Wilson.

The following members were present: Curtis Wilson, Chair, Glenn Bratton, Eric Clemmer, Tim Farris, David Jones, Alternate Reid Simms

Members absent: John Beaty, John O' Daly, Alternate Gene Brown

Also present: Tiffany Faro, Director of Development Services, Johnny Denton, Town Engineer

There was an invocation lead by Chairman Wilson and pledge of allegiance.

**Approval of Agenda:** A motion by Tim Farris was made and seconded by Glenn Bratton to approve the agenda for this meeting, and the motion was adopted unanimously.

**Approval of Minutes:** A motion by Tim Farris was made and seconded by Reid Simms to approve the minutes with correction for the March meeting.

#### **New Business:**

##### 1) Possible Text Amendment: Curb and Gutter Requirements

Tiffany Faro noted that at the previous meeting she misspoke in saying that the curb and gutter requirements were the same in our zoning and subdivision regulations. After looking at the ordinances in detail, she stated there was room for clarification and cleanup of the ordinances. Board Members agree that standards should be standard regardless of chapter in the ordinance. Johnny Denton informed the board that consideration may also want to be given to the type of curbing required- rolled vs. vertical curb. Developers love rolled curb, but they are not ideal when roads are resurfaced. He recommends a 24"x6" vertical curb as a standard, with a possible rolled curb option if requested. Board concerned that all developers would just request the rolled curb. Vertical curb requires developers to know what they are doing ahead of time, especially for driveways. Drop/ valley curb could be limited to secondary streets or a certain number of houses in a subdivision, or by ncdot road designations. Possibly limit valley to roads to those that are not "collector" roads, or major/minor thoroughfares. Tiffany to bring revisions back before Planning Board for review at the next meeting. A motion was made by Glenn Bratton and seconded by David Jones to table this topic to the next meeting.

##### 2) Driveway Encroachment Agreements

Tiffany summarized previous meeting interest in an encroachment agreement process, and presented sample DOT agreements for Board review and comment. Johnny

explained the DOT process to the Board for clarification. Discussion arose regarding fees and minimum pipe size recommended under driveway, and Johnny stated DOT's standard is 18". Driveway permits should be required for all driveways, but some may also need a DOT permit in addition to Town permit. A motion was made by Tim Farris and seconded by Eric Clemmer, then approved unanimously, for the following:

- Residential Driveway Permit Fee of \$25
- Commercial Driveway Permit Fee of \$50
- No additional fee for encroachment agreements- document to accompany permits
- 18" minimum driveway pipe, with exceptions allowed per approval of Public Works

A motion was made by Tim Farris and seconded by Glenn Bratton to move forward with the DOT driveway and encroachment agreements as templates for the Town of Dallas, with adjustments as noted above, after sending to the Town attorney for review and approval.

**Other Business and Adjournment:**

Tiffany reviewed upcoming topics as outlined on the agenda, and added another possible upcoming topic- the zoning regulations for mobile homes within Town limits. Some Board discussion occurred among Board. Board asked Tiffany to expedite the review of this ordinance and place it on the agenda for the next meeting.

Respectfully Submitted,

Approved:

\_\_\_\_\_  
Tiffany Faro, Development Services Director

\_\_\_\_\_  
Curtis Wilson, Chairman

# TOWN OF DALLAS, NORTH CAROLINA

## PLANNING BOARD AGENDA ITEM

DESCRIPTION: Appointment of Board Chair/ Co-Chair

AGENDA ITEM NO. 5A

MEETING DATE: 9/20/2018

### BACKGROUND INFORMATION:

At a previous meeting, Mr. Wilson suggested that the Board appoint or re-appoint a Chairman, and requested that a Co- Chairman also be appointed in the event that the Chairman was unable to lead a meeting.

Board to nominate and vote on Chairman and Co-Chairman positions.

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### BOARD ACTION TAKEN:

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### NEXT STEPS:

# TOWN OF DALLAS, NORTH CAROLINA

## PLANNING BOARD AGENDA ITEM

DESCRIPTION: Possible Text Amendment: Curb and Gutter Requirements

AGENDA ITEM NO. 5B

MEETING DATE: 9/20/2018

### BACKGROUND INFORMATION:

This is a follow-up to the August meeting discussion relating to Town requirements for curb and gutter in the Zoning and Subdivision Ordinances.

Proposed text amendments are attached for Board review, with the Subdivision Ordinance directly referencing the new Zoning Ordinance requirements.

### Question:

1. Does the Board recommend the text amendment as proposed, or are additional changes needed?

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### BOARD ACTION TAKEN:

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### NEXT STEPS:

**Current:**

153.013 (7) *Streets, curb and gutter, street lights.* The proposed location and design of streets, curbs and gutters, and street lights, as required by the this Code, shall be included on the site plan(s).

**Proposed:**

153.013 (7) *Streets, curb and gutter, street lights.* The proposed location and design of streets, curbs and gutters, and street lights, as required by the this Code, shall be included on the site plan(s).

