

The Legal Invincibility of Exclusionary Zoning and the Inevitability of a Housing Shortage in the Old North State*

North Carolina is facing an unprecedented housing affordability crisis, with housing prices up more than thirty percent between 2010 and 2022. This problem is exacerbated by the fact that North Carolina has been the third-fastest-growing state over that time span. For likely the first time in the state's history, the rate of new population growth is outpacing the development of new housing stock. The result is a crisis where North Carolinians are outpriced from the housing market in favor of out-of-staters and without suitable affordable housing alternatives. This Comment highlights how exclusionary zoning policies adopted by North Carolina's municipalities and counties have played a key role in weakening the state's ability to absorb growth through new residential development. Part I discusses the history and background of zoning in North Carolina by defining exclusionary zoning and chronicling its historical development. Part II surveys modern-day zoning laws in North Carolina and presents an overview of the present housing crisis in North Carolina and its connection to zoning. Part III argues that the actions taken by North Carolina's courts and the state's general assembly reflect an unwavering deference to local governments on the issue of zoning. Part IV concludes with a series of brief recommendations, arguing that (1) the judiciary should more rigorously assess local zoning power by defying the "arbitrary and capricious" standard set by Euclid; (2) the Legislature should further revoke aspects of traditional zoning power like 2024's Senate Bill 382; and (3) the Legislature should adopt legislation providing developers of affordable housing with options to bypass local zoning requirements. Overall, the Comment concludes that without taking at least one of these steps, the legal invincibility of zoning regulations could lead to an inevitable and depressing end—a crisis of unaffordability that forces North Carolina natives to live out their days in the more affordable South Carolina.

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INTRODUCTION

In the 1998 comedy movie *The Truman Show*, Jim Carrey plays a man named Truman Burbank who lives in the idyllic town of Seahaven Island¹—a fictional embodiment of the American Dream.² On Seahaven Island, residents can walk from their beachfront homes to restaurants, shops, parks, public amenities, and more.³ Throughout the town there is a diverse array of

1. THE TRUMAN SHOW (Paramount Pictures 1998). Truman unknowingly lives in a completely fictional world set inside a Hollywood studio. *Id.* From birth, Truman's every moment has been broadcast on TV. *Id.* Since its release, the movie has come to serve as a prophetic critique of modern reality television. See Emily Maskell, *The Truman Show: Has a Film Ever Predicted the Future So Accurately?*, BBC (May 31, 2023), <https://www.bbc.com/culture/article/20230531-the-truman-show-has-a-film-ever-predicted-the-future-so-accurately> [<https://perma.cc/Z65K-E3HC>].

2. The term “American Dream” was first popularized during the Great Depression as the “dream of a land in which life should be better and richer and fuller for every man, with opportunity for each according to his ability or achievement.” JAMES TRUSLOW ADAMS, *EPIC OF AMERICA* 404 (Transaction Publishers 2012) (1931). Benjamin Franklin—a runaway child turned early America's most prominent statesman, entrepreneur, and inventor—is often considered the paradigmatic example of the American Dream. See Timothy Sandefur, *The Immortality of Benjamin Franklin and the American Dream Made Real*, GOLDWATER INST. (Oct. 6, 2023), <https://www.goldwaterinstitute.org/the-immortality-of-ben-franklin-and-the-american-dream-made-real/> [<https://perma.cc/LA53-JK7Q>]. See generally BENJAMIN FRANKLIN, *THE AUTOBIOGRAPHY OF BENJAMIN FRANKLIN* (Charles W. Eliot ed., Lerner Publ'g Grp. 2016) (1791) (chronicling Franklin's life story). In modern times, American society has viewed owning a home as the best proxy for achieving the prosperity envisioned by the American Dream. See generally CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP (William M. Rohe & Harry L. Watson eds., 2007) (explaining affordable homeownership's role in providing the American Dream to low- and median-income families). A recent survey found that roughly seventy-five percent of Americans viewed homeownership as the “highest gauge of prosperity” in society, ranking higher than having a successful career, raising a family, or receiving a college degree. Gregory Schmidt, *Homeownership Remains the American Dream, Despite Challenges*, N.Y. TIMES (June 2, 2022), <https://www.nytimes.com/2022/06/02/realestate/homeownership-affordability-survey.html> [<https://perma.cc/GK3J-VDYW>] (staff-uploaded, dark archive)]. Two thirds of respondents who did not own homes pointed to affordability as the primary reason for their lack of homeownership, “including income level, soaring housing prices and their ability to make a down payment.” *Id.*

3. THE TRUMAN SHOW, *supra* note 1.

architecture—pastel-colored houses, tall and short, stand beside rows of apartments, dotted along perfectly manicured streets.⁴ Seahaven Island’s compact development sits between enchanting forests and pristine coastline.⁵ Seemingly, the filmmakers envisioned a town where homes are affordable, sprawl is at a minimum, and communities are not divided across racial lines.⁶

Seahaven Island is a real place, known as Seaside, Florida—a town that has become an expensive resort because of its walkability, proximity to the beach, and Hollywood fame.⁷ Seaside was built in the 1980s to emphasize the potential of mixed-use, high-density, and sustainable development.⁸ Unfortunately, this style of building is so unique that the cost to buy a home in Seaside is exorbitant.⁹ To make matters worse, not only are there few towns like Seaside, it is often illegal to build towns like it due to zoning regulations.¹⁰

Seaside was built under such a relaxed zoning code that it would be illegal to build such a town in essentially every county in North Carolina.¹¹ Lot size minimums, single-family-only designations, and parking requirements are some of the primary ways that localities across North Carolina have made high-density development virtually impossible.¹² And even where builders are allowed to construct dense developments, heightened requirements aimed at

4. *Id.*

5. *Id.*

6. Housing affordability, the environmental damage from urban sprawl, and the enduring effects of redlining are three of the most pervasive effects of over-zoning on North Carolina. *See infra* Section II.B.

7. Seth Zeren, *Reflections on Seaside*, STRONG TOWNS (Apr. 22, 2022), <https://www.strongtowns.org/journal/2022/4/22/reflections-on-seaside> [<https://perma.cc/6UAV-U653>]; Jay Walljasper, *How a Florida Beach Town Changed How We Live*, SEASIDE INST. (Mar. 21, 2022), <https://seasideinstitute.org/news/how-a-florida-beach-town-changed-how-we-lived/> [<https://perma.cc/ZSV4-FGGG>].

