

DEVELOPMENT GUIDE

FEATURING

- *Tips for effective public comment*
- *How projects get approved*
- *Flowcharts of planning processes*

YOUR COMPANION TO

**LAND-USE PLANNING
IN BUNCOMBE COUNTY**

Introduction

BY DANIEL WALTON
dwalton@mountainx.com

Few who lay eyes upon Western North Carolina would disagree that its landscape is magnificent. Layers of undulating mountain stretch to the horizons, shot through with crystal rivulets and waterfalls, tied together by the generous flow of the French Broad River — the place has attracted residents and visitors since at least 10,000 years ago, the age of the earliest Indigenous sites discovered on what is now the Biltmore Estate in Asheville.

Agreeing that land is desirable is easy. Agreeing how people should use it is hard. And in Buncombe County, questions of land use reverberate beneath many other difficult conversations.

Approaches to managing the impacts of tourism, for example, largely depend on where hotels are allowed to be built and where short-term rentals are permitted to operate. Affordable housing advocates push for new rules that would require developers to offer units at cheaper rates. Those concerned about climate change wonder how the county can absorb the thousands of migrants likely to arrive as rising sea levels eat away at U.S. coastlines. Rural residents worry about urban sprawl disrupting cherished ways of life.

While all of these issues are influenced by policy at the state and federal levels, local governments arguably have the greatest ability to determine land use. Through the legislative tools of zoning, cities and counties can specify what types of buildings go where, how big those buildings can be and what's permitted to happen in them.

Those future-shaping decisions are happening every day in the city of Asheville, in unincorporated Buncombe County, in the towns of Biltmore Forest, Black Mountain, Montreat, Weaverville and Woodfin. The goal of the *Mountain Xpress* Development Guide is to give residents the tools to engage with those decisions in the most effective ways possible.

This guide has itself been guided by the more than 230 readers who filled out an *Xpress* survey or participated in listening sessions last year. In response



“

Decisions about land use are too important to be left solely to elected officials, government staffers and developers — they involve all of us.

”

to that feedback, we’ve included a section about how to find projects in their earliest stages, as well as details on the limits of local government action. Many readers were particularly interested in learning how developers might be influencing politicians, leading to a section on campaign finances.

We hope that the engagement we saw while creating the guide will now be dwarfed by the public participation it empowers. Decisions about land use are too important to be left solely to elected officials, government staffers and developers — they involve all of us, and by their impacts on the patterns of society, they involve those yet to come to WNC as well.



Contents //

- 4 **Cans and can'ts**
- 8 **Staying in the loop**
- 10 **Beyond NIMBYism**
- 14 **City of Asheville development process**
- 22 **Buncombe County development process**
- 28 **Not quite court**
- 29 **Other towns**
- 34 **Here's the plan**
- 38 **Muddy ground**
- 40 **On the records**
- 42 **Changing the rules**
- 44 **Terms of the trade**

PUBLISHED February 2022

PUBLISHER Jeff Fobes
EDITOR Daniel Walton
WRITERS Mark Barrett, Justin McGuire, Brooke Randle, Daniel Walton
DESIGNER Scott Southwick
DISTRIBUTION Susan Hutchinson, Cindy Kunst and a fantastic team of devoted drivers

The Development Guide is supported in part by the American Press Institute and published by *Mountain Xpress*
 P.O. Box 114 Asheville, NC 28802
 828.251.1333
 © 2022 Mountain Xpress

CANS AND CAN'TS

How zoning, land-use rules work

BY MARK BARRETT
markbarrett@charter.net

When North Carolina's state government created local governments like the city of Asheville and Buncombe County, it didn't hand out magic wands.

Court rulings and state laws sometimes mean local governments can't adopt zoning rules their constituents might like — and in some cases, it's uncertain just how much authority municipalities have, say Asheville City Attorney **Brad Branham** and other lawyers working in the field.

"We can only do what the state legislature lets us do," Branham says. "Where that line is, is not always specified."

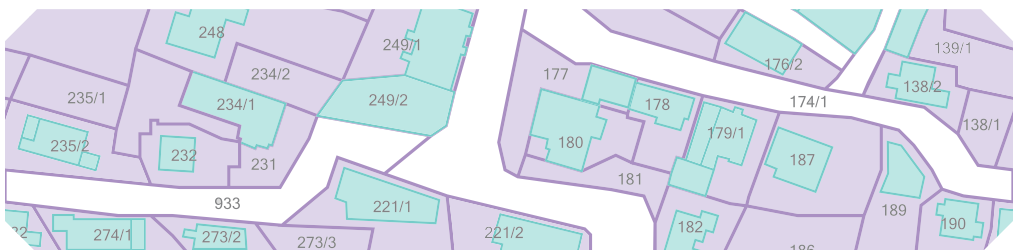
Unlike in so-called "home rule" states, few barriers prevent the N.C. General Assembly from limiting local power or simply telling local governments what to do. But courts usually say the general state laws that do allow local officials to regulate many activities can be interpreted relatively broadly.

Some restrictions on local zoning authority can be quite specific. For example, local governments can't make different zoning rules for a college's official fraternity and sorority houses than for Greek houses not recognized by a school.

Since Republicans took control of the General Assembly in 2011, state legislators have not been shy about limiting local government authority if they see something they don't like. Orange County used to have special state permission to charge an impact fee for school construction needs caused by new development, a power not granted to most other counties or municipalities. Legislators took it away in 2017. In 2013, the state struck the ability of Asheville and Weaverville to apply their zoning rules to property just outside their borders, a power enjoyed by almost all other cities and towns in the state.

Other restrictions stem from broader constitutional principles, like those in the federal 14th Amendment saying states — and by implication, their local governments — cannot "deprive any person of life, liberty, or property without due process of law."

Here's a capsule look at what local governments can and cannot do when it comes to zoning and land use, as well as some areas where their powers are unclear.



Can

- * **Regulate what gets built where.** One of local governments' basic powers is to establish zoning ordinances and maps that set out where different types of land uses, such as single-family homes, apartments, retail stores and industrial plants, can be located. Arbitrary rules can be struck down in court, but the power to institute zoning rules is undisputed.
- * **Dictate the details.** Local governments can require that buildings be set back a certain distance from property lines or that they be built flush with the front of a lot in a downtown setting. They can require buffers of trees and shrubs between different lots, especially when one type of use sits next to another.
- * **Keep it dry.** Governments can require that new buildings not worsen flooding. That includes requiring developers to channel or contain stormwater and ensure that buildings will withstand floods. The most common compliance method is to elevate the lowest occupied floor of a building above the level a 100-year flood is expected to reach. Property owners can't get federal flood insurance unless their local government has an ordinance requiring flood prevention measures.
- * **Call a halt – for a little while.** Governments can impose moratoriums on some types of development while they consider new restrictions, as Asheville did with hotels in 2019 while the city wrote new rules on where and how they can be built. A moratorium must be temporary – usually less than two years, says **Adam Lovelady**, a professor at the University of North Carolina Chapel Hill School of Government — and in all but a few cases can't block projects approved before the moratorium was imposed.
- * **Provide for traffic.** Local governments can require developers to make road improvements before their projects are hooked up to the existing system. Common measures include installing a new traffic light, building turn lanes or widening the pavement. Improvements don't have to be right at the entrance to a development, but their scale and location must have some relationship to the amount of traffic the development will generate. Local governments can also require developers to build sidewalks, bike lanes and bicycle parking, although not all do this.
- * **Build or subsidize affordable housing.** Most local governments are more likely to give a developer financial help, either through tax breaks or reduced permit fees, than they are to build affordable housing themselves.
- * **Make a deal.** Zoning rules sometimes allow a developer more freedom if a project provides facilities or benefits a local government wants. A common example is allowing construction of more housing on a given lot if some of the units are set aside as affordable.
- * **Protect mountain views.** Local governments can limit the height of new buildings on mountain ridges. They also have authority to regulate construction on steep slopes.

Maybe, maybe not

- * **Dictate building style.** State law specifically says local governments can't require one- or two-family homes be built in a particular architectural style or impose other rules on appearance, like requiring certain paint colors. Certified historic districts are an exception: Governments have broad authority to set up rules on all types of new buildings there to require that they fit in with existing structures.
- * **Lay down design lines.** Governments can also adopt broad design rules, like ensuring that windows make up a certain percentage of a wall or setting a maximum height or size for buildings. And officials can consider design issues when deciding whether to approve some larger projects. But there's some uncertainty about just how far local governments can go, UNC's Lovelady says, because state law is largely silent on the issue. A blanket rule dictating the architectural style of new buildings outside a historic district is probably beyond governments' authority, he says.
- * **Regulate group homes.** State law says family care homes, which house up to six people with physical or mental disabilities, must be allowed in all residential zones in a local government's jurisdiction. However, the rules vary for other types of small group facilities, like halfway houses.

Defend Democracy

Support grassroots election coverage.

MOUNTAIN
Xpress
mountainx.com



SupportMountainX.com

Can't

- * **Call a halt forever.** “For the most part, you don’t have the authority to simply ban a land use,” Asheville City Attorney Branhram says; for example, Asheville couldn’t halt all hotel construction indefinitely. Lovelady has the same view. Courts have not given a “clear answer,” he says, and a small resort town might be able to argue there simply isn’t room for some types of uses. But, he adds, “for most jurisdictions in the state, allowing for lawful land uses somewhere in the jurisdiction is certainly prudent, if not required.”
- * **Keep your neighbor from building anything.** In most cases, governments can’t make a private landowner keep their property as is for the long term without paying compensation. State law even sets out a procedure whereby landowners can get exceptions to zoning rules that would otherwise prevent them from getting an economic benefit from their property. As Buncombe County Planning Director **Nathan Pennington** puts it, if you like your view of the woods across the street and want to ensure it will stay that way, “The best way to protect yourself ... is a property acquisition.” In other words: Buy it.
- * **Act without adequate reason.** Courts can and do strike down development decisions that judges decide were made without a sound basis. They’ll often look to see whether a decision fits with a community’s existing ordinances and comprehensive plan.
- * **Refuse to consider a proposal.** If an application for a project is properly submitted, a government can’t just toss it in the trash.
- * **Prohibit mobile homes.** Generally, a city or county must allow them somewhere in their jurisdiction.
- * **Keep renters out.** Turning down a residential project because its houses or apartments will be rented out instead of owner occupied is not allowed. Development rules must be the same for rental housing as for owner-occupied housing.
- * **Control rents.** State law specifically prohibits government rent-control rules.
- * **Block affordable housing.** Turning down a development because it would include affordable housing is illegal. The only exception is to avoid concentrations of affordable housing in one part of a government’s jurisdiction.
- * **Discriminate.** Zoning and land-use decisions can’t be based on the race, religion, ethnicity, gender or other protected statuses of property owners, applicants or residents. Governments also are not supposed to let officials’ opinions of a property owner or applicant affect zoning decisions. That extends to consideration of the brand of a proposed store and whether it is a chain or locally owned, Lovelady says.
- * **Prevent demolition of historic buildings.** Governments can make a property owner wait for a year before tearing down buildings with certain historic designations, but demolition can proceed after that.
- * **Take it back.** Generally, the rules in place when a property owner or developer applies for permission to build are the ones that must apply when a government gives the project a thumbs up or thumbs down. For instance, if a property’s zoning allows buildings up to 10 stories when a developer seeks a permit, a municipality can’t block it by reducing the limit to five stories. And once a project is permitted, that permission stays in place for a period of time, even if the applicant doesn’t start right away or sells the property to someone else.

Staying in the loop

How to keep abreast of proposed development projects

BY DANIEL WALTON
dwalton@mountainx.com

When residents organize to influence a proposed development in their neighborhood, they can sometimes feel like they're starting on the back foot. By the time a project makes its way into the public eye, it's often been through several layers of review by government staff or appointed boards, and issues such as building size and parking availability have already been considered. Although that doesn't prevent officials from seeking changes to development plans, they're often content just to go with what's been recommended.