- (a) Combination vertical curbs and gutters shall be installed in accordance with town specifications in all subdivisions, except as follows:
1. "Valley type" curb and gutter may be requested if the road is a non-arterial local road as defined by NC Department of Transportation.
  2. If the proposed subdivision is off a private unpaved road which accesses no greater than three lots as allowed in division (A)(2) above, sewer and gutter on any portion of the road shall not be required
  3. If the subdivision fronts an existing street, the abutting portion of which does not contain curb and gutter, curb and gutter on the street may be waived by the Planning Board or Town Board of Aldermen. If abutting portions of the street, however, do contain curb and gutter, the waiver shall not be allowed; and
  4. If a residential subdivision is located in the Watershed Protected Area, curb and gutters, are optional. The Watershed-IV Protected Area is shown on the official zoning map adopted by the Town Board of Aldermen, designating all areas located within this watershed.

(b) The diagram below shall serve to illustrate curb and gutter requirements.

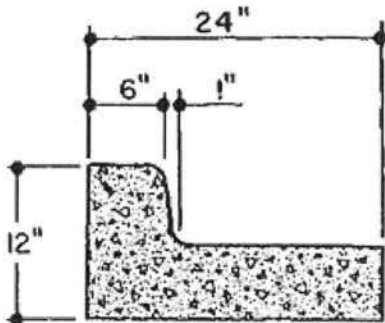


Figure 1 - 24" x 6" Vertical Curb/Gutter

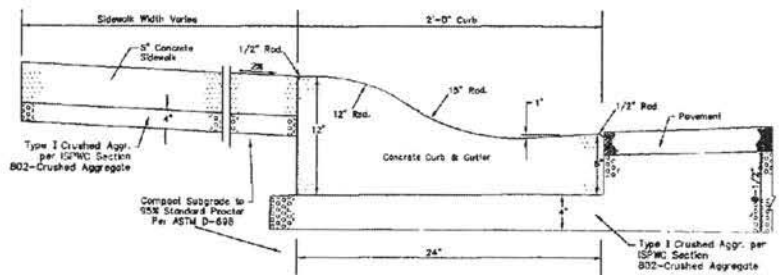


Figure 2 - 24" Valley Type Curb (on non-arterial local roads with approval)

**Current:**

152.074 (E) (5) *Curbs, gutters and storms.*

(a) Combination vertical curbs and gutters or “valley type” curb and gutter shall be installed in accordance with town specifications in all subdivisions, except as follows:

1. If the proposed subdivision is off a private unpaved road which accesses no greater than three lots as allowed in division (A)(2) above, sewer and gutter on any portion of the road shall not be required;

2. If the subdivision fronts an existing street, the abutting portion of which does not contain curb and gutter, curb and gutter on the street may be waived by the Planning Board or Town Board of Aldermen. If abutting portions of the street, however, do contain curb and gutter, the waiver shall not be allowed; and

3. If a residential subdivision is located in the Watershed Protected Area, curb and gutters, are optional. The Watershed-IV Protected Area is shown on the official zoning map adopted by the Town Board of Aldermen, designating all areas located within this watershed.

(b) The diagrams below shall serve to illustrate curb and gutter requirements.

**Proposed:**

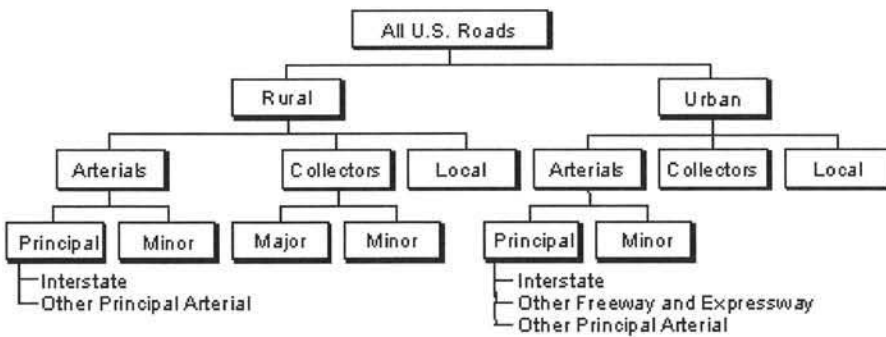
152.074 (E) (5) *Curbs, gutters and storms.* All required curb and gutter shall meet the standards outlined in the Town’s Zoning Ordinance, as outlined in Chapter 153.

## Functional Classification System

The Highway Functional Classification System distinguishes among public roads by the service they provide. Exhibit 1 describes the hierarchy of the Highway Functional Classification System (HFCS).

Arterials provide the highest level of mobility, at the highest speed, for long, uninterrupted travel. The Interstate Highway System is an arterial network. Arterials generally have higher design standards than other roads, often with multiple lanes and some degree of access control.