8. Zeren, *supra* note 7; Walljasper, *supra* note 7. The initial architects of Seaside were inspired by “New Urbanism,” a movement that seeks to restore “key urban features like street life, local businesses and neighborly gathering spots to modern life.” Walljasper, *supra* note 7; Zeren, *supra* note 7. As such, Seaside was inspired by the walkable, town-square-centric architecture of some of America’s oldest cities, including Savannah, New Orleans, Charlottesville, and Charleston. Walljasper, *supra* note 7. It’s worth noting that after its initial round of development, Seaside failed to fully realize its vision as a high-density development, instead, morphing into a rather low-density resort town with some high-density areas. *See* Zeren, *supra* note 7. As a result, Seaside has become the poster child for critics of New Urbanism who fear that towns focused on building walkable urban centers inevitably become unaffordable and exclusive. *Id.* However, as one writer points out, “Sure Seaside has become expensive. But the right response isn’t to condemn it—it’s to build a thousand little towns like it . . .” *Id.*

9. As of May 8, 2025, the average home price for active listings in Seaside, Florida was \$4.3 million. *Seaside Real Estate*, DAVIS PROP. OF NW. FLA., INC., <https://www.davisprop.com/seaside-fl-homes-for-sale.php> [<https://perma.cc/8DZD-C5LY> (staff-uploaded archive)]. The cheapest house for sale was listed for \$2.8 million and the average price per square foot was \$1,500. *Id.*

10. *See* Zeren, *supra* note 7.

11. *See infra* Section II.A. While there are some exceptions, many single-family residential zonings in North Carolina have setback requirements that are violated by Seaside’s development. *See* Zeren, *supra* note 7.

12. *See infra* Section II.A.

encouraging community uniformity and redundant environmental regulations can make the project economically unviable.¹³ Without such high-density developments in North Carolina, it is impossible to build enough housing units to keep up with demand without increasing the urban sprawl¹⁴ that is rapidly invading the traditionally rural areas of the state.¹⁵

This Piece unpacks zoning's impact on North Carolina in four parts. Part I explores the history and development of exclusionary zoning in North Carolina. It defines exclusionary zoning as a legal concept and explores its

13. See *infra* Section II.A.

14. See MICHAEL D. TANNER, CATO POLICY ANALYSIS: KEEPING NORTH CAROLINA'S HOUSING AFFORDABLE 1 (Dec. 7, 2022), <https://www.cato.org/sites/cato.org/files/2022-12/pa-938-updated.pdf> [<https://perma.cc/6G76-FXYS> (staff-uploaded archive)]. "Urban sprawl" is the "unrestricted growth in many urban areas of housing, commercial development, and roads over large expanses of land, with little concern for urban planning." Zhenfeng Shao, Neema S. Sumari, Aleksei Portnov, Fanan Ujoh, Walter Musakwa & Paulo J. Mandela, *Urban Sprawl and Its Impact on Sustainable Urban Development: A Combination of Remote Sensing and Social Media Data*, 24 GEO-SPATIAL INFO. SCI. 241 (2021). It is commonly seen in the loss of farmland on the outskirts of a city that is developed for housing. LEON KOLANKIEWICZ, ROY BECK & ERIC A. RUARK, NUMBERS USA & N.C. SPRAWL, LOVE HURTS: HOW THE POPULARITY OF NORTH CAROLINA DRAWS ENDLESS STREAMS OF OUTSIDERS, WHO DRIVE RAPID POPULATION GROWTH & SPRAWL, WHICH DESTROYS THE FARMLAND AND HABITAT ESSENCE OF THE STATE 1, 18 (2024), https://ncsprawl.com/wp-content/uploads/2024/03/NC_Background.pdf [<https://perma.cc/M6EU-SA9Q>]. For the purposes of this Piece, "urban sprawl" is best understood as a catch-all term for the type of development that is usually a consequence of cities adopting exclusionary zoning policies. North Carolina lost 2.56 million acres of farmland between 1982 and 2017, making it the state with the third-most farmland lost due to increased development. *Id.* at 11. For a visual representation of urban sprawl across North Carolina, see N.C. SPRAWL, <https://ncsprawl.com/> [<https://perma.cc/W8UK-HX2V>]. There are six primary characteristics of urban sprawl: (1) low-density, single-family dwellings; (2) automobile dependency; (3) spiraling growth from existing urban areas; (4) development that avoids vacant lands adjacent to existing development; (5) development that runs parallel to highways; and (6) an undefined division between urban and rural lands, often associated with encroachment on agricultural lands. Samuel Brody, *The Characteristics, Causes, and Consequences of Sprawling Development Patterns in the United States*, NATURE EDUC. (2013), <https://www.nature.com/scitable/knowledge/library/the-characteristics-causes-and-consequences-of-sprawling-103014747/> [<https://perma.cc/6SR5-XRK4>]. Urban sprawl has significant costs including increased traffic congestion, pollution, and energy consumption. Thomas J. Nechyba & Randall P. Walsh, *Urban Sprawl*, 18 J. ECON. PERSPS. 177, 187–88 (2004).

15. Some cities like Durham have specifically responded to complaints about urban sprawl by passing resolutions to increase housing density. Ned Barnett, *As NC Cities Grow, Suburbs Sprawl. In Durham, Rural Residents Are Pushing Back*, NEWS & OBSERVER (Apr. 4, 2022, at 16:17 ET), <https://www.newsobserver.com/opinion/article260023345.html> [<https://perma.cc/8WDT-NT4V> (staff-uploaded, dark archive)]. However, some have suggested that zoning reform is not enough to combat sprawl, instead suggesting that North Carolina's sprawl problem cannot be addressed by zoning reform alone without a substantial decrease in the state's population growth. See KOLANKIEWICZ ET AL., *supra* note 14, at 34–36. North Carolina did decrease its acres of development per person by 9.2% between 2002 and 2017 largely due to the adoption of "Smart Growth" policies that emphasized higher-density development. *Id.* at 36. Nonetheless, the state still lost 821 square miles of farmland to development, meaning that even where development got denser, sprawl still increased, though at a reduced rate compared to the previous decades, due to population growth. *Id.* Recent research suggests that the trend toward denser development may be at its end following the COVID-19 pandemic as the "work from home" revolution has driven urbanites to the outskirts of cities. Richard B. Peiser & Matt Hugel, *Is the Pandemic Causing a Return to Urban Sprawl?*, 5 J. COMPAR. URB. L. & POL'Y 26, 26 (2022).