But both Asheville and Buncombe County offer a number of tools to help residents avoid getting caught off guard. The following resources give early notification of development proposals and provide more information about each project's movement through the overall approval process.

Asheville

- * **The city's notification service** (avl.mx/b6n) enables residents to sign up for email alerts concerning large-scale development proposals filed with the Development Services Department, as well as new projects that include affordable housing or are targeted for steep slopes. These emails can be sent for projects anywhere in the city or within up to 3 miles of a given city address.
- * **All large-scale projects** for which a permit application has been filed since Dec. 1, 2018, **are shown on a city map** at avl.mx/av9. Older proposals filed from 2015 on are included in a different map at avl.mx/avb.
- * **SimpliCity** (avl.mx/b6o), the city's open data portal, provides a search tool to find all development permits for sites within a mile of a given city address. Another tool (avl.mx/avc) reveals all development permits filed for a specific address.
- * **The full SimpliCity map** (avl.mx/ave) lists all development permits filed with the city, including those not involving major new construction. Among the types included are residential building alterations, changes to historic structures and event-related temporary use permits. Further permits and planning records are available through the city's **Citizen Access Portal** at avl.mx/avk.
- * An employee of the city's Development Services Department, designated the **"planner of the day,"** is on call during business hours to answer questions about development projects. More information is available by calling 828-259-5450 or emailing POD@AshevilleNC.gov.

Buncombe County

- * The county's Planning and Development Department doesn't currently have a notification tool, and no neighborhood meetings are required prior to submitting a development plan.
- * **All projects submitted since May 2020** for which a rezoning, special use permit or subdivision approval is necessary **are shown on a county map** at avl.mx/8qr, with planning documents linked to each project name. Users can search for all projects within a given distance from any county address.
- * The map doesn't cover **projects submitted prior to May 2020**; information concerning these must be requested from county staff via an online form (avl.mx/avt) or by phone at 828-250-4830.
- * **The county's online permits portal** (avl.mx/avx) enables users to search for all permits filed for a given address, whether they pertain to building, planning or environmental health.
- * **Buncombe County's geographic information systems website** (avl.mx/aw0) provides data on specific parcels of land, including ownership, zoning designation and property value.

Neighborhood MEETINGS

In Asheville, developers planning a Level II project, major subdivision or request for conditional zoning are required to hold a neighborhood meeting before submitting their plans to the city. At this informational session, project representatives provide an overview of their proposal and gather feedback from nearby residents and property owners. A written report about the meeting must then be submitted along with the plans.

City ordinances require developers to post notice of such neighborhood meetings on the property in question at least 10 days in advance. They must also mail notices to all property owners within 200 feet of the site; for projects in the central business district, notice must be sent to all physical addresses within 200 feet, including both residential renters and business tenants.

Although developers are not required to notify the city in advance of a neighborhood meeting, many choose to do so. A calendar containing details of those meetings is available at avl.mx/avm.

Beyond NIMBYism

How to participate effectively in land-use decisions

BY MARK BARRETT
markbarrett@charter.net

An email sent to Asheville City Council in October 2021 opposing a proposed apartment building on Charlotte Street begins this way: “Are you people insane?”

A few sentences later, the writer asks Council members, “Where are your brains?... In your well-padded pockets?”

How did that work out for the writer, who argued that the 186 apartments proposed for a former Fuddruckers restaurant property would overtax neighborhood streets and other infrastructure?

Not so well. Council approved the project 6-1. The only “no” vote came from Council member **Kim Roney**, who was concerned not over infrastructure but about whether the building would include enough affordable housing.

It is highly unlikely that one intemperate email among many other, more reasoned messages persuaded Council to back the project. Nonetheless, the example illustrates what local attorney **John Noor** says is an unproductive approach for convincing decision-makers to see things your way: Personal attacks.

“I think that just allows people to tune you out,” says Noor, who has represented residents in several high-profile land-use battles in recent years.

The following guidelines are best practices for getting public officials to tune you in if you are involved in a development issue. With apologies to self-help author **Stephen Covey**, let’s call them the seven habits of highly effective public involvement. Each piece of advice is based on interviews with people who used to turn thumbs up — or thumbs down — on development projects and others with experience in the field.

Don’t be a NIMBY

Among the objections former Asheville City Council member **Chris Pelly** heard most often during development debates was his least favorite: when people said, “I’m all for affordable housing, but this isn’t the right location.”

That objection amounts to a resident saying, “I’m not a part of the solution here. ... This is something for somebody else to figure out,” Pelly says. “The fact is, we’re all in this together,” he continues, and a

shortage of affordable housing is one of the area’s most pressing problems.

Several other officials made the same point. They say local governments must allow residential construction — often at densities greater than some citizens would like — to attack the problem.

“Your personal interests still have to be weighed against the collective,” says **Laura Hudson**, a former chair of Asheville’s Planning and Zoning Commission. “Think about future generations. Think about people that would love to have an opportunity to live in this neighborhood.”

////////////////////////////////////

“Not-in-my-backyard thinking should be recognized for what it is, selfishness, and not confused with constructive contribution to a decision-making process,” adds former City Council member **Carl Mumpower**.

Communities around the country are debating the extent to which zoning should keep residential neighborhoods the same or allow more construction of apartments and condominiums. Critics say strict zoning, especially rules that allow only single-family homes in certain areas, can keep people of color or those with lower incomes out of wealthier, whiter neighborhoods.

Hudson says residents can get too invested in keeping their neighborhoods

as is. “I think [neighborhood] character evolves. It’s not static,” she says.

Shape the big plan

When a developer proposes a shopping center a few blocks from your home, the battle may already be half won — or lost, depending on your perspective. If the comprehensive plan and zoning map for your area identify the site as suitable for retail development, it will be more difficult to persuade a governmental body to block the project.

In some cases, approval might come at a staff level and be virtually automatic. If the project meets the standards for things like building size, vehicle access



and stormwater facilities, a government employee might OK it without a public hearing or even public notice.

Governments often struggle to get citizens involved in drawing up comprehensive plans or providing feedback on new land-use rules. The process isn't so interesting to many people until something is proposed near their home that they don't like.

But decisions made at the macro level shape those made on specific projects.

Nathan Pennington, director of the Buncombe County Planning Department, says a comprehensive plan often plays a major role in elected officials' decisions on questions like rezoning. Involvement in drawing up a plan, he notes, may also help residents understand why a particular property is zoned a certain way to start with.

Start early

Many jurisdictions require developers who propose projects greater than a certain size to hold informal meetings at which neighbors can learn more. Sometimes, says Noor, those events are held just to meet the requirement. In other cases, they can result in a real dialogue between developers and neighbors that shapes what ultimately gets built.

A development project often goes through several governmental bodies before reaching the board that makes the final decision. Noor says it's worth attending as many of those meetings as possible instead of voicing support or opposition at the last minute.

Otherwise, he explains, "The advice that City Council is going to get from the staff and the developer is that this is not controversial."

**“
Think about future
generations.
Think about people
that would love to have
an opportunity to live
in this neighborhood.**

— *Laura Hudson*

Prepare to negotiate

Developers are often willing to change their projects to assuage neighborhood concerns. Some aren't, but officials may hold that against them when it's time to decide whether to give a project an OK – or make granting some concessions a condition of approval.

Those changes can include everything from the size of a project to the location of roads and sidewalks. Noor says it's not realistic to expect a developer to cut a project in half: "This is a business just like any other," he points out, and developers need to make a profit. But there's usually some flexibility if neighbors or government officials ask, says Noor, who has also had developers as clients.

Mumpower says talks between developers and residents often become just "a PR opportunity for one side or the other," but others say they see great value in the dialogue.

"The input on how to make [a proposed project] better is very helpful, very useful and usually more impactful" than outright opposition, says Hudson.

Focus on facts

When development projects came before Asheville City Council for public comment during the tenure of former Mayor **Terry Bellamy**, she says, “The most impactful presentations were individual stories. ... And they had specifics.”

People who could document issues that a development might exacerbate or help with were more likely to affect debate and the outcome, she says.

Mumpower agrees: “New and credible information about problems that may have been missed by the developer or staff is always helpful.”

Be civil

Speakers at public hearings sometimes say they will turn officials out of office if a decision goes against them, or they’ll demonize those on the opposite side of an issue.

Elected officials realize a particular vote may affect their political futures. And when a governmental body has considerable discretion as to how it decides an issue, contacts from the public can make a big difference, Noor says. But threats or rude behavior can allow decision

makers to discount a speaker as simply unreasonable.

Former Buncombe County Commissioner **Ray Bailey** says he focused on what was best for the county as a whole when making decisions. “If somebody threatened me with the fact that they wouldn’t vote for me, that would be fine,” he says — but it wouldn’t change his vote.

Bellamy notes that when anyone in a debate before Council is belligerent or makes negative comments about others, that “really takes the focus off the issue they were hoping to support.”

Remember the basics

Government boards usually ask anyone making a public comment to share their name and where they live, and most have a time limit for each speaker. Three minutes is common.

It pays to give some thought before a meeting to what you want to say and how to say it in the allotted time. Speakers can usually also submit written documentation or extended remarks after their comments. Simply repeating at length what others have said doesn’t help your case, Mumpower says. Brevity, however, might at least draw a sympathetic smile from a weary official about to cast a vote.



City of Asheville development process



The city of Asheville’s approach to regulating development generally obeys the following rule: the greater an impact a project will have on its neighbors, the more levels of review it must clear before being approved.

Small-scale projects, such as new single-family homes or boutique retail spaces, are processed entirely by city staff, with no opportunities for public input. In contrast, a 300-unit apartment complex proposed for downtown would go through five levels of neighborhood meetings, board reviews and public comment before a final decision by the elected City Council.

The flowchart in the pages that follow tracks the course of the development process for different project types, each of which is explained below. More information is available through the city of Asheville website at avl.mx/b3u.

Development classifications

Level I I

The smallest type of “large-scale development” defined by city ordinances, Level I projects include small restaurants, commercial spaces and apartment buildings. No opportunities for public input are available for these projects, but permit details are posted on the city’s website.

- * If located downtown, includes projects between 500 and 19,999 square feet.
- * If not located downtown, includes projects containing between 3 and 19 residential units or 500 to 34,999 square feet of commercial space.

Major Subdivision MS

This level is the first to allow public input. All major subdivisions require a neighborhood meeting, with notifications given to all property owners within 200 feet of the project.

- * Major subdivisions involve the creation or extension of a road and usually result in the creation of new residential lots.

Level II II

Projects such as grocery stores, medium-sized apartment complexes and some hotels don’t go before City Council, but they do require neighborhood meetings and review by appointed boards if located in specific parts of the city.

- * If located downtown, includes projects between 20,000 and 99,999 square feet. Downtown Level II projects are reviewed by both the Design Review Committee and Planning and Zoning Commission.
- * If not located downtown, includes projects containing between 20 and 49 residential units or 35,000 to 99,999 square feet of commercial space. Hotel projects and those located in the River Arts District are reviewed by the Design Review Committee.

Conditional Zoning

CZ

Projects at this level, including developments previously designated as Level III, require a change to the zoning laws of the city and therefore must be approved by City Council. Examples include large apartment complexes, office buildings and hotels of more than 115 rooms.

- * Projects of 50 or more residential units or in excess of 99,000 square feet are covered by conditional zoning. All such projects involve a neighborhood meeting, review by the Planning and Zoning Commission and City Council.
- * All hotel projects and those located downtown or in the River Arts District are also reviewed by the Design Review Committee.

Conditional Use Permit

CUP

These projects don't require a change of zoning but are nonetheless subject to strict review due to their potential public impacts. CUP developments include cell towers, adult establishments and car dealerships; a full list of regulated uses is included in the city's Unified Development Ordinance at avl.mx/b3v.