Exhibit 1



The rural arterial network provides interstate and intercounty service so that all developed areas are within a reasonable distance of an arterial highway. This network is broken down into principal and minor routes. The rural principal arterial network is more significant. It serves virtually all urban areas with populations greater than 50,000 people. Additionally, most urban areas larger than 25,000 people are served by rural principal arterial highways. Rural principal arterial highways provide an integrated network without stub connections except where needed because of unusual geographic or traffic conditions (for example, connections to international borders, coastal cities, waterports and airports). The rural principal arterial network is divided into two subsystems, Interstate highways and other principal arterials.

In 1997, the rural principal arterial system accounted for about 3.3 percent of total miles in the United States. This small portion of highways carried 46.8 percent of rural traffic and 18.3 percent of total travel in the United States. The other element of the rural arterial system, minor arterials, represented 3.5 percent of total U.S. miles, carrying 16.5 percent of rural traffic and 6.4 percent of total travel in the United States.

Similarly, in urban areas, the arterial system is divided into principal and minor arterials. The urban principal arterial system is the most important group; it includes Interstate highways, other freeways and expressways, and other principal arterials. The urban principal arterial system serves major metropolitan centers, corridors with the highest traffic volume, and those with the longest trip lengths. It carries most trips entering and leaving urban areas, and it provides continuity for all rural arterials that intercept urban boundaries. In 1997, the urban principal arterial system accounted for 1.9 percent of total miles in the United States. However, this network carried 57.8 percent of urban traffic and 35.5 percent of total travel in the United States.



Urban minor arterial roads provide service for trips of moderate length and at a lower level of mobility. They connect with urban principal arterial roads and rural collector routes. In 1997, the urban minor arterial network represented 2.3 percent of total U.S. mileage. This system carried 19.5 percent of urban traffic and 12.0 percent of total travel in the United States.

Collectors provide a lower degree of mobility than arterials. They are designed for travel at lower speeds and for shorter distances. Collectors are typically two-lane roads that collect and distribute traffic from the arterial system.

The rural collector system is stratified into two subsystems: major and minor collectors. Major collectors provide service to any county seat not on an arterial route. They also serve larger towns not accessed by higher order roads, and important industrial or agricultural centers that generate significant traffic (but are avoided by arterials). Rural major collectors accounted for 10.9 percent of total U.S. miles in 1997. They carried 20.2 percent of rural traffic and 7.9 percent of total travel in the United States.

Rural minor collectors are spaced at intervals, consistent with population density, to collect traffic from local roads and to insure that all urbanized areas are within a reasonable distance of a collector road. The rural minor collector system accounted for 6.9 percent of total U.S. mileage in 1997. These roads carried 5.3 percent of rural traffic and 2.1 percent of total travel in the United States.

In urban areas, the collector system provides traffic circulation within residential neighborhoods and commercial and industrial areas. Unlike arterials, collector roads may penetrate residential communities, distributing traffic from the arterials to the ultimate destination for many motorists. Urban collectors also channel traffic from local streets onto the arterial system. In 1997, the urban collector network accounted for 2.2 percent of U.S. road mileage. It carried 8.04 percent of urban traffic and 4.9 percent of total U.S. travel.

Local roads represent the largest element in the American public road network in terms of mileage. For rural and urban areas, all public road mileage below the collector system is considered local. Local roads provide basic access between residential and commercial properties, connecting with higher order highways. In 1997, rural local roads represented 54.1 percent of total U.S. road mileage. Local roads carried only 11.5 percent of rural traffic and 4.5 percent of total travel in the United States. Urban local roads, meanwhile, accounted for 14.9 percent of total U.S. road mileage, 14.3 percent of urban traffic, and 8.7 percent of total U.S. travel.

# TOWN OF DALLAS, NORTH CAROLINA

## PLANNING BOARD AGENDA ITEM

DESCRIPTION: Possible Text Amendment: Allowable locations of mobile homes

AGENDA ITEM NO. 6A

MEETING DATE: 9/20/2018

### BACKGROUND INFORMATION:

In review of existing ordinances, Town staff noticed that mobile homes are currently allowable throughout R-6 zone as long as they meet the Class A designation.

The Development Services Director is proposing review of the regulations governing mobile homes.

Attached is the existing ordinance, proposed text amendment, new proposed ordinance section, a zoning map, GS. 160A-376, and an article from the UNC School of Government on allowable regulation of mobile/manufactured housing.

#### Questions:

1. Does the Board want to treat mobile home communities as “subdivisions” as allowed by G.S. 160A-376, or should it undergo the development site review process similar to apartment communities?
2. Does the Board recommend the proposed text amendments, or are there changes needed prior to a public hearing?

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### BOARD ACTION TAKEN:

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### NEXT STEPS:

[Print](#)

EXISTING  
Dallas, NC Code of Ordinances

**§ 153.026 R-8 AND R-6 ZONES: MULTI-FAMILY RESIDENTIAL.**

Within the R-8 and R-6 zones as shown on the zoning map, incorporated by reference in § 153.021, the following regulations shall apply.