historical development. Part II then unpacks the modern-day use of zoning in North Carolina and concludes with a discussion about the present-day housing crisis, linking local zoning regulations with the decreased housing stock that caused home prices to soar. Part III analyzes the legal history of exclusionary zoning in North Carolina by tracing the judicial precedents that led to North Carolina courts' deferential approach to local zoning power. Part III then details the General Assembly's attempts to revoke and revise the broad grant of zoning power given to local governments. Finally, Part IV argues for a more rigorous judicial review of local zoning regulations and legislation that incentivizes developers to construct workforce housing in North Carolina by revoking local government power over some zoning restrictions.

Ultimately, North Carolina's housing affordability crisis necessitates rethinking the current balance between local and state zoning power to reduce the artificial barriers created by overregulation that drastically increase housing costs and burden all North Carolinians.

I. DEFINING ZONING AND ITS HISTORY IN NORTH CAROLINA

Zoning policies enable cities and towns to establish districts that dictate the uses for which land can and cannot be used.¹⁶ Over time, zoning has become the preeminent form of land use management in North Carolina and across the country.¹⁷ Over ninety percent of North Carolinians live in areas subject to zoning ordinances, comprising more than 550 cities and eighty counties.¹⁸ As of

16. DAVID W. OWENS, INTRODUCTION TO ZONING AND DEVELOPMENT REGULATION 3 (4th 2013) [hereinafter OWENS, INTRODUCTION].

17. *Id.* at 33.

18. *Id.* "Almost all of the state's cities with populations over 1,000 have a zoning ordinance." *Id.* A 2018 UNC School of Government survey found ninety-two percent of municipalities had adopted zoning regulations and that an additional five percent of municipalities had zoning regulation within city limits that was administered at the county level. David W. Owens, *2018 Survey Report: Adoption and Administration of Local Development Regulations, Conditional Zoning, and Subdivision Administration*, 30 PLAN. & ZONING L. BULL. 1, 4 (2020), <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/PZLB%2030.pdf> [<https://perma.cc/GP7N-37RA> (staff-uploaded archive)] [hereinafter *2018 Survey*]. The same survey found that sixty-nine counties had countywide zoning, twelve had partial countywide zoning, and nineteen had no countywide zoning. *Id.* at 5. The counties with no zoning are mostly rural counties in North Carolina's mountains like Cherokee, Graham, Clay, Macon, Swain, Haywood, Yancey, Avery, Rutherford, Ashe, and Mitchell, or along the coast like Bertie, Martin, Beaufort, Pamlico, Tyrrell, Jones, and Duplin. *Id.* Among counties with no countywide zoning, Alamance stands out as the only county adjacent to one of the state's three primary urban hubs (Charlotte-Mecklenburg, Greensboro-High Point, or Raleigh-Durham). *Id.* In 2024, Alamance County discussed adding a minimum residential lot size in unincorporated parts of the county, however, the county ultimately struck it down as "antithetical" to the county's general "antipathy" toward county zoning. Tomas Murawski, *County Commissioners: No Interest in Planning Board Idea of Increasing Minimum Lot Sizes Across County*, ALAMANCE NEWS (Sep. 5, 2024), <https://alamancenews.com/county-commissioners-no-interest-in-planning-board-idea-of-increasing-minimum-lot-sizes-across-county/> [<https://perma.cc/USL8-BY97>].

2018, just two percent of North Carolina municipalities had no zoning policies whatsoever.¹⁹

Specifically, zoning uses started with three simple categories: residential, commercial, and industrial.²⁰ In most North Carolina municipalities, these restrictions have ballooned to contain “a dozen or more categories” of potential land use restrictions.²¹ Zoning is the “principal tool for protecting property values and providing a stable real estate market” by separating incompatible uses and providing a predictable land market.²² However, these benefits are undercut by several costs. Zoning has furthered racial discrimination,²³ economic exclusion,²⁴ and environmental damage.²⁵ Zoning, however well-intentioned, has become a “mechanism of exclusion designed to inflate property values, slow the pace of new development, segregate cities by race and class, and enshrine the detached single-family house as the exclusive urban ideal.”²⁶

This Part chronicles the development of zoning from its inception to its modern day uses, highlighting how this history has created North Carolina’s present housing crisis. First, it defines the types of zoning regulations that are encompassed in the term “exclusionary zoning.” Second, it outlines the history of exclusionary zoning policies in North Carolina, starting with their federal origins and ending with their universal adoption in North Carolina.

19. 2018 Survey, *supra* note 18, at 4.

20. TANNER, *supra* note 14, at 6.

21. *Id.* This is true in large cities like Charlotte and Raleigh but also in small towns like Banner Elk. *Id.*

22. OWENS, INTRODUCTION, *supra* note 16, at 33.

23. See generally RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017) (explaining the racially discriminatory roots of exclusionary zoning policies). One of Rothstein’s central claims is that during the twentieth century, the federal government “urged suburbs to adopt exclusionary zoning laws.” *Id.* at 216. An example of the federal government’s push for zoning was then-Secretary of Commerce Herbert Hoover’s Advisory Committee on Zoning. *Id.* at 51. This committee drafted the model zoning ordinance that states like North Carolina would adopt and distributed “a manual explaining why every municipality should develop a zoning ordinance.” *Id.* Rothstein argues that if they had not done so, “white flight would have been minimized because there would have been fewer racially exclusive suburbs to which frightened homeowners could flee.” *Id.* at 216.