- * All CUP developments involve a neighborhood meeting, review by the Planning and Zoning Commission and City Council.
- * CUP projects located downtown or in the River Arts District are also reviewed by the Design Review Committee.

SIGN UP FOR Notifications



The city of Asheville is piloting a system that allows people to receive an email notification when a developer submits an application for a new large-scale development.

Visit Notifications.AshevilleNC.gov to sign up or change your notification settings.

The development process

After the developer submits an application, it goes through a decision-making process that includes city staff, elected and appointed city officials, developers and residents. Who is involved at what step depends on the type of project.

Before the application is submitted		I	II	MS	CZ	CUP
Pre-application meeting	Neighborhood meeting					
<p>What? Developers and city staff meet to look at initial sketches, discuss process and schedule and identify applicable regulations.</p> <p>Who? Developer • City Staff</p> <p>When? Required before application submission</p> <p>Where? Development Services Department offices</p>	<p>What? Developers must notify all property owners within 200 feet of the proposed development, and all physical addresses within 200 feet if downtown, and share information on their plans.</p> <p>Who? Developer • Neighbors</p> <p>When? At least 10 days before application submission (see avl.mx/avm)</p> <p>Where? Somewhere near the proposed development site/Remote</p>					



Permit application		I	II	MS	CZ	CUP
<p>What? Submission of required plans and documents and payment of application fees to the Development Services Department.</p> <p>Who? Developer</p>	<p>When? After all required preliminary steps are completed.</p> <p>Where? Development Services Department offices</p>					



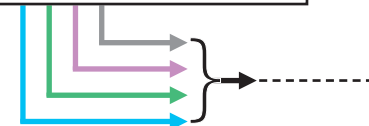
Staff review	I
<p>What? A staff member reviews plans for compliance with applicable ordinances and documents and creates a report.</p> <p>Who? City Staff</p> <p>When? Within 10 days of application submittal.</p> <p>Where? Development Services Department offices</p>	



Level I decision	I
✓ Approved • ✗ Denied • ↻ Revise	



Technical Review Committee		II	MS	CZ	CUP
<p>What? An eight-member body that ensures compliance with city standards and requirements. Meeting agendas are available on the city website; no public comment is allowed.</p> <p>Who? Developer • City Staff</p> <p>When? First and third Monday of each month.</p> <p>Where? Development Services Department offices/Remote</p>					



Major Subdivision and Level II decision (not downtown) II MS

✓ Approved • ✗ Denied • ↻ Revise

Major Subdivision decision (downtown) MS

✓ Approved • ✗ Denied • ↻ Revise

Planning and Zoning Commission II CZ CUP

What? For conditional zoning requests and conditional use permits, the Planning and Zoning Commission holds a public hearing and makes a recommendation for action to City Council. For downtown Level II projects, the Planning and Zoning Commission verifies technical compliance with the requirements of applicable ordinances and documents and takes final action.

Who? Developer • City Staff • Public • City Officials

When? First Wednesday of each month

Where? City Hall/Remote

Level II decision (downtown) II

✓ Approved • ✗ Denied • ↻ Revise

Design review II MS CZ CUP

What? Hotel projects, large developments located downtown or in the River Arts District and projects involving a historic landmark or site must be reviewed for architectural design by the Design Review Committee and/or the Historic Resources Commission prior to approval.

Who? Developer • City Staff • Public

When? Design Review Committee: third Thursday of each month • Historic Resources Commission: second Wednesday of each month

Where? Design Review Committee: City Hall/Remote • Historic Resources Commission: City Hall/Remote

City Council CZ CUP

What? Applications are reviewed during a public hearing before City Council. These projects arrive at the City Council meeting with a recommendation for action from the Planning and Zoning Commission.

Who? Developer • City Staff • Public • City Officials

When? Second and fourth Tuesday of each month

Where? City Hall/Remote

City Council decision CZ CUP

✓ Approved • ✗ Denied • ↻ Revise

KEY

Level I I Level II II

Major Subdivision MS

Conditional Zoning CZ

Conditional Use Permit CUP



City of Asheville development boards



BY XPRESS STAFF

Over 30 boards and commissions guide the work of Asheville's government, but three are critical to the fate of large-scale development in the city: Asheville City Council, the Design Review Committee and the Planning and Zoning Commission. Below you'll find more about what each body does, who's on it and how you can get involved with its meetings.

Asheville City Council

- * **Website:** avl.mx/8o4
- * **Development responsibilities:** Asheville City Council is the city's legislative body; its members establish laws and policies related to development, including zoning designations. The Council also focuses on the community's goals, major projects and long-term considerations such as community growth, land use development, capital improvement plans, capital financing and strategic planning. City policies are then carried out by a Council-appointed city manager who oversees day-to-day operations.
- * **Current members:** Asheville City Council consists of a mayor and six council members, all of whom are elected at-large for four-year, staggered terms. Current members include: attorney and Mayor **Esther Manheimer**; community consultant and Vice Mayor **Sheneika Smith**; retired CEO of outdoor manufacturer Coleman **Gwen Wisler**; piano teacher and service-industry worker **Kim Roney**; real estate agent **Sandra Kilgore**; **S. Antanette Mosley**, attorney; and French Broad Food Co-op project manager **Sage Turner**. Asheville's city manager is **Debra Campbell**.
- * **Meeting details:** Asheville City Council meetings take place on the second and fourth Tuesday of every month starting at 5 p.m. As of February, meetings occur remotely, with livestreams available through Asheville's public engagement hub at avl.mx/b3f and on the city's YouTube channel at avl.mx/6h6. Members of the public can also listen live by calling 855-925-280 and entering a code shared prior to each meeting or watch on Charter/Spectrum Cable channel 193 and AT&T U-Verse channel 99.
- * **Board agendas:** Agendas are typically posted the Friday before each meeting on the city's website. Members of the public can contact City Clerk **Maggie Burleson** at 828-259-5601 or MBurleson@AshevilleNC.gov to be added to the email distribution list to receive Council agendas and Council-related notifications.
- * **Public comment:** As Council continues to meet remotely in response to COVID-19, members of the public who wish to speak during the meeting must sign up in advance online at the city's public engagement hub or call 828-259-5900 no later than 9 a.m. the day of the meeting. Commenters must listen to the meeting via phone by calling 855-925-2801 and entering

the meeting code; they will then be prompted to speak by city staff. Pre-recorded voicemail messages can be left by calling 855-925-2801 and entering the meeting code. All spoken comments are limited to three minutes per person per item. Email comments are also accepted through 9 a.m. the day of the meeting. Council receives transcribed voicemail and email comments, which are posted online but not shared during the meeting itself.

Planning and Zoning Commission

- * **Website:** avl.mx/8b6
- * **Development responsibilities:** Asheville's Planning and Zoning Commission approves downtown Level II projects, reviews text for proposed amendments to the Unified Development Ordinance, hears proposals to zone or change the zoning of property and makes recommendations to City Council for final action.
- * **Current members:** The commission consists of seven members, each appointed for three-year terms. Five

are city residents appointed by City Council, and two are residents of areas outside the city limits appointed by the Buncombe County Board of Commissioners. The current members include: Chair **Joe Archibald**, owner at Narwhal Design; Vice Chair **Kim Levi**, architect at Novus Architects; real estate agent **Robert Hoke**; Vans store manager **Jenifer Bubenik**; **Brenton Faircloth**, estimator for Living Stone Design and Build; **Geoffrey Barton**, director of real estate development at Mountain Housing Opportunities; and **Kelsey Simmons**, program director at the YMI Cultural Center.

- * **Meeting details:** As of February, meetings take place remotely at 5 p.m. the first Wednesday of the month. Members of the public can watch the meeting live through the city's engagement hub at avl.mx/b21 or on the city's YouTube channel at avl.mx/6h6. Meetings are also available by phone by calling 855-925-2801 and entering the meeting code.
- * **Board agendas:** Agendas are posted to the Planning and Zoning Commission's webpage two weeks before each meeting.



- * **Public comment:** The commission accepts prerecorded voicemail comments, written comments and live comments during the meeting. Voicemail and written comments must be submitted by 5 p.m. the day before the meeting. All public comments will be sent to the commission prior to the meeting but may not be read aloud.

Design Review Committee

- * **Website:** avl.mx/anr
- * **Development responsibilities:** The Design Review Committee reviews all major works in the River District and Central Business District, as well as hotels located outside those areas. The committee also performs studies and prepares plans for desirable standards and goals for the aesthetic enhancement of the city.
- * **Current members:** Asheville City Council appoints three members to the Design Review Committee from the Downtown Commission and three members from the Asheville Area Redevelopment Commission. Council also appoints three at-large members from the broader public. As of February

2022, there were several vacancies. The committee's current members include: **Robin Raines**, vice president at Rowhouse Architects; **Jeremy Goldstein**, real estate broker; **Kimberly Hunter**, real estate agent, broker and cooperative business developer; **Steven Lee Johnson**, landscape architect; and **Bryan Moffitt**, architect.

- * **Meeting details:** As of February, meetings take place remotely at 12:30 p.m. on the third Thursday of each month. Members of the public can watch the meeting live on the city's YouTube Channel at avl.mx/6h6.
- * **Board agendas:** Agendas are posted between 10 and 14 days ahead of each meeting. Materials, such as plans and reports, are usually posted the Friday before the meeting.
- * **Public comment:** Prerecorded voicemail comments can be made by 5 p.m. the day before the meeting by calling 855-925-2801 and entering the meeting code. Written public comments may be emailed to AVLDRC@PublicInput.com but must be submitted by 5 p.m. the day before the meeting. No live public comment is accepted.



OUR MISSION

To build community and strengthen democracy **by** serving an engaged, thoughtful constituency at the local level – where the impact of **citizen action** is greatest. **We report** on local events, regional issues and the area's vibrant arts-and-culture scene – **independently, fairly and in-depth.**

We partner with the community to **create** an ongoing **civic dialogue.** **We offer** exceptional and affordable media **opportunities** for local businesses, professionals and nonprofit groups to promote their offerings to the community.

CASE IN POINT:

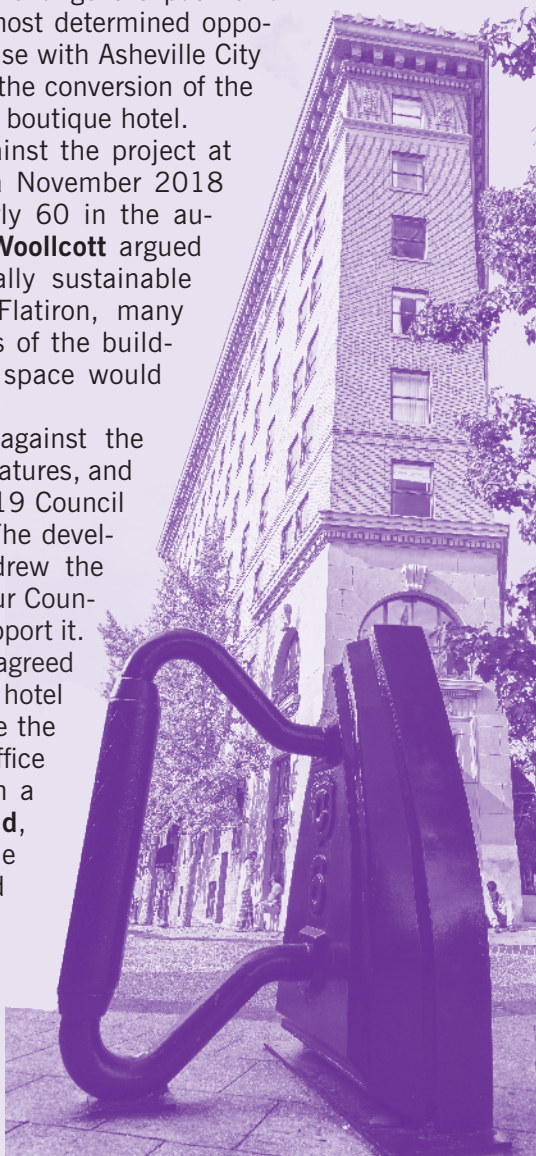
The Flatiron Hotel

Community concerns can often change the path of a proposed project. But even the most determined opposition has its limits, as was the case with Asheville City Council's June 2019 approval of the conversion of the downtown Flatiron Building into a boutique hotel.