(A) *Permitted uses.*

- (1) Any use permitted in the R-15, R-12 and R-10 zones.
- (2) Multiple dwellings.
- (3) Trailer camps.
- (4) Fraternities associated with a recognized junior or senior college.
- (5) Customary home occupations.
- (6) Manufactured homes, Class A, in R-6 zones only.

(7) Adaptive reuse of historic building (this is subject to the issuance of a conditional use permit by the Board of Alderman in accordance with § 153.015.

(B) *Lot areas and width, yards and building height requirements.* The requirements set forth in Appendix A: Yard and Height Requirements in Residential Districts and Appendix B: Yard and Height Requirements in Business Districts shall govern.

(C) *Off-street parking.* Off-street parking shall be provided by all uses as required in § 153.042.

(D) *Signs.* The requirements set forth in the sign regulations, §§ 153.080 through 153.087, shall apply.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3-1972; Am. Ord. passed 11-13-2001)

***Cross reference:***

*Sign regulations schedule, see Appendix D*

PROPOSED

**§ 153.026 R-8 AND R-6 ZONES: MULTI-FAMILY RESIDENTIAL.**

Within the R-8 and R-6 zones as shown on the zoning map, incorporated by reference in § 153.021, the following regulations shall apply.

(A) *Permitted uses.*

- (1) Any use permitted in the R-15, R-12 and R-10 zones.
- (2) Multiple dwellings.
- (3) Trailer camps.
- (4) Fraternities associated with a recognized junior or senior college.
- (5) Customary home occupations.

**(6) Manufactured/mobile homes. Must be Class A, and located in the R-6 zone only within approved mobile home parks or subdivisions.**

(7) Adaptive reuse of historic building (this is subject to the issuance of a conditional use permit by the Board of Alderman in accordance with § 153.015.

(B) *Lot areas and width, yards and building height requirements.* The requirements set forth in Appendix A: Yard and Height Requirements in Residential Districts and Appendix B: Yard and Height Requirements in Business Districts shall govern.

(C) *Off-street parking.* Off-street parking shall be provided by all uses as required in § 153.042.

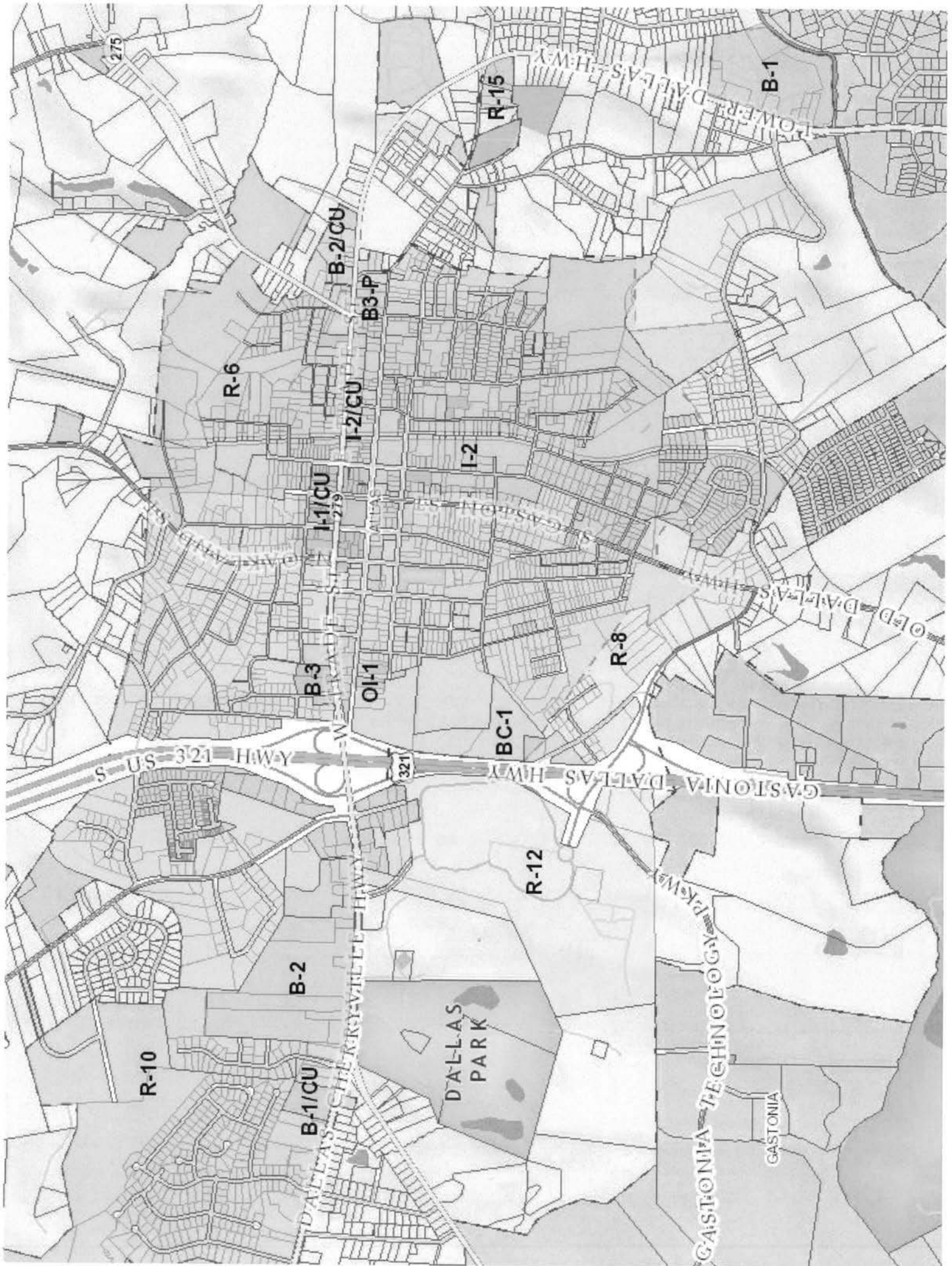
(D) *Signs.* The requirements set forth in the sign regulations, §§ 153.080 through 153.087, shall apply.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3-1972; Am. Ord. passed 11-13-2001)