24. “Yet many of the fastest-growing major cities over the past decade—including cities like Orlando, Fort Worth, Durham, Charlotte, and Omaha—were all essentially right at the national median [income].” M. NOLAN GRAY, ARBITRARY LINES: HOW ZONING BROKE THE AMERICAN CITY AND HOW TO FIX IT 75 (2022). Meanwhile, our wealthiest cities like San Diego, San Francisco, and San Jose grew by less than one percent per year. *Id.* “This is an inversion of the historical norm of Americans moving toward prosperity, and many economists agree that zoning-induced high housing costs are largely to blame.” *Id.*

25. “[T]he environmental pitch for cities is straight forward: they simply take up less space.” *Id.* at 94. Environmentalists have observed that detached single-family homes use as much as three times more energy than an apartment. *Id.* Urban sprawl “gobbles up wilderness” land but has been enshrined as the urban ideal due to zoning’s pernicious preference for the single-family detached house. *Id.* at 30, 94; see also Nechyba & Walsh, *supra* note 14.

26. GRAY, *supra* note 24, at 30.

A. *What Is Exclusionary Zoning?*

1. Exclusionary and Inclusionary Zoning

Exclusionary zoning, simply put, is zoning that “limits the type and amount of housing that can be built.”²⁷ In practice, most zoning regulations are exclusionary because they highlight “permitted uses” for a set of parcels while excluding other uses.²⁸ For example, when the Town of Cary designates a parcel as an R-40 district, the land is restricted to residential use “compatible with the natural landscape,” which the town defines as single-family housing with a minimum lot size of 40,000 square feet or nearly one acre.²⁹ As long as a developer meets the restrictions outlined by the zoning ordinance, the developer’s use is automatically allowed, known as a “use by right.”³⁰ The clearest effect of this restriction is to exclude the other uses outlined in the Town of Cary’s Land Development Ordinance (“LDO”) including uses such as “Residential Multi-Family,” “Resource/Recreation,” “Office and Institutional,” “General Commercial,” and “Industrial.”³¹ More subtly, this designation indicates that a bevy of other potential *residential* uses are also barred, including housing the LDO describes as single-family “medium or high density residential use.”³² This would include most standard single-family housing developments, which fall under R-20, R-12, or R-8 designations and have minimum lot sizes of around one-half, one-quarter, or one-fifth of an acre, respectively.³³

27. TANNER, *supra* note 14, at 1.

28. OWENS, INTRODUCTION, *supra* note 16, at 46.

29. CARY, N.C., CARY LAND DEV. ORDINANCE § 4.2.2(B). The words “single-family housing” do not appear in the ordinance’s definition for this use. *Id.* However, “maximum density of 1.08 units per acre” is the standard density associated with restricting a lot to single-family use. *Id.*

30. OWENS, INTRODUCTION, *supra* note 16, at 117.

31. CARY LAND DEV. ORDINANCE § 4.2. “Residential Multi-Family” includes land where the “principal use of the land is for multifamily dwellings” with a maximum density of twelve units per acre. *Id.* § 4.2(G). “Resource/Recreation” districts exist to “protect and preserve parks, scenic areas, and open spaces, and to protect watersheds and water supplies and to allow public recreational uses.” *Id.* § 4.2(H). “Office and Institutional” districts encompass “development of offices and community institutions that have similar development characteristics and require locations close to the more intensive commercial districts.” *Id.* § 4.2(I). “General Commercial” districts are “generally intended to allow for uses that provide goods and services to residents of the community,” and must have “appropriate appearance, ample parking, controlled traffic movement, suitable landscaping” and buffers from nearby residential areas. *Id.* § 4.2(J). “Industrial” districts are those where “the principal use of land is for industries which can be operated in a relatively clean and quiet manner and which will not be obnoxious to adjacent residential or business districts.” *Id.* § 4.2(M). Industrial districts can include “warehousing and wholesaling activities with limited contact with the general public.” *Id.*

32. *Id.* § 4.2(C)–(E). The use referenced here is that of an R-8 residential district. It is also important to note that an R-40 classification rules out R-20 development, which effectively allows for a house on every half acre—which is already incredibly restrictive. *Id.* § 4.2(B)–(C).

33. *See id.* § 4.2(C)–(E).

In contrast, municipalities sometimes use so-called “inclusionary zoning” regulations—one of the most common being conditional or special use permits.³⁴ Rather than seeking to exclude incompatible uses, inclusionary zoning tries to find a way to incorporate these uses into the surrounding neighborhood.³⁵ Inclusionary zoning measures arise when a developer does not have a “use by right” on a parcel but still wants to build there.³⁶ The Town of Cary states that “[c]onditional use district zoning provides an option by which an applicant for a rezoning may be held to certain promises relating to the type of development that occurs on his or her property.”³⁷ For example, the owner of a residential plot may want to run a small business out of a house or build a church. If the owner meets the square footage and density requirements of that zoning designation, then the property may be eligible for a conditional use permit which would bypass the need to rezone the entire property.

Conditional use zoning appears to add much-needed flexibility to the rigid zoning world. However, the municipality or county that drafted the zoning ordinance ultimately makes the determination of whether a conditional use is allowable. This means that the power to exclude or include a particular use always runs through a “quasi-judicial” process administered by local leaders.³⁸ Thus, the power of inclusionary zoning through conditional use permits is almost always checked by the impulse toward exclusionary zoning that predominates local planning ordinances.

2. Dillon’s Rule and the Balance of State/Local Zoning Power

Local governments like the Town of Cary can exercise unchecked zoning power due to a broad grant of power from the General Assembly. The extent of local government’s power in this domain is somewhat unexpected given that North Carolina is often referred to as a “Dillon’s Rule state,” which “means that local government can only exercise those powers *expressly* granted by the General Assembly and those other powers that can be *reasonably inferred*

34. OWENS, INTRODUCTION, *supra* note 16, at 117.

35. Tyler Mulligan, *A Primer on Inclusionary Zoning*, COATES’ CANONS: N.C. LOC. GOV’T L. (Nov. 16, 2010), <https://canons.sog.unc.edu/2010/11/a-primer-on-inclusionary-zoning/> [<https://perma.cc/N82H-JPAD>]. Inclusionary zoning is often used to increase or encourage workforce housing. *Id.* For instance, creating a zoning designation where a developer is required to use ten percent of the land for low-income housing. *See infra* Section III.B; *see also* S.B. 317, 156th Gen. Assemb., Reg. Sess. (N.C. 2023) (proposing zoning legislation to address workforce housing crisis in North Carolina).