People began speaking out against the project at the earliest public opportunity, a November 2018 neighborhood meeting with nearly 60 in the audience. While developer **Philip Woollcott** argued hotel use was the only financially sustainable path for restoring the historic Flatiron, many downtown residents said the loss of the building's affordable office and retail space would harm local livability.

A subsequent online petition against the project gathered nearly 1,100 signatures, and the bulk of speakers at a May 2019 Council meeting also opposed the hotel. The developer's attorney temporarily withdrew the project from consideration after four Council members said they wouldn't support it.

However, when Woollcott agreed to cut the number of proposed hotel rooms from 80 to 71 and preserve the second floor of the building for office use, Council approved the plan in a 4-3 vote. Member **Julie Mayfield**, who had previously called the Flatiron "the soul of our city" and didn't support the hotel, said the changes were enough to allay her worries over small-business displacement and parking.



Buncombe County development process



Compared with the city of Asheville, Buncombe County has a much simpler process for development review. Many projects have no public input opportunities, and the elected Board of Commissioners only reviews property rezoning requests — not specific project plans.

County staff have exclusive review of most developments, making sure they comply with technical requirements for construction, steep slope protection and other aspects. Other levels of review come into play for large subdivisions or requests to deviate from existing rules.

The flowchart here tracks the course of the development process for different project types, each of which is explained below. More information is available through the Buncombe County website at avl.mx/b3w.

Application types

Special Use Permit (SUP)

Some types of development projects, such as large apartment complexes, manufactured home parks and recreation facilities, are allowed in certain zoning districts only after additional review by the Board of Adjustment. The board holds a quasi-judicial hearing to determine if the proposed use would detract from the surrounding neighborhood's quality of life or the general public welfare.

- * A full table of projects requiring an SUP by zoning district can be found in the county's zoning ordinance at avl.mx/b3x.

Subdivision/Zoning Variance

In other cases, a developer may want to build a project permitted by right in a zoning district but not adhere to all of the legal regulations. Common examples include constructing houses on smaller lots than usually permitted or not setting a building back from a road by the required distance. These variances are considered by the Board of Adjustment in a quasi-judicial hearing.

Major Subdivision

New Buncombe County subdivisions of 10 or fewer lots are reviewed only by staff, but those of 11 or more units must receive preliminary approval from the Planning Board. County staff then continue to review the project as it is constructed.

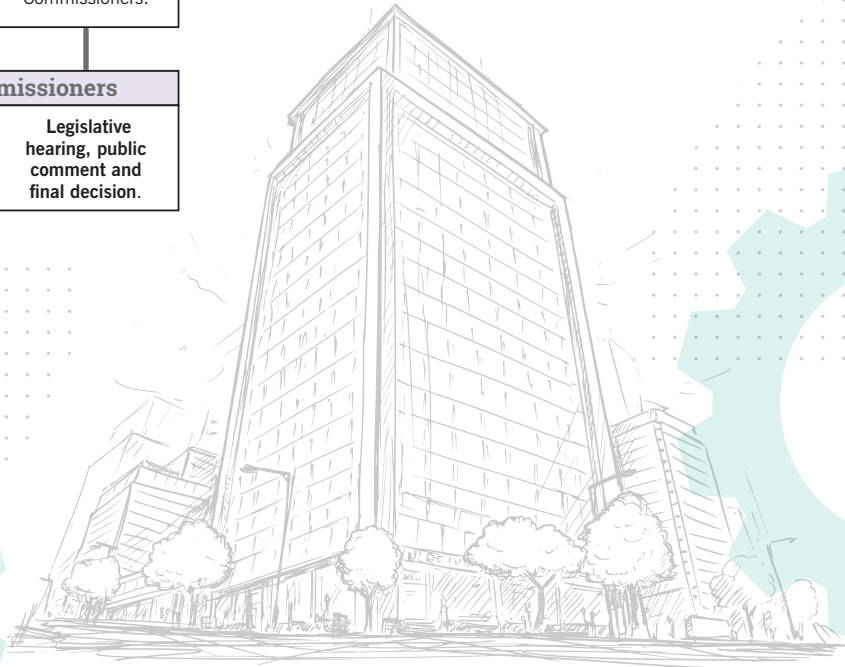
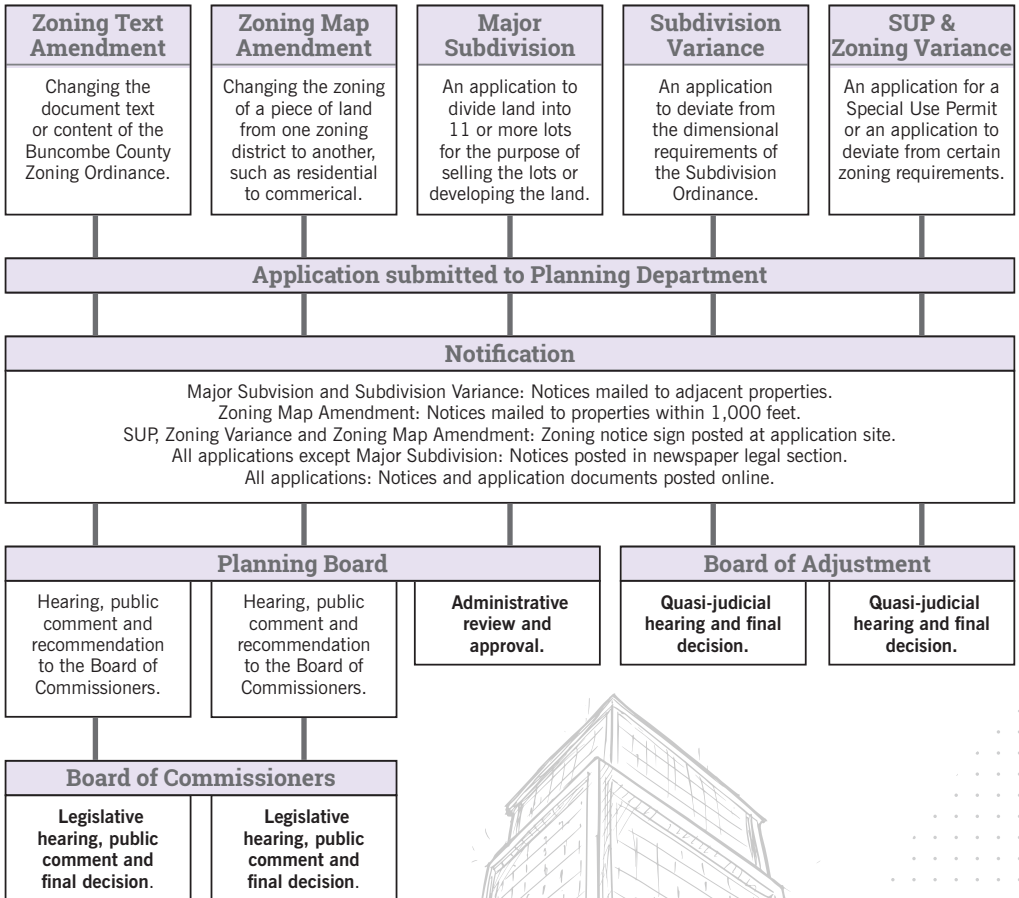
- * A flowchart showing the full process for major and minor subdivisions can be found on the county's website at avl.mx/b3z.

Zoning Amendments

Developers who want to use property in a way not currently permitted can submit a request to change the county's zoning map or regulations. For example, a residential property might be rezoned as commercial to allow a business use. The Planning Board reviews all zoning amendment requests and provides recommendations to the Board of Commissioners, which has the final say.

- * Zoning amendments are tied to the land itself, not a specific project. Although developers may have plans for a certain use, once the zoning has been changed, they are allowed to build anything permitted by the new rules.

Application review process





Buncombe County development boards



BY XPRESS STAFF

Buncombe County is a relative newcomer to land use regulation. Prior to 2009, no countywide zoning was in place whatsoever. Today, many outlying areas still remain under open use zoning. For parts of the county where development is more regulated, these three boards have the greatest say.

Buncombe County Board of Commissioners

- * **Website:** avl.mx/4ay
- * **Development responsibilities:** The Buncombe County Board of Commissioners is the county's legislative body. Its members make final decisions regarding zoning requests and text amendments, including rules about solid waste, subdivisions, erosion control, stormwater and more. The board also manages long-term considerations such as community growth, land use and strategic planning. County policies are then carried out by a board-appointed county manager who oversees day-to-day operations.
- * **Current members:** The seven-member Board of Commissioners consists of a chair, who is elected at large on a four-year cycle, and two commissioners from each of three districts, who are elected in even years for four-year, staggered terms. Current members include: Chair **Brownie Newman**, owner of Headwaters Solar; retired banker and civil rights leader **Al Whitesides**; farmer and WNC Communities Director of Community and Agricultural Programs **Terri Wells**; minister and Campaign for Southern Equality Executive Director **Jasmine Beach-Ferrara**; Vice Chair

Amanda Edwards, executive director of the A-B Tech Foundation; Cypress Creek Renewables manager **Parker Sloan**; and retired NASCAR driver **Robert Pressley**. Buncombe's county manager is **Avril Pinder**.

- * **Meeting details:** Board of Commissioners meetings take place on the first and third Tuesday of every month starting at 5 p.m. at 200 College St., Suite 326, Asheville. Meetings are livestreamed through Buncombe's Facebook page at avl.mx/b3i and on Charter/Spectrum Cable channel 192.
- * **Board agendas:** Agendas are typically posted by 5 p.m. the Wednesday before each meeting on the county's website. Members of the public can contact County Clerk **Lamar Joyner** at 828-250-4105 or Lamar.Joyner@BuncombeCounty.org to be added to the email distribution list to receive board agendas and related notifications.
- * **Public comment:** Members of the public who wish to speak must attend in person. Open comment takes place at the start of each regular meeting, and additional public hearings are held on specific items. No formal phone or email comment is accepted, although phone and social media information for all commissioners is available on the county's website.

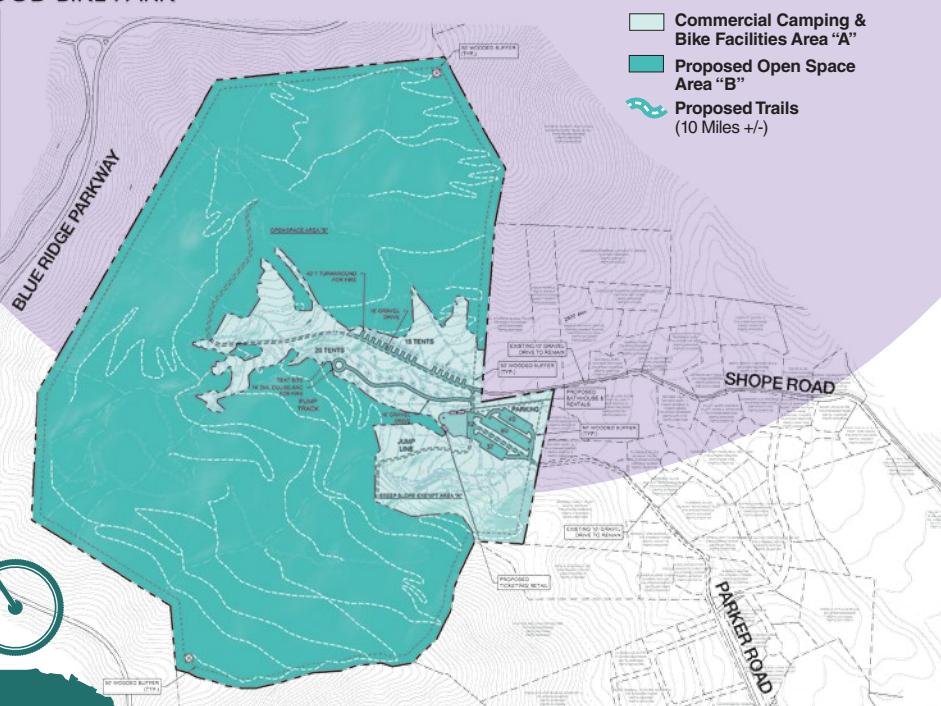
Windy Wood Bike Park

Many of the biggest development projects in Buncombe County go before the Board of Adjustment, a quasi-judicial body that behaves a lot like a court of law. For residents who want to have a say in the proceedings, the most effective approach is often to band together and hire a lawyer.