**153.017 MANUFACTURED/MOBILE HOMES**

Any mobile/manufactured home installed from and after the effective date of this section shall meet the following standards:

- (A) Mobile Home Parks/ Subdivisions shall be located within an R-6 zone, and all new proposed locations shall be treated as a planned subdivision per NC G.S. 160A-376 and comply with the Town's Subdivision Development Standards.
  - a. A zoning permit and building permit shall be required for every structure located within a mobile home park, including replacement mobile homes.
  - b. Accessory structures shall be limited to one per home, and must comply with the accessory structure requirements outlined in Chapter 153.009.
- (B) New mobile/manufactured homes shall not be located on any parcel within Town limits, unless the parcel has been approved as a mobile home park or subdivision.
  - a. If an existing mobile home, regardless of location or zone, becomes damaged by fire, flood, explosion, earthquake, wind, storm, hurricane or any other act of God, war or riot, becomes damaged by any third-party by no fault of the owner, or becomes damaged by the owner by accidental means, it may be replaced at the same location with a home of the same size within a 12 month period.
  - b. Any parcel containing a mobile home that has been removed for a period of greater than 12 months must comply with all current zoning regulations.



**§ 160A-376. Definition.**

(a) For the purpose of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Part:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations.
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in its subdivision regulations.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

(b) A city may provide for expedited review of specified classes of subdivisions.

(c) The city may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under subdivision (2) of subsection (a) of this section.
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than five acres.
- (4) After division, no more than three lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
  - a. Any lot dimension size requirements of the applicable land-use regulations, if any.
  - b. The use of the lots is in conformity with the applicable zoning requirements, if any.
  - c. A permanent means of ingress and egress is recorded for each lot. (1955, c. 1334, s. 1; 1971, c. 698, s. 1; 1973, c. 426, s. 61; 1977, c. 912, s. 6; 2003-284, s. 29.23(a); 2005-426, s. 4(a); 2017-10, s. 2.5(b).)



# Manufactured Housing, Modular Housing, and Zoning

David W. Owens

May, 2014

Legislative summary(ies)

Manufactured housing is an important component in North Carolina's overall housing market. In 2010 over 14 percent of the state's housing units were manufactured homes.[1] Despite the importance and widespread use of manufactured housing, there has been some degree of citizen antipathy toward mobile homes.

## Summary:

## Manufactured Housing, Modular Housing, and Zoning

David W. Owens

*Gladys Hall Coates Professor of Public Law and Government*

*School of Government, The University of North Carolina at Chapel Hill*

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**May 2014**

Manufactured housing is an important component in North Carolina's overall housing market. In 2010 over 14 percent of the state's housing units were manufactured homes.[1] Despite the importance and widespread use of manufactured housing, there has been some degree of citizen antipathy toward mobile homes.

Many local governments in North Carolina have long included special restrictions on manufactured housing in their development regulations.[2] By 1960 a familiar land use regulatory approach for manufactured housing had emerged—manufactured home park standards, floating zoning districts for manufactured housing parks, special and conditional use permits for manufactured home placement, and standards on buffers and other aspects of design of manufactured home parks.[3]

## Manufactured Housing

In response to exclusionary regulations imposed by some local governments,[4] the state enacted legislation limiting local zoning provisions affecting manufactured housing.[5] G.S. 160A-383.1, which was added to the statutes in 1987 and is applicable to both cities and counties, directs local governments to consider allocating more land to manufactured housing sites as a way of providing additional affordable housing in the state. Under the statute, local governments may regulate the location, the appearance, and the dimensions of manufactured homes but may not exclude such homes entirely from their zoning jurisdiction.