36. OWENS, INTRODUCTION, *supra* note 16, at 117.

37. CARY LAND DEV. ORDINANCE § 4.3.1.

38. OWENS, INTRODUCTION, *supra* note 16, at 117.

therefrom.”³⁹ Contrastingly, a “Home Rule state” “allows local governments to exercise all legislative authority unless ‘expressly’ prohibited by the state.”⁴⁰

Despite North Carolina’s practical adherence to Dillon’s Rule, the state’s 1923 Zoning Enabling Act,⁴¹ explained further below, was seen as such a broad grant of power that the state has effectively granted all zoning power to counties and municipalities, retaining almost nothing for itself.⁴² This power to determine zoning remains with cities or counties and has been authorized by Chapter 160D of the North Carolina General Statutes.⁴³

Nonetheless, the state still has the power to revise the “rules for which local government can exercise [zoning] powers and where that can be done.”⁴⁴ Theoretically, North Carolina’s General Assembly would be able to revoke all zoning power from local government, although this is unlikely due to the long history of local control.⁴⁵

In summary, exclusionary zoning: (1) encompasses local government determinations of what land use is allowed on a given parcel; (2) stands in contrast to but is often supported by inclusionary zoning; and (3) remains

39. *North Carolina Remains a Dillon Rule State—Tread Lightly, Raleigh City Council*, RALEIGH FORWARD (May 14, 2023), <https://raleighforward.org/raleigh101/north-carolina-remains-a-dillon-rule-state-tread-lightly-raleigh-city-council> [https://perma.cc/8CUV-C52T]. Recently, some have called into question whether North Carolina really is a Dillon’s Rule state. *See, e.g.*, Frayda Bluestein, *Is North Carolina a Dillon’s Rule State?*, COATES’ CANONS: N.C. LOC. GOV’T L. (Oct. 24, 2012), <https://canons.sog.unc.edu/2012/10/is-north-carolina-a-dillons-rule-state/> [https://perma.cc/A54C-PBTY]. The conflict arises from the fact that the Supreme Court of North Carolina has recently questioned Dillon’s Rule yet seems to adopt an equally strict standard. *Id.* The court adopted Dillon’s Rule as early as 1874. *See, e.g.*, *Smith v. City of Newbern*, 70 N.C. 14, 18 (1874), *superseded by statute*, An Act to Consolidate, Revise, and Amend the General Statutes Relating to Cities and Towns, ch. 698, 1971 N.C. Sess. Laws 724 (codified at N.C. GEN. STAT. § 160A-4), *as recognized in* *Homebuilders Ass’n of Charlotte, Inc. v. City of Charlotte*, 336 N.C. 37, 42–44, 442 S.E.2d 45, 49–50 (1994); *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 553, 276 S.E.2d 443, 445 (1981) (contending that municipalities “may not exercise any power not granted” explicitly by statute and that “statutory delegations of power to municipalities should be strictly construed”).

40. *North Carolina Remains a Dillon Rule State—Tread Lightly, Raleigh City Council*, *supra* note 39.

41. An Act to Empower Cities and Towns to Adopt Zoning Regulations, ch. 250, 1923 N.C. Sess. Laws 572.

42. *See* Terri Jones, *The 100th Anniversary of the North Carolina Zoning Enabling Act*, NCBARBLOG (Mar. 8, 2023), <https://www.ncbarblog.com/zplu-the-100th-anniversary-of-the-north-carolina-zoning-enabling-act/> [https://perma.cc/4LWB-WLPK]; *infra* notes 51–52 and accompanying text.

43. *See* DAVID W. OWENS & ADAM S. LOVELADY, CHAPTER 160D: A NEW LAND USE LAW FOR NORTH CAROLINA 15 (2020).

44. OWENS, INTRODUCTION, *supra* note 16, at 13.

45. DAVID OWENS, LRC STUDY COMM., AUTHORITY TO ENACT AND ENFORCE LAND USE REGULATIONS 1 (2014), <https://webservices.ncleg.gov/ViewDocSiteFile/33864> [https://perma.cc/S8MT-4RSK (staff-uploaded archive)] (“Local governments in North Carolina have no inherent power. Municipalities and counties are created by the state and can exercise only those state powers that have been delegated to them by the General Assembly. The General Assembly can delegate or revoke such authority as deemed appropriate and may set procedural requirements for the use of delegated authority.”).

within local government's power, although the General Assembly may revise or revoke the power under Dillon's Rule.

B. *History of Exclusionary Zoning in North Carolina*

1. Origins of Zoning in North Carolina

Prior to the advent of local zoning, North Carolinians relied largely on nuisance suits to enforce private property rights and to address improper land uses.⁴⁶ However, this approach was inefficient at preserving existing neighborhoods amidst rapid urbanization.⁴⁷

In 1916, in response to increasing safety concerns about the height and density of the city's skyscrapers, New York City created the "country's first comprehensive zoning ordinance."⁴⁸ This decision spurred the adoption of New York's zoning ordinance in cities around the country,⁴⁹ which then prompted the United States Department of Commerce to craft a "standard zoning-enabling law," that would allow states to give zoning power to municipalities.⁵⁰ North Carolina's municipalities first began adopting exclusionary zoning following the passage of the state's Zoning Enabling Act in 1923.⁵¹ To this day, North Carolina's Zoning Enabling Act remains mostly the same as it was in 1923.⁵²

In 1926, the United States Supreme Court held in *Village of Euclid v. Ambler Realty Company*⁵³ that zoning ordinances were to be given broad

46. OWENS, INTRODUCTION, *supra* note 16, at 31.

47. *Id.* Nuisance "law was reactive . . . For the most part, nuisance law did not address broader public concerns regarding land development." DAVID W. OWENS, LAND USE LAW IN NORTH CAROLINA 23 (3d. 2020) [hereinafter OWENS, LAND USE].

48. OWENS, LAND USE, *supra* note 47, at 24. While New York is generally considered the first to pass comprehensive zoning law, a series of precursors to zoning were passed in the years prior. *See id.* at 22. In 1885, Modesto, California, passed a law regulating the location of laundries. *Id.* Washington, D.C., and Boston passed limits on building heights in 1899 and 1904. *Id.* Los Angeles passed an ordinance limiting industrial land use in 1908. *Id.*

49. *Id.* at 24.

50. *Id.* at 24–25.