One example of that tactic emerged during consideration of a special-use permit to allow hiking and biking trails at the Windy Wood Bike Park, a 152-acre recreation facility proposed for the Riceville area. Members of the nearby Under the Blue Ridge Property Owners Association, who were concerned about traffic and property values, engaged legal representation to help navigate the hearing.

While nearly 60 applications were submitted asking for “standing,” or the right to present testimony before the board, only eight parties were granted that status, including Under the Blue Ridge. Developer **Hartwell Carson** subsequently pulled his special-use permit request and said he would limit the project to what was allowable by right on the property.

- WINDY WOOD BIKE PARK

[illegible]

Board of Adjustment

- * **Website:** avl.mx/anq
- * **Development responsibilities:** Buncombe's Board of Adjustment authorizes zoning variances, issues conditional use permits and hears appeals to decisions by county development staff.
- * **Current members:** The board consists of 14 members, appointed by the county Board of Commissioners to three-year terms. Seven are regular members, and the remainder are alternates who serve if a regular member is unable to attend a meeting. The board's current makeup includes lawyers, real estate agents, construction managers and business owners.
- * **Meeting details:** Meetings take place at noon the second Wednesday of the month at 30 Valley St., Asheville. In response to COVID-19, members of the public are encouraged to participate via Zoom; those who are unable to participate virtually may request special accommodations through the Buncombe County Planning Department at 828-250-4830 or PlanningInfo@BuncombeCounty.org no later than 48 hours prior to the meeting.

- * **Board agendas:** Agendas are posted to the Board of Adjustment's webpage at least 10 days before each meeting.
- * **Public comment:** Due to the quasi-judicial nature of Board of Adjustment hearings, people who wish to comment on a given matter must submit a formal request to participate. Those seeking to comment as witnesses should submit the form found at avl.mx/b3j via email to PlanningInfo@BuncombeCounty.org or by mail to county planning staff at 46 Valley St. at least 24 hours before the meeting. Those seeking standing in a board hearing should submit the form found at avl.mx/b3l via the same means.

Planning Board

- * **Website:** avl.mx/ans
- * **Development responsibilities:** The Planning Board is the final approval body for major subdivision applications. Members also issue recommendations on rezoning requests and zoning text amendments to the Board of Commissioners, as well as offer broader suggestions on land use.
- * **Current members:** The board consists of nine members, appointed by the county Board of Commissioners to three-year terms. The body's current



members include several real estate agents, lawyers, architects and affordable housing advocates.

- * **Meeting details:** Meetings take place at 9:30 a.m. the first and third Monday of the month. In response to COVID-19, members of the public are encouraged to participate via Zoom; those who are unable to participate virtually may request special accommodations through the Buncombe County Planning

Department at 828-250-4830 or PlanningInfo@BuncombeCounty.org no later than 48 hours prior to the meeting.

- * **Board agendas:** Agendas are posted to the Planning Board's webpage at least 10 days ahead of each meeting.
- * **Public comment:** Live public comment is accepted on each public hearing before the board, as well as at the end of each meeting.

CASE IN POINT: 95 Broadway

Neighborhood meetings are often sparsely attended. A large turnout by residents and business owners opposed to a project thus suggests a very bumpy road ahead for the developer.

Such was the case for a September 2018 meeting about a proposed hotel/condo development at 95 Broadway. Roughly 80 people gathered in the auditorium at Pack Memorial Library to raise concerns that the project would complicate downtown parking, suppress nearby live music venues and contribute to gentrification. Following the mass outcry, property owner **Victor Foo** decided not to move forward with the development.

That strong attendance was largely thanks to Asheville Downtown Commission member **Andrew Fletcher**, who posted flyers about the meeting and spread the news among the Lexington Avenue business community. "It's very difficult to fight a project once it's on Council members' desks," Fletcher tells *Xpress*.

"Council meetings are where decisions are issued, not where decisions are made."

— *Andrew Fletcher*

Not quite court

‘Quasi-judicial’ procedures govern some development

BY MARK BARRETT
markbarrett@charter.net

People who go to a meeting of the Buncombe County Board of Adjustment might not realize the bland room where the board gathers is a first cousin to a court of law.

The board decides whether many larger developments proposed in unincorporated areas of the county can proceed. Projects that come before it typically include apartment complexes, groups of vacation rental homes and larger utility substations — all of which county rules say are allowed in a zoning district only if they meet specific requirements.

State law says the county Board of Adjustment and similar boards around the state must consider these applications in “quasi-judicial” proceedings. The same rules of evidence apply as in a regular court. Witnesses are sworn in, and board members can’t consider communication from the public before the meeting on the issue to be decided. The board can only hear from expert witnesses and people who allege they may suffer what the law calls “special damages” from a project, not just anyone who wants to speak. Hearings may involve lawyers arguing for and against a project.

The proceedings are different from those in a regular court in that they are typically less formal and board members serve as both judge and jury, deciding whether a development can proceed. (They don’t wear black robes, either.)

The board decides, in a process that’s supposed to be objective and predictable, whether an applicant has met certain standards set out in state law and the county’s zoning ordinance. Considerations include whether a proposal will harm nearby property values, create “noise, vibration, odor or glare” that will hurt neighbors and has adequate provisions to handle traffic.

The law says only people who might suffer damages from a development that are distinct from those incurred by the community at large can mount a case opposing a project. That means someone who thinks too many apartment complexes are popping up in Enka might not get to testify about a specific proposed complex, while someone who says the development would reduce the value of their home near the project site would.

Some North Carolina local governments, including Asheville, have changed their ordinances in recent years to avoid quasi-judicial hearings because applicants often seek rezonings with conditions. Asheville City Council approves many larger projects through conditional zoning, in which the applicant and government officials can negotiate terms with input from both neighbors and the broader community.

However, Asheville’s Historic Resources Commission and city Board of Adjustment, which only hears appeals from staff decisions and requests for zoning exceptions, do employ quasi-judicial procedures.

Other Towns

Who handles development in municipalities beyond Asheville?

BY XPRESS STAFF

While Asheville city and Buncombe County leaders govern the bulk of local development, other municipalities set zoning rules and approve projects within their own borders. Here's the key information about when and where those decisions are made, as well as how you can weigh in.

Town of Black Mountain

Board of Adjustment

- * **Website:** avl.mx/anv
- * **Development responsibilities:** The Board of Adjustment hears zoning variance requests and appeals, as well as issues special use permits.
- * **Meeting details:** Meetings are held on the third Thursday of the month, 6 p.m., at Town Hall, 160 Midland Ave., Black Mountain.
- * **Board agendas:** Agendas are typically posted one week ahead of each meeting on the website.
- * **Public comment:** Public comments are allowed at the meetings under the limitations of the quasi-judicial process. People can also submit written comments to Comments@tobm.org if they choose not to attend in person.

Planning Board

- * **Website:** avl.mx/anw
- * **Development responsibilities:** The Planning Board is an advisory board that comments on rezoning applications and major subdivisions, with recommendations going on to the Town Council. The board

also provides general insight on land use ordinances and planning efforts.

- * **Meeting details:** Regular meetings are held on the fourth Monday of every month, 6 p.m., at Town Hall, 160 Midland Ave., Black Mountain.
- * **Board agendas:** Agendas are typically posted one week ahead of each meeting on the website.
- * **Public comment:** Public comments are allowed at the meetings. People can also submit written comments to PlanningBoard@tobm.org if they choose not to attend in person.

Town Council

- * **Website:** avl.mx/anx
- * **Development responsibilities:** The Town Council approves all rezoning applications and sets policy on general land use and planning matters.
- * **Meeting details:** Regular meetings are held on the second Monday of every month, 6 p.m., at Town Hall, 160 Midland Ave., Black Mountain. The board also holds an information-only "agenda meeting" at 5 p.m. on the Thursday prior to each regular session meeting in the same location.

- * **Board agendas:** Agendas are typically posted on the website by the first Tuesday of each month.
- * **Public comment:** Public comments are allowed at regular meetings; residents are asked to sign in at the start of the meeting if they plan to speak. People can also submit written comments to Comments@tobm.org if they choose not to attend in person.

Town of Biltmore Forest

Board of Adjustment

- * **Website:** avl.mx/ant
- * **Development responsibilities:** The board considers quasi-judicial matters, including special use and variance requests. The board also reviews landscaping plans associated with new construction, both residential and commercial, and hears appeals of decisions made by the zoning administrator.
- * **Meeting details:** Meetings are held on the third Monday of each month, 4 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest. Meetings may be canceled if there is no business to consider.
- * **Board agendas:** Agendas are typically posted on the town website the Friday before each meeting.
- * **Public comment:** Public comments are allowed at the meetings under the limitations of the quasi-judicial process. As of this writing, commenters can participate in meetings remotely via Zoom or in person. People can also email public comments to TownHall@BiltmoreForest.org.

Board of Commissioners

- * **Website:** avl.mx/b3h
- * **Development responsibilities:** The board sets policy via land use regulations and has final signoff on subdivision applications and sign requests.
- * **Meeting details:** Meetings are held on the second Thursday of the month, 4:30 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest.
- * **Board agendas:** Agendas are typically posted on the town website the Friday before each meeting.
- * **Public comment:** As of February 2022, commenters can participate in meetings remotely via Zoom or in person. People can email also public comments to TownHall@BiltmoreForest.org.

Design Review Board

- * **Website:** avl.mx/prwc
- * **Development responsibilities:** The board reviews all new structures for compliance with the town's recommended design standards.
- * **Meeting details:** Meetings are held on an as-needed basis on Thursdays immediately following a Board of Adjustment meeting, 5:30 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest.
- * **Board agendas:** Agendas are typically posted the Tuesday before the meeting.
- * **Public comment:** People can email public comments to TownHall@BiltmoreForest.org.

Planning Commission

- * **Website:** avl.mx/b3g
- * **Development responsibilities:** The board reviews potential zoning/land use changes



and makes recommendations to the Board of Commissioners on those items; it also conducts preliminary review of subdivision requests. As of February 2022, board members are in the process of conducting a Comprehensive Land Use Plan review.

- * **Meeting details:** Meetings are held on an as-needed basis, usually on the fourth Tuesday of the month, 5:30 p.m., at Town Hall, 355 Vanderbilt Road, Biltmore Forest.
- * **Board agendas:** Agendas are typically posted on the town website the Friday before each meeting.
- * **Public comment:** People can email public comments to TownHall@BiltmoreForest.org.