Local zoning provisions are generally applied to units constructed in a factory and built to the uniform national standards for manufactured homes promulgated by the U.S. Department of Housing and Urban Development.[6] Federal law preempts local construction and safety standards for manufactured housing.

Many zoning ordinances establish subcategories of manufactured housing and apply differential standards to each (e.g., Class A manufactured homes are allowed in some districts; Class B, in other districts).[7] Any such distinction must have a rational basis. Typical distinctions that are used are those based on the size of the units[8] or the construction standards in effect at the time of manufacture.[9]

Cities and counties may not employ factors other than appearance, dimension, and location in land use regulation of manufactured housing. The court in *White v. Union County*[10] reviewed an ordinance that limited the use of mobile homes as residences to those built after 1976 (when federal construction standards became applicable) or valued at more than \$5,000. The court expressed doubt about the county's statutory authority for the monetary value requirement. In *Five C's, Inc. v. County of Pasquotank*,[11] the court invalidated an age standard used as the basis for regulation of manufactured homes. The county had adopted an ordinance under its general police powers to prohibit bringing manufactured homes into the county that were more than ten years old at the time of setup. The rationale offered by the county was protection of the county tax base, noting that manufactured homes rapidly decline in value and at the ten-year point have little more value than a motor vehicle and thus provide insufficient tax revenue to support the need for county services generated. The court held that G.S. 160A-383.1 limits regulation of manufactured housing to appearance and dimensional criteria and thus prohibits regulation based solely on the age or value of the unit.

It is also common for local governments to have detailed standards for mobile home parks—such as standards for road width and paving, minimum lot sizes, and provisions for waste disposal. These are sometimes incorporated into a zoning ordinance and sometimes adopted as a separate ordinance.[12]

Typical zoning requirements that have been adopted in North Carolina include limiting manufactured housing to specified zoning districts[13] or to manufactured home parks[14] (which often can be located only in special overlay zoning districts).[15] Other ordinances only allow units of at least a certain size to be located in specified districts.[16] It is also common for ordinances to include special provisions regarding replacement and repair of nonconforming manufactured housing units.[17]

Many ordinances also include various appearance standards to integrate the units aesthetically into surrounding neighborhoods with site-built homes. These standards typically include requiring a pitched roof, skirting around the underside of the unit or location on a permanent foundation, and orienting the unit to the front of the lot. Such appearance standards were upheld in *CMH Manufacturing, Inc. v. Catawba County*. [18] The county required lap siding, minimum roof pitch, and shingled roofs for single-wide manufactured homes. Other county requirements that were not challenged included installation of a deck or porch, removal or screening of travel hitches, orientation on the lot, and brick underpinning or skirting for double-wide units. The court held that these were permissible "appearance" standards rather than "construction and safety" standards that are preempted by federal law.

Regulations on manufactured housing may not be based on the ownership of the unit, for example, allowing owner-occupied but not rental manufactured housing.[19] Nor may zoning restrictions be based on the "type of people" presumed to be residing therein.[20] Only legitimate land use-related factors may be considered in framing such regulations.

## Modular Units

Most zoning ordinances do not apply the requirements for manufactured housing to factory-built housing that is built to State Building Code standards.[21] The latter units generally are referred to as "modular" rather than "manufactured" homes. Modular units[22] are often, but not always, treated as the equivalent of site-built homes for zoning purposes. State law does, however, set minimum design standards for modular units.[23] requires modular units to meet these standards:

1. The pitch of the roof shall be no less than 5 feet rise for every 12 feet of run, for homes with a single predominant roofline.
2. The eave projections of the roof shall not be less than 10 inches (excluding roof gutters) unless the roof pitch is 8/12 or greater.
3. The minimum height of the first-story exterior wall must be at least 7 feet 6 inches.
4. The materials and texture of exterior materials must be compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction.
5. The modular home must be designed to require foundation supports around the perimeter.

## Private Covenants

There has also been considerable litigation in the state regarding the interpretation of private restrictive covenant provisions related to manufactured housing.[24] However, these covenants are private agreements between the property owners involved. The interpretation, administration, and enforcement of these covenants do not affect government regulations.



<sup>[1]</sup> The 2010 Census reported 4,327,528 housing units in the state, of which 604,286 were mobile homes (14%). This proportion of manufactured housing has been relatively constant for several decades (14% in 2010, 16% in 2000, and 15% in 1990). Prior to this time there were a smaller percentage of manufactured homes (10 % in 1980, 6% in 1970).