51. *See* Jones, *supra* note 42; An Act to Empower Cities and Towns to Adopt Zoning Regulations, ch. 250, 1923 N.C. Sess. Laws 572, 576.

52. *See* Jones, *supra* note 42. However, Chapter 160D of the North Carolina General Statutes, which governs what zoning authority has been delegated and how local governments ought to use it, has undergone numerous changes, most recently in 2019. *See generally* OWENS & LOVELADY, *supra* note 43 (documenting the legislative changes to Chapter 160D).

53. 272 U.S. 365 (1926).

deference by the courts.⁵⁴ Under the Court's standard, zoning ordinances were to be upheld unless arbitrary and capricious.⁵⁵

Consequently, zoning ballooned across the country and became common practice in North Carolina's cities.⁵⁶ North Carolina's rapid population growth following World War II "fueled the public demand for land use management in places well beyond the state's largest cities."⁵⁷ By 1959, North Carolina extended the Zoning Enabling Act to give general authority to all counties to adopt zoning.⁵⁸ However, it wasn't until the 1980s that zoning, primarily at the county level, became standard practice in rural North Carolina.⁵⁹

2. Racial Discrimination in Zoning

A discussion of the history of zoning would not be complete without mentioning how zoning has been utilized as an agent of racial discrimination. In 1910, Baltimore, Maryland, enacted the first racially explicit zoning ordinance which "prohibited people of one race from purchasing a home or renting an apartment on a block in which the majority of residents were of a different race."⁶⁰ The Supreme Court's 1917 decision in *Buchanan v. Warley*⁶¹ found that a Louisville, Kentucky, zoning ordinance that limited the proportion of white and Black residents in an integrated neighborhood was an unconstitutional violation of the Fourteenth Amendment.⁶² In the wake of

54. *Id.* at 395.

55. *Id.* Underpinning the Court's reasoning was the idea that the Court could potentially embarrass itself by trying to "formulate rules or decide questions" of local zoning which would be an extremely fact-driven contextual inquiry that is better suited for the "flexible powers of police." *Id.* at 397.

56. OWENS, INTRODUCTION, *supra* note 16, at 33 ("By the 1960s most of North Carolina's cities and towns had adopted zoning ordinances.").

57. *Id.*

58. *Id.* at 15.

59. *Id.* at 33. In 1979, fifty-six North Carolina counties had no countywide zoning. 2018 Survey, *supra* note 18, at 5. Over the course of the 1980s, twenty of those counties adopted some form of countywide zoning. *Id.*

60. TANNER, *supra* note 14, at 9. This law was passed a mere two years after Los Angeles passed the country's very first zoning law. *Id.* In this way, the very origin of exclusionary zoning in America is necessarily tied to racial segregation. *Id.*

61. 245 U.S. 60 (1917).

62. *Id.* at 82; see also ROTHSTEIN, *supra* note 23, at 45. Adherence to *Buchanan* by many municipalities was limited. *Id.* at 46. A prominent city planner of the time, Robert Whitten, even stated that "a reasonable segregation is normal, inevitable, and desirable," and that as such "race zoning" was necessary to prevent "race conflict," and to protect homes from decreasing property values from "encroachment of the colored race." *Id.* In 1922, five years after *Buchanan*, the Atlanta City Planning Commission stated that "race zoning is essential in the interest of the public peace, order and security and will promote the welfare and prosperity of both the white and colored race." *Id.* at 46. Atlanta went on to pass a zoning law that divided the city into "R-1" and "R-2" districts, segregated by race. *Id.* Atlanta's law was challenged in court and overruled by the Supreme Court of Georgia in 1924. *Id.* Atlanta argued that their law was different than Louisville's because it "designated whole

Buchanan and the Supreme Court's landmark decision in *Shelley v. Kraemer*,⁶³ exclusionary zoning, in combination with other tactics such as redlining,⁶⁴ emerged as an alternative to the use of racial zoning and racially restrictive covenants.⁶⁵

In North Carolina, the history of the municipal use of zoning as a tool for racial discrimination largely mirrors that of municipalities in other states.⁶⁶ In 1912, just two years after Baltimore's ordinance, Mooresville adopted "Ordinance 62" which "not only prohibited African Americans from living in certain parts of town[,] but also imposed a \$50 fine on any African American who attempted to buy property or live in a majority white area."⁶⁷ Meanwhile, in 1912, Winston-Salem "prohibit[ed] both races from living in areas where they were not already the majority race."⁶⁸ After the U.S. Supreme Court decided

neighborhoods exclusively for black or white residence, without regard to the previous majority-race characteristics of any particular block." *Id.* While Atlanta's argument failed, many American cities followed suit, as Indianapolis, New Orleans, Richmond, Birmingham, and West Palm Beach all adopted explicit racial zoning laws. *Id.* at 46–48. Birmingham's racial zoning ordinance was administered until 1950. *Id.* at 47. West Palm Beach's was in place until 1960. *Id.* The zoning restriction of an Orlando suburb that "bann[ed] blacks from living on the north side of the railroad tracks and whites from living on the south side" was in effect until 1968. *Id.* Other cities like Austin, Atlanta, Kansas City, and Norfolk had no racial zoning ordinance on the books but "designat[ed] African American areas in official planning documents and us[ed] th[o]se designations to guide spot zoning decisions." *Id.* at 47–48. Kansas City and Norfolk kept these practices up until at least 1987. *Id.* at 48.

63. 334 U.S. 1 (1948) (holding the enforcement of racially restrictive covenants unconstitutional under the Equal Protection Clause).