Town of Montreat

Board of Adjustment

- * **Website:** avl.mx/any
- * **Development responsibilities:** The Board of Adjustment hears zoning variance requests, appeals of town zoning decisions and applications for special use permits. Variances must be approved by a fourth-fifths majority, while other matters are decided by simple majority.
- * **Meeting details:** Meetings are generally held as needed on the fourth Thursday of the month, 7 p.m., at Town Hall, 1210 Montreat Road, Montreat.
- * **Board agendas:** Agendas are generally made available online one week before a scheduled meeting.
- * **Public comment:** Citizen testimony on any quasi-judicial matter must be given in person and under oath at the time of the hearing. Other witnesses may present competent, material and substantial

evidence as allowed by the board. To be entered into the record, all comments must be presented in person.

Board of Commissioners

- * **Website:** avl.mx/anz
- * **Development responsibilities:** The Board of Commissioners approves all conditional use permits and rezoning applications. The board also sets general town land-use policy.
- * **Meeting details:** Regular meetings are held on the second Thursday of every month, 7 p.m., at Town Hall, 1210 Montreat Road, Montreat. Each meeting is generally preceded by a public forum at 6:30 p.m. in the same location.
- * **Board agendas:** Agendas are generally made available online one week before a scheduled meeting.
- * **Public comment:** To be entered into the official record of the meeting, all public comment must be presented in person. People can also address unofficial written comments until 5 p.m. the day of the meeting to Info@TownOfMontreat.org.

Planning and Zoning Commission

- * **Website:** avl.mx/any
- * **Development responsibilities:** The Planning and Zoning Commission issues recommendations on conditional use permits and rezoning applications to the Montreat Board of Commissioners and prepares the town's comprehensive plan. The board also has final say on subdivision approvals.
- * **Meeting details:** Regular meetings are held quarterly on the second Thursday of January, April, July and October, 7 p.m., at Town Hall, 1210 Montreat Road, Montreat.

- * **Board agendas:** Agendas are generally made available online one week before a scheduled meeting.
- * **Public comment:** To be entered into the official record of the meeting, all public comment must be presented in person. People can also address unofficial written comments until 5 p.m. the day of the meeting to Info@TownOfMontreat.org.

Town of Weaverville

Planning and Zoning Board

- * **Website:** avl.mx/ao3
- * **Development responsibilities:** The board reviews zoning text and map amendments and issues recommendations to the Town Council based on compliance with the town's comprehensive land use plan. This board also reviews development applications for compliance with subdivision standards and conditional zoning district applications.
- * **Meeting details:** Meetings are held on the first Tuesday of the month, 6 p.m., at Town Hall, 30 S. Main St., Weaverville.
- * **Board agendas:** Agendas and packets of information related to the meeting are posted to the town's website on the Thursday before the meeting.
- * **Public comment:** General public comments may be made during the meeting or by writing in advance. Written comments can be submitted (1) by putting a written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least six hours prior to the meeting, (2) emailing to PublicComment@WeavervilleNC.org at least six hours prior to the meeting, (3) by mailing written comment (received not later than Monday's mail delivery) to Town of

Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments.

Town Council

- * **Website:** avl.mx/ao4
- * **Development responsibilities:** Legislative decisions, such as ordinance changes and zoning text or map amendments, are ultimately ruled upon by Town Council, which considers the recommendations of the Planning and Zoning Board.
- * **Meeting details:** Regular meetings are held on the fourth Monday of every month, 7 p.m., at Town Hall, 30 S. Main St., Weaverville.
- * **Board agendas:** Agendas and packets of information related to the meeting are posted to the town's website on the Thursday before the meeting.
- * **Public comment:** General public comments may be made during the meeting or by writing in advance. Written comments can be submitted (1) by putting a written comment in a drop box at Town Hall (located at front entrance and back parking lot) at least six hours prior to the meeting, (2) emailing to PublicComment@WeavervilleNC.org at least six hours prior to the meeting, (3) by mailing written comment (received not later than Monday's mail delivery) to Town of Weaverville, PO Box 338, Weaverville, NC, 28787, Attn: Public Comments.

Zoning Board of Adjustment

- * **Website:** avl.mx/ao3
- * **Development responsibilities:** The Zoning Board of Adjustment handles all quasi-judicial matters, such as variance requests and appeals of administrative decisions by town staff. As of 2017, Weaverville no longer issues special



use permits, which had previously been reviewed by this board.

- * **Meeting details:** Meetings are held as needed on the second Monday of the month, 7 p.m. at Town Hall, 30 S. Main St., Weaverville.
- * **Board agendas:** Agendas and packets of information related to the meeting are posted to the Town’s website on the Thursday before the meeting.
- * **Public comment:** General public comments may be submitted during the meeting under the limitations of the quasi-judicial process.

Town of Woodfin

Board of Adjustment

- * **Website:** avl.mx/ao0
- * **Development responsibilities:** The Board of Adjustment approves variance requests and special use permits, as well as considers appeals of staff decisions.
- * **Meeting details:** Regular meetings are held on the fourth Thursday of the month, 6:30 p.m., at Town Hall, 90 Elk Mountain Road, Woodfin. Meetings are streamed live via Facebook.
- * **Board agendas:** Board agendas are available to the general public two business days before a scheduled meeting. Agendas are published on the town’s website on the Board of Adjustment page
- * **Public comment:** The public is invited to provide comments in person during each monthly meeting under the limitations of the quasi-judicial process.

Board of Commissioners

- * **Website:** avl.mx/ao1

* **Development responsibility:** The Board of Commissioners adopts land use plans and ordinances and approves the town’s master plan, as well as annexation, rezoning and subdivision requests.

* **Meeting details:** Regular meetings are held on the third Tuesday of every month, 6:30 p.m., at Town Hall, 90 Elk Mountain Road, Woodfin. Meetings are streamed live via Facebook.

* **Board agendas:** Board agendas are available to the general public two business days before a scheduled meeting. Agendas are published on the town’s website on the Board of Commissioners page.

* **Public comment:** The public is invited to provide comments in person during each monthly meeting.

Planning Board

- * **Website:** avl.mx/ao2
- * **Development responsibilities:** The Planning Board issues recommendations for or against approval of land use plans and development ordinance adoption/amendments to the Board of Commissioners. The board also makes recommendations on master plans, rezoning and subdivision requests.
- * **Meeting details:** Regular meetings are held on the the first Tuesday of each month, 6 p.m., at Town Hall, 90 Elk Mountain Road, Woodfin. Meetings are streamed live via Facebook.
- * **Board agendas:** Board agendas are available to the general public two business days before a scheduled meeting. Agendas are published on the town’s website under the Planning Board page.
- * **Public comment:** The public is invited to provide comments in person during each monthly meeting.

Here's the plan

High-level land-use discussions shape neighborhood decisions

BY MARK BARRETT
markbarrett@charter.net

Deciding what gets built on an empty lot down the street should, according to state law, begin with decisions about what gets built across an entire city or county.

Counties and municipalities that want to have zoning in their jurisdiction first need to write a comprehensive plan that looks at big questions like which areas are best for growth, what types of development should go where and how government services like water, sewer and roads should be improved, a 2019 revision of land-use laws says.

Asheville answered many of those questions when City Council adopted “Living Asheville: A Comprehensive Plan for Our Future” in 2018. The document says the city should become denser, with much of that growth contemplated in or near downtown and “urban centers” scattered around town.

Buncombe County’s current land-use plan, last updated in 2013, meets state requirements but is both less detailed and less prescriptive than the city’s plan, perhaps reflecting a historic aversion to zoning in the county’s rural areas. That’s likely to change soon. In the second half of 2021, the county began writing a new comprehensive plan in a process scheduled to take two years.

Areas near but outside Asheville city limits, and thus in the county’s jurisdiction, are seeing significant growth. With the city’s ability to annex property sharply limited by the state General Assembly in 2012, Buncombe County will have to look at whether to offer traditionally urban services in some places, says county Planning Director **Nathan Pennington**.

“The county historically has not been in the sidewalk-building business, but with the annexation law having changed so much,” the county might decide it should provide pedestrian facilities, Pennington offers as an example. “We have to look at how do we provide amenities on an urban level and a rural level” in less populated parts of the county, he adds.

Asheville’s 2018 plan says repeatedly that the city must allow construction of more housing to accommodate residents at various income levels and push back against the environmental impacts of sprawl. Some recommendations have been implemented, while other steps called for in the plan are on the way, says city Planning Director **Todd Okolichany**.

Results that have emerged from the Living Asheville plan, Okolichany says, include recent rezonings of property at Innsbruck Mall and around the Merrimon Avenue-Beaverdam Road intersection to encourage mixed-use development, adoption in September of an ordinance to make it harder to cut trees on private property and the city’s new rules on where and how hotels are allowed.

Guidebook, not law book

Comprehensive plans can look at broader issues, such as a community's quality of life, in addition to choices more closely tied to land use and zoning, says **Adam Lovelady**, a professor at the School of Government at the University of North Carolina Chapel Hill. Done well, he continues, these plans can engage residents to make decisions about what they want, help officials decide where public dollars should be spent, spur structural changes in local government and hold local officials accountable for progress toward community goals.

Comp plans may also inject the wishes of the community at large into decisions on specific properties. If a developer proposes a large apartment complex, and the plan identifies a need for more housing and flags the neighborhood as a

likely area, it's easier for officials to approve the project — even if those living next to it are opposed. If the property is more rural and someone wants to put in a large shopping center, plan goals for open space and a more centralized growth pattern might tilt a decision against a project.

However, Lovelady points out, a plan's recommendations do not bind the officials who make zoning decisions. If a major development like a large manufacturing plant is proposed, leaders can approve it even if the comprehensive plan doesn't contemplate such a project for the area.

"In North Carolina, [a comprehensive plan] is a policy document. It is not a regulatory document," he says.

In some situations, applicants for land-use permits are required to show that their proposals comply with a city or county comprehensive plan. And governing bodies must consider the plan's provisions when considering a rezoning, Lovelady says, even though they don't have to follow them.

Plans can also come into play when a land-use decision is contested in court. If the decision is consistent with the plan, it will likely be harder to overturn.

Making plans can be easier than implementing them. For instance, a previous Asheville comprehensive plan said the area around the Merrimon-Beaverdam Road intersection should become one of several nodes of denser development around the city, but the development pattern there has changed little.

“

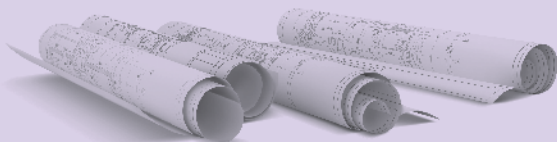
**In North Carolina,
[a comprehensive plan]
is a policy document. It is
not a regulatory document.**

— *Adam Lovelady*

”

Plan to plan?

More information about the process of creating Buncombe County's Comprehensive Plan 2043, including a form to sign up for an email newsletter, is available at avl.mx/arw.



'Popularity problem'

Most local governments have comprehensive plans, UNC's Lovelady says. State legislators gave those that didn't a shove in that direction in 2019 as part of a consolidation of the state's land-use laws. Counties and municipalities that haven't adopted a comp plan by July 2022 won't have the legal authority to enforce their zoning ordinances. The state won't take any steps to penalize those that don't comply, he says, but governments won't have a leg to stand on if anyone challenges their ordinances in court.

That 2019 law has sparked steps in Woodfin to comply after it was discovered that a plan drawn up several years ago was discussed but never formally approved by the town Board of Commissioners. The board adopted a placeholder plan in September 2021 to comply with the state requirement, and the town has begun developing a new plan, with completion scheduled sometime in 2022.

While Buncombe's current plan does comply with the law, the county hired consulting firm Clarion Associates on a roughly \$375,000 contract and appointed a 23-member committee of county residents in 2021 to guide an update. Meetings and other efforts to get the public involved are scheduled to run through summer 2022, and a final plan is to be approved in 2023.