<sup>[2]</sup> See, e.g., *City of Raleigh v. Morand*, 247 N.C. 363, 100 S.E.2d 870 (1957), *appeal dismissed*, 357 U.S. 343 (1958) (upholding ordinance prohibiting trailer parks within residential districts in the city's one-mile extraterritorial area). One of the earlier North Carolina ordinances on the subject was adopted when "mobile homes" were in fact mobile. The City of Durham amended its zoning ordinance in 1949 to "put an end to the indiscriminate parking of the portable dwellings within the city limits," requiring all inhabitable mobile units to be located in trailer parks. *Trailer Camps*, *Popular Gov't*, Dec. 1949, at 4.

<sup>[3]</sup> Philip P. Green, Jr., *Regulating Mobile Homes Through Zoning*, *Popular Gov't*, Mar. 1961, at 10.

<sup>[4]</sup> In *Town of Conover v. Jolly*, 277 N.C. 439, 177 S.E.2d 879 (1970), the court invalidated an ordinance that completely barred mobile homes for residential use within the town. The court ruled that the mobile home ordinance, which was not part of the zoning ordinance, was beyond the town's delegated police powers, for mobile homes were neither a nuisance per se nor a detriment per se to public health, morals, comfort, safety, convenience, or welfare.

<sup>[5]</sup> 1987 N.C. Sess. Laws ch. 805.

<sup>[6]</sup> National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401 to 5426 (1995). Federal construction and safety standards preempt the construction and safety standard authority of states and local governments. 42 U.S.C. § 5403(d) (1995). The federal regulations regarding preemption are set forth in 24 C.F.R. § 3282.11(a) (1997).

<sup>[7]</sup> See N.C. League of Municipalities, N.C. Ass'n of County Comm'rs, N.C. Manufactured Hous. Inst., *Manufactured Housing: Zoning Alternatives to Address North Carolina Housing Needs* (1988) for an example of such classification.

<sup>[8]</sup> For example, many ordinances have more restrictive locational standards for single-wide units than for double-wide units.

<sup>[9]</sup> The most commonly used distinction is to have more restrictive requirements for those units constructed before the imposition of minimum federal construction standards in 1976.

<sup>[10]</sup> 93 N.C. App. 148, 377 S.E.2d 93 (1989).

<sup>[11]</sup> 195 N.C. App. 410, 672 S.E.2d 737 (2009). The court noted that the fact that the county used its general ordinance-making power rather than the zoning power cannot be used to circumvent the clear legislative limitation on regulatory authority regarding manufactured homes.

<sup>[12]</sup> A 2005 survey by the School of Government indicated that 79 percent of the responding municipalities and 93 percent of the responding counties had adopted regulations on manufactured home parks. David W. Owens & Nathan Branscome, *An Inventory of Local Government Land Use Ordinances in North Carolina* 8 (School of Government, Special Series No. 21, 2006).

<sup>[13]</sup> *Koontz v. Davidson County Bd. of Adjustment*, 130 N.C. App. 479, 503 S.E.2d 108, *review denied*, 349 N.C. 529, 526 S.E.2d 177 (1998) (upholding zoning amendment that removed manufactured housing as a permitted use in a particular zoning district); *City of Asheboro v. Auman*, 26 N.C. App. 87, 214 S.E.2d 621, *cert. denied*, 288 N.C. 239, 217 S.E.2d 663 (1975) (upholding injunction to prohibit continued use of a mobile home that had been moved into a zoning district that did not allow mobile homes, even though the wheels and tongue had been removed and the unit had been placed on a permanent foundation); *Town of Mount Olive v. Price*, 20 N.C. App. 302, 201 S.E.2d 362 (1973) (upholding injunction compelling removal of a mobile home located in violation of the zoning ordinance).

<sup>[14]</sup> *County of Currituck v. Upton*, 19 N.C. App. 45, 197 S.E.2d 883 (1973) (upholding an order to remove a mobile home from a zoning district that did not permit individual units outside a park); *State v. Martin*, 7 N.C. App. 18, 171 S.E.2d 115 (1969) (upholding conviction for violation of an Ahoskie ordinance limiting the location of mobile homes to mobile home parks).

<sup>[15]</sup> The creation of a zoning district to allow location of manufactured home parks can be challenged as unlawful spot zoning. See *Alderman v. Chatham County*, 89 N.C. App. 610, 366 S.E.2d 885, *review denied*, 323 N.C. 171, 373 S.E.2d 103 (1988); *Stutts v. Swaim*, 30 N.C. App. 611, 228 S.E.2d 750, *review denied*, 291 N.C. 178, 229 S.E.2d 692 (1976).

<sup>[16]</sup> *Currituck County v. Willey*, 46 N.C. App. 835, 266 S.E.2d 52, *review denied*, 301 N.C. 234, 283 S.E.2d 131 (1980). In this case the court upheld a provision prohibiting mobile homes with dimensions of less than 24' x 60' in a single-family zoning district. The court ruled that mobile homes were sufficiently different from other types of housing that a rational basis existed for differing requirements, such as this dimension standard.