64. The term "redlining" is often used in reference to racial segregation of American cities as shown by a map that depicts African American neighborhoods in red. See ROTHSTEIN, *supra* note 23, at 93–99. While there is frequently overlap between zoning districts and "redlined" areas, redlining actually refers to the maps that the Federal Housing Authority used to determine its appraisal standards and mortgage requirements. Kayla McDaniel, *Redlining in North Carolina: A Pervasive Legacy*, CAMPBELL L. OBSERVER (Mar. 19, 2021), <https://campbelllawobserver.com/redlining-in-north-carolina-a-pervasive-legacy/> [<https://perma.cc/JAK5-4DY5>]. Areas that were labeled "red zones" would be ineligible "for new loans, allowing lenders to either refuse to extend credit altogether or offer costly rates." *Id.*

65. Richard Rothstein argues that in relation to race, zoning developed "two faces." See ROTHSTEIN, *supra* note 23, at 56. The first existed to work around the prohibition on racial covenants by keeping African Americans out of white neighborhoods through the Federal Housing Administration's policy of not extending loans to African Americans. *Id.* at 56–57. In effect, this created white suburbia. *Id.* at 57. The second face was zoning's ability to exclude industrial and "environmentally unsafe businesses" from white neighborhoods and instead place them near African American neighborhoods. *Id.* This coupled with the Federal Housing Administration's infamous red maps, which indicated areas where they instructed underwriters to avoid insuring mortgages, created the predominantly African American neighborhoods that still exist in almost every major city in America. *Id.*

66. See McDaniel, *supra* note 64.

67. TANNER, *supra* note 14, at 9. For a look at the text of Ordinance 62, see John Deem, *In 1912, Mooresville's Segregation Ordinance Made It a Trailblazer for the Wrong Reason*, LAKE NORMAN PUB. (July 23, 2020), <https://www.lakenormanpublications.com/articles/in-1912-mooresvilles-segregation-ordinance-made-it-a-trailblazer-for-the-wrong-reason/> [<https://perma.cc/W5MC-X74R>].

68. TANNER, *supra* note 14, at 9.

Buchanan, Winston-Salem “simply passed a new ordinance decreeing racial separation in housing in defiance of the Court’s precedent.”⁶⁹ It took ten years before the Supreme Court of North Carolina would strike down Winston-Salem’s law in *Clinard v. City of Winston-Salem*.⁷⁰ Nonetheless, other North Carolina municipalities began to pass zoning restrictions that were “neutral on their face, [but] limit[ed] the types of housing in white areas [which] dr[o]v[e] up prices in ways that made it difficult for African American[s] . . . to afford.”⁷¹ A recent study of Durham, North Carolina, suggests that from 1945 to 2014, downzoning⁷² was far more likely to occur in white neighborhoods, while upzoning occurred more frequently in Black neighborhoods.⁷³

In effect, Durham serves as an example that the discriminatory roots of exclusionary zoning policies manifested themselves in policies that “keep . . . neighborhoods segregated” and can partially explain why “many communities in North Carolina remain overwhelmingly monoracial.”⁷⁴ However, a closer inspection of zoning regulations across North Carolina today indicates that racial division is just one of the ways that zoning harms our state.

69. *Id.*

70. 217 N.C. 119, 6 S.E.2d 867 (1940).

71. TANNER, *supra* note 14, at 9. The goal of these policies was to make “housing in white areas so expensive that people of color could not afford to live there.” *Id.* at 10.

72. See *infra* notes 208–09 and accompanying text.

73. TANNER, *supra* note 14, at 10. The Durham study reviewed residential upzonings, residential downzonings, and refused residential upzonings in the City of Durham. Andrew Whittemore, *The Role of Racial Bias in Exclusionary Zoning: The Case of Durham, North Carolina, 1945-2014*, 50 ENV’T & PLAN. A: ECON. & SPACE 826, 830 (2018). “Residential Upzonings” include “the rezoning of any residentially zoned land for denser residential use.” *Id.* “Residential Downzonings” include “the rezoning of residentially zoned land for less dense residential use.” *Id.* Lastly, “Refused Residential Upzonings” are “refusals to rezone any residentially zoned land to a denser residential zone.” *Id.* In analyzing these categories, the author remarked that “Durham never had racial zoning, but its initial zoning scheme was clearly motivated by racial geography.” *Id.* at 837. This fact is underscored by the fact Durham’s 1926 zoning map labeled the cities “five African-American ghettos” as “Residence Zone ‘C,’” which was the densest zoning type, while all other mostly white neighborhoods were given less dense zoning designations. *Id.* at 838. Further, “[b]efore 1985, residential downzonings and refused residential upzonings occurred in average census tracts that were Whiter than the citywide average . . . by statistically significant margins.” *Id.* However, when adjusted for rates of homeownership, the rate of downzonings and refused residential upzonings was not significantly greater than areas with lower rates of homeownership. *Id.* “Taken together, the quantitative evidence suggests that . . . the areas that the city shielded from residential intensification were Whiter areas, but not higher-income areas or areas with higher homeownership rates.” *Id.* at 839. “This suggests that race offers a more compelling explanation for exclusionary zoning before 1985 than either homeownership or income in Durham.” *Id.*

74. TANNER, *supra* note 14, at 10. According to a UC-Berkeley study of the 2020 census data, four North Carolina cities, Charlotte, Greensboro, Raleigh, and Winston-Salem, were considered to have “high segregation” levels, ranking as the 41st, 56th, 61st, and 64th most-segregated cities in America, respectively. *Most to Least Segregated Cities in 2020*, OTHERING & BELONGING INST. (2021), <https://belonging.berkeley.edu/most-least-segregated-cities-in-2020> [https://perma.cc/A4KK-SQV4]. Durham ranked 72nd and Fayetteville ranked 107th, each with “low-medium segregation” levels. *Id.*

II. ZONING AND THE HOUSING AFFORDABILITY CRISIS

Where has North Carolina's hundred-year zoning experiment landed our state? Nowhere good. As the data below demonstrate, North Carolina's land is over-zoned, and consequently, overpriced.

A. *Exclusionary Zoning Laws Today Across North Carolina*

While North Carolina's Zoning Enabling Act has remained largely unchanged, the practice of zoning has changed drastically in the last hundred years.⁷⁵ The average town's zoning ordinance was once about twenty to thirty pages long; now, some Uniform Development Ordinances ("UDOs") are thousands of pages.⁷⁶ For instance, the City of Charlotte recently revised its UDO to be more concise; nonetheless, it is still over six hundred pages long.⁷⁷ In 1950, Charlotte's zoning ordinance included only six districts and took up just fourteen pages.⁷⁸

As of 2013, 550 cities and eighty counties in North Carolina have adopted zoning ordinances.⁷⁹ Over ninety percent of our state's population lives in areas subject to zoning.⁸⁰ Modern zoning restrictions span from regulating what color

75. OWENS, INTRODUCTION, *supra* note 16, at 34.

76. *See id.* There are several reasons for this abrupt increase in Unified Development Ordinance ("UDO") length. First, most municipalities used to have only three zoning districts, but now it is not uncommon to have upwards of thirty. *Id.* Second, municipalities now have standards for things like "off-street parking, signs, storm-water control, historic preservation, manufactured home parks, and landscaping," none of which were regulated in the early days of zoning. *Id.* at 34–35. Lastly, special and conditional permits have added increased complexity to the zoning process. *Id.* at 35.