County planner Pennington says it's much too early to predict what the plan will say. But it's clear that its authors will have to grapple with "the scarcity of land" to build on and what he calls the county's "popularity problem" – the desire of so many people to live here. He says he expects "policies and recommendations that would change how development is going to be regulated in the county in the future."

CASE IN POINT:

The Bluffs at River Bend

Western North Carolina's 2021 election cycle provided a perfect example of how a motivated local community can shift its government's decision-making. In Woodfin, a town of roughly 8,000 people to the northwest of Asheville, a record voter turnout replaced three incumbent commissioners in a race defined by development.

Woodfin's residents had been stirred up in March 2021 by The Bluffs at River Bend, a proposed residential project of nearly 1,400 new units slated for Richmond Hill next to the French Broad River. Believing that current town leaders were too lenient toward developers, a slate of three political newcomers — **Eric Edgerton, Jim McAllister and Hazel Thornton** — decided to run for office.

The three candidates and their supporters organized an aggressive get-out-the-vote effort, together knocking on nearly 800 doors and reaching thousands of Woodfin residents by phone. "I learned during the campaign that residents feel like the town is not listening to them and that it makes decisions privately and quietly, and they are angry about it," McAllister said. The candidates were rewarded for their outreach, with each receiving at least 615 votes, while none of the three incumbents earned more than 150 votes.

What's on paper now



Here's a look at key points in Asheville and Buncombe County's existing comprehensive plans. You can find the Asheville plan online at avl.mx/asj and the county plan at avl.mx/ask.

Asheville

The city's plan was not written by people who think it's possible to lock the gate and keep Asheville just the way it is. "The future growth of the city is inevitable," it says. But the direction of that growth must shift to preserve the environment, keep the city's quality of life, boost its economy and create a healthy and equitable community.

"Without intervention, the city risks becoming a strictly tourism-oriented destination and second-home community," says the Living Asheville plan, adopted in 2018. It describes a "need to balance preservation of the natural and built environment while accommodating population growth and the need to provide new and diverse housing that is priced affordably."

The plan says Asheville is a relatively low-density city today and identifies three types of areas where growth should be directed:

- * Downtown
- * North Charlotte Street, the South Slope and the River Arts District, all "innovation districts" where the city can use special financing for improvements.
- * Land along major roads in the city. That includes projected town and urban centers that the plan says will provide a mix of residential uses in a denser, more walkable environment with enough population density to support transit. Corridors identified for that growth pattern include Hendersonville Road, Patton Avenue/Smokey Park Highway and Merrimon Avenue.

If the city's population were to grow at 1% a year, all of the expected increase could be accommodated in those areas for three generations, the plan says. Asheville grew faster than that target over the past decade: 13.4% from 2010 to 2020, according to the latest U.S. Census Bureau figures.

However, the plan suggests that the targeted growth areas could at least hold all of the population increase expected over the next 20 years. It projects that the city will grow from an estimated 91,000 in 2018 to 110,000 in 2038; Asheville's population was 94,589 in 2020.

Buncombe County

The most recent update of the county's land use plan was approved in 2013. It says the county should direct denser development toward areas with existing infrastructure, like water and sewer service, and prioritize efforts to conserve farmland and mountain ranges. Recommendations include:

- * Providing incentives for the construction of affordable housing.
- * Relaxing some standards for lot size and the distance a home must be from a property line in areas served by public water and sewer. Lot size rules in areas without public sewers should be adjusted to ensure there is room for septic systems, the plan says.
- * Assessing new developments for their connection to bicycle and pedestrian facilities. The plan stops short of saying developers should be required to build sidewalks or bike paths.
- * Adjusting rules to make it easier to place a manufactured home on land that's not part of a mobile home park.

MUDDY GROUND

Legality of affordable housing tool disputed

BY MARK BARRETT
markbarrett@charter.net

Can't local governments just make developers build more affordable housing?

The answer is more complicated than the question. Experts say it's unclear whether counties and municipalities in North Carolina can require a certain percentage of homes in a residential development to be sold or rented at prices affordable to people of modest means. While such requirements do result in construction of affordable housing where they exist, the number of units produced varies. Advocates of these "inclusionary zoning" rules say they should be only one of several strategies governments employ to help bring housing costs in line with workers' ability to pay.

Several local governments around the state, including Asheville, Black Mountain and Buncombe County, offer incentives to developers who agree to include affordable housing in their projects. The carrots these governments dangle include easing restrictions on the number of housing units per acre, reducing or waiving permit fees and speeding up the processing of applications for zoning approval.

Incentive-based approaches are clearly allowed under North Carolina law, says **James Joyce**, a professor at the University of North Carolina Chapel Hill's School of Government who co-authored a book on inclusionary zoning. But uncertainty exists over whether local governments in the state can whip out the stick and force developers to include affordable units.

"Depending on who you ask, you may get different answers in terms of how firm the [legal] ground is" authorizing such a requirement, Joyce says. "In general, it's not very firm."



Joyce's co-author, School of Government professor **Tyler Mulligan**, wrote in 2010 that the argument that governments can adopt mandatory inclusionary zoning is "plausible" but involves "some risk" of a judge disagreeing.

At least two North Carolina municipalities have already adopted mandatory inclusionary zoning. Chapel Hill says 10%-15% of housing units, depending on location, must be affordable for residential projects in which the units are to be sold. Davidson's ordinance requires 12.5% affordable units in both rental and owner-occupied projects. Some developers of projects subject to the rules have challenged them, but those suits were either settled or decided on other grounds, meaning state courts have yet to rule on whether the requirements are legal.

Brad Branham, Asheville's city attorney, says city officials "would love to have" the power to impose mandatory inclusionary zoning. But he doubts such rules would withstand a court challenge if the matter came to a final verdict and says most attorneys around North Carolina agree.

"I would be very reluctant to advise our City Council that we have authority to have inclusionary zoning," he said.

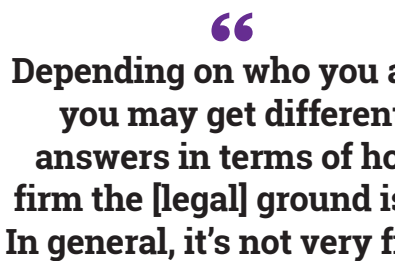
Unsuccessful attempts have been made at the state level to give local governments explicit inclusionary zoning authority. State Sen. **Julie Mayfield**, an Asheville Democrat and former City Council member, introduced such legislation, Senate Bill 426, in April 2021. As of February 2022, it had not moved out of the Senate Rules Committee, which is traditionally a holding pen for bills unlikely to get a hearing.

A study by the Grounded Solutions Network, a national organization of non-profits involved in affordable housing, found that inclusionary zoning does spur the production of affordable housing and has the potential to reduce population segregation by race and income. According to that data, local governments with inclusionary zoning require an average of 16% of units in each development above a certain size to be affordable.

But critics like the National Apartment Association, which advocates on behalf of the rental housing industry, say the number of units produced is relatively small and inclusionary zoning programs increase the cost of other units in a residential project.

Laura Hudson, an Asheville architect and a former chair of the city's Planning and Zoning Commission, says it might be nice if the city could simply require that half or all of units in a development be affordable. But the reality, she says, is that such high ratios wouldn't work because a project would not offer a developer a reasonable rate of return. They would simply invest elsewhere.

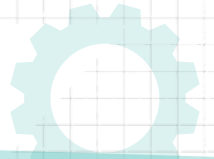
"Without large infusions of capital [from government], that's just not possible," Hudson says. "The cost of construction now is bananas."



**“
Depending on who you ask,
you may get different
answers in terms of how
firm the [legal] ground is. ...
In general, it's not very firm.
”**

– James Joyce,
*professor at UNC Chapel Hill's
School of Government*

On the records



Public documents can shed light on development issues

BY DANIEL WALTON
dwalton@mountainx.com

Development projects leave obvious marks on the world around them: earth moved, steel erected, asphalt laid. But every building that goes up in Western North Carolina also leaves a paper trail in local government archives that, as public property, residents have the legal right to inspect.

Many of these documents are available through public databases, such as Asheville's SimpliCity (avl.mx/b6o) or Buncombe County's public permits portal (avl.mx/avx). Other items, such as emails to elected leaders concerning a particular project, may not be accessible online but can be obtained by submitting a request to government officials.

According to North Carolina law, "all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts or other documentary material" associated with "the transaction of public business" are public record unless specifically exempted.

Here are some tips for making public records requests, as well as where to ask for records from Buncombe County and each of its municipalities.

Ask (correctly) and ye shall receive

- * While the law requires public records to be provided "as promptly as possible" upon request, large or vague requests can take many months to fulfill. For a quick turnaround, it's best to limit the scope of a request. Asking for all emails sent between a developer and city planning staff in a given week, for example, will yield faster results than asking for all emails ever sent related to a project.
- * Governments are required to provide specific records that already exist, but they're not required to provide general information or create new records in response to a request. Asking for all multifamily construction permits approved in 2021 would thus be a valid request, but asking for the total amount of money spent on tax incentives for affordable housing would not be viable.
- * State law designates certain categories of development-related records as confidential. These include most personnel information about government staff, attorney-client communications and records concerning proposed economic development projects.
- * Governments must generally provide records in the form in which they're requested. However, they are not required to convert paper records to digital media.

//////

- * Fees for obtaining public records are generally limited to the actual cost of making a copy, such as the paper used in printing or a flash drive to store digital files. But state law does allow governments to levy a “special service charge” in cases involving “extensive use of information technology resources” — another reason to keep requests small when possible.

Where to look

- * Asheville — The city operates an online records requests portal at avl.mx/awp.
- * Buncombe County — County public records requests can be filed through an online form at avl.mx/awr.

- * Biltmore Forest — Contact Town Clerk **Laura Jacobs** at LJacobs@BiltmoreForest.org or 828-274-0824.
- * Black Mountain — Public records requests can be filed through an online form at avl.mx/awv.
- * Montreat — Complete the online form at avl.mx/awu.
- * Weaverville — File a request through the town’s general contact form at avl.mx/aww.
- * Woodfin — Complete the online form at avl.mx/aww.

Campaign finance

It’s no secret that many developers active in Western North Carolina are players in the political arena as well. Thanks to campaign finance laws, it’s also no secret who gives money to whom in support of bids for public office.

Financial reports detailing the donations politicians receive are generally required semiannually for years in which there is no primary or general election for the position the person holds or is seeking. During election years, quarterly reports are required. More frequent reports are required for large contributions given close to an election. All candidates for local elected office file these reports with the Buncombe County Board of Elections; those documents are accessible online at avl.mx/azf, though it typically takes several weeks after submission before they’re available.

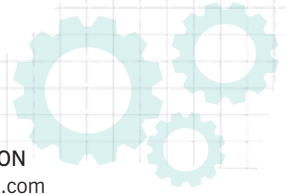
The N.C. State Board of Elections’ campaign finance website (avl.mx/azc) enables residents to look up documents for state-level offices, including the House of Representatives and Senate. Searches can capture all donations received by a candidate (avl.mx/azd) or all donations given by an individual (avl.mx/aze). Candidates for federal offices, such as the U.S. House or Senate, must file their reports through the Federal Election Commission (fec.gov/data). They’re not required to register with the N.C. State Board of Elections unless they want their own election committee to contribute money to other people’s campaigns for state or local offices.

Reports generally include the name, address, profession and employer of anyone making a donation of more than \$50. Donations of \$50 or less are reported anonymously as “aggregated individual contributions.”

Changing **THE RULES**

How to participate in the political process

BY DANIEL WALTON
dwalton@mountainx.com



The bulk of this guide has described how the decision-making process for development proposals currently works. Neighborhood residents and developers alike must abide by those rules as they debate projects and negotiate changes they'd like to see.

To go beyond those guidelines, however, the rules themselves have to change. And while the power to make that happen is in the hands of elected officials, the power to decide who those officials are lies with Western North Carolina's voters.