<sup>[17]</sup> See, e.g., *Forsyth County v. York*, 19 N.C. App. 361, 198 S.E.2d 770, *cert. denied*, 284 N.C. 253, 200 S.E.2d 653 (1973) (upholding requirement that changes in nonconforming use and mobile home use in certain districts be authorized by special use permits). Care is necessary in drafting the precise terms of such limitations. See *In re Hensley*, 98 N.C. App. 408, 390 S.E.2d 727 (1990), a case involving the Town of Cramerton's zoning ordinance. The court ruled that where the ordinance provided that a nonconforming use might not be reestablished after it had been discontinued for 180 days, a nonconforming use could be reestablished if done in less than that time. In this instance, a mobile home had been removed from a lot in a zone that did not allow mobile homes; however, the petitioner was entitled to a permit to replace the mobile home if that were done within 180 days. By contrast, in *Williams v. Town of Spencer*, 129 N.C. App. 828, 500 S.E.2d 473 (1998), the court upheld an ordinance provision explicitly prohibiting replacement of units on vacated lots in a nonconforming manufactured home park.

<sup>[18]</sup> 994 F. Supp. 697 (W.D.N.C. 1998). The court further held that the challenged standards did not violate the commerce, due process, or equal protection clauses.

<sup>[19]</sup> *Graham Court Assocs. v. Town Council of Chapel Hill*, 53 N.C. App. 543, 281 S.E.2d 418 (1981).

<sup>[20]</sup> *Gregory v. County of Harnett*, 128 N.C. App. 161, 493 S.E.2d 786 (1997). See Chapter 25 for discussion of legitimate objectives for development regulation.

<sup>[21]</sup> *Duggins v. Town of Walnut Cove*, 63 N.C. App. 684, 306 S.E.2d 186, *review denied*, 309 N.C. 819, 310 S.E.2d 348 (1983), *cert. denied*, 466 U.S. 946 (1984). The ordinance prohibited a "mobile home" in a residential zoning district but allowed "modular" and site-built homes of similar dimensions to be used. The court upheld the ordinance as validly regulating the location of various types of structures, ruling that given the presumption of validity, the city had only to establish that the ordinance was rationally related to any legitimate government objective. The protection of property values was such a legitimate objective, and the council could determine that the method of construction affected the price of homes.

<sup>[22]</sup> G.S. 105-164.3(21a) provides that a modular unit is a "factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1."

<sup>[23]</sup> These provisions were created by S.L. 2003-400.

<sup>[24]</sup> In *Young v. Lomax*, 122 N.C. App. 385, 470 S.E.2d 80 (1996), there were covenants prohibiting "mobile homes." The structure involved had two sections, each with a steel chassis, axles, and wheels. The axles and wheels were removed upon installation and the units were secured to concrete piers. The court held that the unit remained a "mobile home" as a matter of law and was distinguishable from the modular units addressed earlier in *Angel v. Truitt*, 108 N.C. App. 679, 424 S.E.2d 660 (1993), wherein the court held that placement of a modular home on a lot did not violate a restrictive covenant prohibiting "mobile homes." The court applied the customary definition of mobile homes at the time the covenant was executed, using the dictionary definition of a mobile home to mean a house trailer that is hauled by a truck. Since the modular unit involved in the case had no permanent chassis or axles and was placed on a permanent foundation, it was held not covered by the prohibition. In *Forest Oaks Homeowners Association v. Isenhour*, 102 N.C. App. 322, 401 S.E.2d 860 (1991), a restrictive covenant prohibited trailers and "mobile homes" but permitted "modular or component homes or pre-built homes" if erected on a permanent foundation. The court applied the manufactured/modular distinction used in the State Building Code to allow a modular home to be placed on the plaintiff's lot. In *Starr v. Thompson*, 96 N.C. App. 369, 385 S.E.2d 535 (1989), the restrictive covenant at issue prohibited the use of "trailers or mobile homes." The court held that the restriction applied to a factory-built modular home consisting of two 8' x 40' sections that had been delivered to the site with a permanent chassis with removable axles. The wheels, axles, and tongue had been removed and the units placed on footings on the site. The court distinguished the definitions that were applicable for zoning from those to be used in enforcing private restrictive covenants. In *Barber v. Dixon*, 62 N.C. App. 455, 302 S.E.2d 915, *review denied*, 309 N.C. 191, 305 S.E.2d 732 (1983), a restrictive covenant prohibited the use of a "structure of a temporary character (including house trailers)." The court held that this prohibited the use of a structure consisting of two units transported to the site, even though the wheels, the tongues, and the axles had been removed two days after the units had been located on the lot. In *Van Poole v. Messer*, 19 N.C. App. 70, 198 S.E.2d 106 (1973), a restrictive covenant prohibited temporary structures and trailers. The court held that "trailer" included a mobile home. The restrictive covenant in *Strickland v. Overman*, 11 N.C. App. 427, 181 S.E.2d 136 (1971), prohibited trailers and temporary structures, categories that the court held to include a "prefabricated modular unit."

Accessibility

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