As of press time, candidate filing had been postponed until Thursday, Feb. 24, and other information pertaining to the 2022 elections was in flux due to ongoing legal challenges. Among other changes, primaries have been pushed back from Tuesday, March 8, to Tuesday, May 17. Decisions concerning early voting dates, sites and times for the general election in November also haven't yet been finalized. Look for the *Xpress* voter guides closer to these elections for more up-to-date information. In the meantime, here's some general guidance for local voters.

Find your sample ballot

To find sample ballots and check voter registration status, visit the N.C. State Board of Elections voter search website at avl.mx/6nq.

Users must enter their full name and voter status. After searching, the system will display a list of matching names. Selecting your name takes you to a page with sample ballots, the address of your primary or Election Day polling place and your representatives' jurisdictions. If you've voted absentee, this page also shows the status of your ballot.

If your name does not show up, you aren't registered to vote in North Carolina. If you believe this is an error, contact your county board of elections as soon as possible.

Each county board of elections also has sample ballots available on its website. Voters are encouraged to fill one out in advance to minimize the time spent in a polling place.

Vote by mail

If you'd like to vote by mail, request an absentee ballot through the N.C. State Board of Elections' online portal (avl.mx/8ii) or by filling out and submitting an absentee ballot request form (avl.mx/aw6). All forms must be returned to the corresponding county board of elections by 5 p.m. on the Tuesday before Election Day; request forms can be mailed, emailed, faxed or brought to the county election office in person by the voter or a near relative.

When your ballot arrives, follow the enclosed directions. You must mark the ballot in the presence of a witness, who must sign the absentee ballot envelope upon completion.

The completed absentee ballot can be mailed back to the county board of elections (you will need your own postage stamp) or delivered to any early voting site

or the county board of elections. Absentee ballots can be delivered by the voter or a near relative, but they must be dropped off by 5 p.m. on Election Day. Mailed ballots must be postmarked by Election Day and arrive at the local board of elections by 5 p.m. on Nov. 11.

Absentee voters can sign up for text or email updates on the status of their ballot through BallotTrax (avl.mx/8il), run through the N.C. State Board of Elections.

Absentee request forms in Spanish can be found at avl.mx/aw6.

Do I need to bring my ID?

As of press time, voters aren't required to show a photo ID, according to the N.C. State Board of Elections. A September 2021 order by a North Carolina superior court permanently blocked the state's photo ID requirement, which was approved in a statewide referendum in 2018, from taking effect without action by a higher court. A procedural case pertaining to the law is currently on the U.S. Supreme Court's docket, but legal wrangling about the photo ID requirement itself seems likely to continue for quite a while.

However, people registering to vote at a one-stop early voting site must provide one of the following: a North Carolina driver's license or an identity card from the N.C. Division of Motor Vehicles; a current bank statement, paycheck or utility bill showing the voter's name and address; a student photo ID plus a school document showing the student's address; or any other government-issued photo ID or document showing the voter's name and current address.

Voter guides beyond Buncombe County

Xpress plans to publish both primary and general election voter guides for all municipal races within Buncombe County, as well as elections involving candidates who are seeking to represent the county in the state legislature. The following nonpartisan voter guides offer information and candidate profiles for state and national races:

- * Vote411.org, a bilingual voter guide sponsored by the League of Women Voters, can be personalized to match your sample ballot.
- * Democracy North Carolina's NCVoter.org offers a comprehensive guide to state races in both English and Spanish.
- * NCVoterGuide.org, a service of Common Cause North Carolina, presents each candidate's responses to questions grouped by issue.

Having trouble?

Call the N.C. State Board of Elections at 919-814-0700, Buncombe County Election Services at 828-250-4200 or the nonprofit Election Protection hotline at 866-687-8683.



Terms of the trade

A glossary of development lingo

BY DANIEL WALTON
dwalton@mountainx.com

Attending a government meeting where development issues are on the table can sometimes feel like visiting a foreign country. The metal detectors one must pass to enter Asheville City Hall or Buncombe County's Board of Commissioners meeting room are reminiscent of airport security. Public comment comes with strict rules of etiquette different from those of normal American conversation.

And when lawyers, planners and elected officials get into the weeds of jargon and legal minutiae, it can seem like they're no longer speaking English.

While a full accounting of that language would take more pages than this guide contains, here's a list of some of the most commonly encountered — and commonly confused — terms that come up in development discussions. More definitions are available through the city of Asheville's Unified Development Ordinance ([avl.mx/b6l](#)), Buncombe County's Land Development and Subdivision Ordinance ([avl.mx/ast](#)) and North Carolina's Chapter 160D local planning and development regulations ([avl.mx/asu](#)).

Accessory dwelling unit: A separate and complete space for occupancy by one family, containing toilets, sleeping rooms and a kitchen, that is located on the same lot as a single-family dwelling or business.

Administrative decision: Any choice made in the enforcement of development regulations involving the determination of facts and application of objective standards, mostly handled by government staff.

Affordable housing: Any residential units provided for people earning at or below 80% of the area median income for a given jurisdiction (currently \$42,100 for an individual or \$60,100 for a family of four in Asheville).

Annexation: The incorporation of land into an existing municipality. North Carolina law prevents cities from adding new property without the approval of voters who would be annexed.

Appurtenance: An accessory added to a main structure or land, such as a stone wall.

Buffer: A planted area, sometimes combined with fences or walls, meant to separate two areas or land uses.

Central business district: The major commercial downtown center of a community, with boundaries set by the municipality.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict.



Complete streets: Streets designed to safely accommodate all modes of travel, including walking, biking, driving and public transit.

Comprehensive plan: The official public planning document adopted by a government as a long-range advisory guide addressing the community’s general, social, economic and physical development.

Conditional use: A specific type of activity on a property that, because of its potential impacts on the surrounding area, require individual consideration to ensure appropriateness at a particular location and protection of the public welfare.

Conditional use permit: A special allowance given to a property for a conditional use after a public hearing; approval of a permit does not change the property’s zoning.

Conditional zoning: A legislative change to a property’s land use rules incorporating site-specific regulations.

Deed restriction: A legal limitation on the use of a property as outlined in real estate records.

Density: The number of dwelling units per acre of land.

Development: The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site or demolition of any structure; the excavation, grading, filling, clearing or alteration of land; the subdivision of land; and the initiation or substantial change in the use of land or intensity of use.

Easement: A grant of property rights, such as permission to build a greenway, given by a property owner to another person or entity.

Extraterritorial jurisdiction: The area within 1 mile of a city’s limits that can be regulated according to that city’s development rules. Asheville and Weaverville have been stripped of this area by the N.C. General Assembly.

Frontage: The length of a building or lot that runs parallel to a public street or alley.

Gentrification: The process of neighborhood redevelopment accompanied by a shift in demographics and the displacement of longtime residents.

Hardship: A practical difficulty in carrying out the requirements of a government’s development regulations. Unless specifically noted, financial difficulties alone do not constitute a hardship.

Highest and best use: The activity on a property that will bring the greatest profit to its owners.

Impervious surface: A roof or paved area through which water cannot penetrate, creating the need for drainage facilities to handle increased storm runoff.

Inclusionary zoning: A locally adopted requirement that a specific percentage of housing units in a project remain affordable for a certain length of time, the legality of which is disputed in North Carolina.

Infill development: New construction or changes to existing properties in established urban areas that are currently vacant or being used for another purpose.

Level of service: A scale measuring the amount of vehicle traffic a road or intersection can accommodate, ranging from A (relatively free flow) or F (unsatisfactory stop-and-go conditions).

Light industrial use: Activity involving the assembly, packaging, processing, production and manufacturing of goods conducted wholly within an enclosed building and without external effects such as smoke, odor or noise.

Legislative decision: The adoption, amendment or repeal of a development regulation made by a governing body, including the rezoning of property, based on public opinion and the best interest of the community.

Lot: A tract or piece of land with fixed boundaries as designated on a plot or survey map.

Major subdivision: In Buncombe County, a proposed splitting of land that will result in 11 or more lots.

Minor subdivision: In Buncombe County, a proposed splitting of land that will result in four to 10 lots.

Mixed-use development: A project that combines multiple activities in one or more structures on the same property, such as residential units above offices and a retail storefront.

New Urbanism: A design philosophy intended to create a strong sense of community by incorporating features of traditional small towns or urban neighborhoods, such as compact commercial areas with active, walkable streets.

NIMBY: An acronym for “not in my backyard,” often used to characterize opponents of development projects.

Nonconforming use: An activity in a building that existed prior to the adoption of a development rule that would otherwise forbid the activity.

Open space: An area that is intended to provide light and air and is designed for either environmental, scenic or recreational purposes. This does not include parking lots or other surfaces intended for vehicles.

Overlay district: A type of zoning that applies supplemental or replacement rules to those of an area with another zoning.

Permitted use: Any activity explicitly allowed by a property’s zoning.

Quality of life: The degree to which individuals perceive themselves as able to function physically, emotionally and socially, as influenced by all aspects of a community.

Quasi-judicial decision: Any choice made in the enforcement of development regulations that involves both the finding of facts and discretion in applying the rules.

Regulatory taking: The result of a development rule becoming so restrictive that it has the same effect as the physical appropriation of land, such as zoning private property as a public park without the owner’s consent.

Residential: Land designated by a government plan or zoning regulations for buildings consisting only of dwelling units.

Rezoning: An amendment to the map or text of an ordinance to change the nature, density or intensity of uses allowed on certain property.

Right of way: An area or strip of land dedicated for use as a street, crosswalk, electrical line, water main or other special purpose.



Road diet: A reduction in vehicle lanes on a street meant to improve safety and access for other modes of travel, such as walking and bicycling.

Setback: The required minimum distance between a building and its closest property line.

Smart growth: A theory of community design with 10 principles, as defined by the U.S. Environmental Protection Agency: (1) mix land uses; (2) take advantage of compact building design; (3) create a range of housing opportunities and choices; (4) create walkable neighborhoods; (5) foster distinctive, attractive communities with a strong sense of place; (6) preserve open space, farmland, natural beauty and critical environmental areas; (7) strengthen and direct development toward existing communities; (8) provide a variety of transportation choices; (9) make development decisions predictable, fair and cost effective; (10) encourage community and stakeholder collaboration in development decisions.

Special subdivision: In Buncombe County, a proposed splitting of land that will result in three or fewer lots.

Special use: Any activity permitted by an underlying zoning district that must undergo an additional level of review due to potential community impacts.

Spot zoning: Allowing the use of land in a way that is detrimental or incompatible with uses of its surrounding area, especially to favor a particular landowner.

Sprawl: The spreading of a city and its suburbs over rural land at the fringe of an urban area, often linked to negative health and environmental impacts.

Streetscape: The scene as may be observed along a public street composed of natural and man-made components, including buildings, paving, planting, street furnishings and miscellaneous structures.

Strip development: Commercial and higher-density residential development located adjacent to major streets, characterized by shallow depth, street-oriented layout and multiple vehicle access points.

Subdivision: Any split of a property into two or more lots or sites for sale or building development, including all divisions involving a new street or change to existing streets.

Substantial improvement: Any repair, reconstruction, rehabilitation, addition or other change to a structure equal to or greater than 50% of the structure’s fair market value before construction.

Sustainable development: As defined by the United Nations, a pattern of land use “that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Universal design: The practice of constructing spaces and buildings to be usable by everyone, including people with disabilities.

Variance: An exception to development regulations given to a specific person or business that allows construction in a way that would otherwise be prohibited.

Viewshed: The area that can be seen from a defined observation point.

Zoning: The division of a jurisdiction by legislative regulations into areas that specify allowable land uses and size restrictions for buildings.

MOUNTAIN **Xpress** mountainx.com

local**matters.**

arts • government
news • club listings
health • history
environment
calendar • opinion
wellness

IN PRINT EVERY WEEK