77. *See* Charlotte, N.C., Unified Development Ordinance (2022) (amended June 16, 2025). Before the changes, Charlotte's UDO was 889 pages long. *See* TANNER, *supra* note 14, at 6. Charlotte's update to its UDO made several crucial changes to increase housing density, including legalizing duplexes and triplexes in most single-family zoning districts. *See* CHARLOTTE, N.C., UNIFIED DEVELOPMENT ORDINANCE art. 4, § 1. However, just a year after these changes, some community members are advocating to walk them back and only allow triplexes on corner lots. *See* Chase Jordan, *Charlotte Wants To Change Triplex Rules Nearly a Year After UDO Implemented*, CHARLOTTE OBSERVER (Apr. 9, 2024), <https://www.charlotteobserver.com/news/business/article287304720.html> [<https://perma.cc/GBM6-3N7E> (staff-uploaded, dark archive)]. Similarly, in 2021, Raleigh made changes to its UDO to allow duplexes and townhomes to be built in most single-family neighborhoods. *See* Anna Johnson, *Raleigh Leaders Consider Change to Allow More Duplexes, Townhomes in City Neighborhoods*, NEWS & OBSERVER (July 5, 2021), <https://www.newsobserver.com/news/local/counties/wake-county/article252499018.html> [<https://perma.cc/R2QA-EBB4> (staff-uploaded, dark archive)]. Raleigh's UDO is 529 pages long. RALEIGH, N.C., UNIFIED DEVELOPMENT ORDINANCE (2025).

78. *Charlotte Place Types & Unified Development Ordinance*, S. CHARLOTTE CMTY. UPDATE 11 (July 13, 2017), https://charlotteudo.org/wp-content/uploads/2013/10/2017_07_13_udo-update-ballantyne-presentaton.pdf [<https://perma.cc/CM3Q-G5QN>].

79. OWENS, INTRODUCTION, *supra* note 16, at 33. In the twenty counties where there is no countywide zoning, many individuals are still subject to zoning regulations put in place by their municipality. *See id.* It is important to note that countywide zoning usually only governs unincorporated county lands, whereas municipal zoning governs lands within town limits. *Id.*

80. *Id.*

your house is⁸¹ to banning anything that is not a single-family home. “The overwhelming majority of residential land in North Carolina, especially in urban areas, is zoned as R-1, which is restricted to detached single-family homes.”⁸² As of 2022, this accounts for eighty-eight percent of residential land in Raleigh, eighty-four percent of residential land in Charlotte, and eighty-four percent of residential land in Greensboro—meaning that in North Carolina’s three largest cities, less than sixteen percent of residential land is used for townhomes, apartments, and other housing types.⁸³

But North Carolina’s zoning regime goes far beyond the standard “detached single-family home” requirement. Many North Carolina municipalities and counties have minimum lot sizes, height limits, setback requirements, and parking minimums.⁸⁴ I conducted a survey of North Carolina’s one hundred counties and found that the densest zoning designation for a detached single-family home is three units per acre or less in thirty-eight counties—which is nearly fifty percent of the counties with countywide zoning.⁸⁵ Five counties (Ashe, Gates, Madison, Surry, and Watauga) only allowed for a single house on every acre.⁸⁶ Sixty of the counties have height restrictions ranging from twenty-five to fifty feet.⁸⁷ Forty-eight counties have mandatory minimum parking spots for residences.⁸⁸ Almost every single county in the state with zoning has setback requirements dictating how far houses can be from the road, other houses, and adjoining lots.⁸⁹ Notably, some of the state’s fastest-growing counties, such as Cabarrus, Chatham, Currituck, Gaston,

81. In North Carolina, towns are no longer able to directly regulate “building design elements” following a law passed in 2015. David Owens, *Can the City Tell Me What My New House Has To Look Like? Residential Design Standards*, COATES’ CANONS: N.C. LOC. GOV’T L. (Aug. 3, 2015), <https://canons.sog.unc.edu/2015/08/can-the-city-tell-me-what-my-new-house-has-to-look-like/> [<https://perma.cc/37XS-3ZL5>]. Under the 2015 law, municipalities cannot regulate: (1) exterior building color; (2) type/style of exterior material; (3) style or materials of roofs or porches; (4) exterior nonstructural architectural ornamentation; (5) location or architectural styling of windows and doors; (6) location of rooms; and (7) interior layout of rooms. *Id.* However, the Town of Morrisville recently passed a UDO amendment limiting “[f]acade colors, including permitted painted masonry . . . [to] muted, subtle, or neutral colors.” MORRISVILLE, N.C., UNIFIED DEVELOPMENT ORDINANCE art. 5, § 9.4(C)(1)(c) (2013) (amended July 9, 2024). Further, the UDO states that “[w]hen part of a common development, buildings shall utilize colors that are consistent with or complement the surrounding development.” *Id.*

82. TANNER, *supra* note 14, at 6.

83. *Id.* at 7. This is outpacing the national average of residential land zoned for single-family use, which as of 2019, was seventy-five percent. Joshua Braver & Ilya Somin, *The Constitutional Case Against Exclusionary Zoning*, 103 TEX. L. REV. 1, 10 (2024).

84. TANNER, *supra* note 14, at 7.

85. See *infra* Appendix A. A complete compilation of the survey, alongside the zoning ordinances of all hundred counties can be found in Appendix A.

86. See *infra* Appendix A.

87. See *infra* Appendix A.

88. See *infra* Appendix A.

89. See *infra* Appendix A.

Harnett, Hoke, Iredell, Johnston, Lincoln, Moore, Pender, and Watauga, are among the worst offenders for low-density per acre, low height limits, and egregious setback and parking limits.⁹⁰

These kinds of restrictions are just as prevalent in the zoning codes of North Carolina's municipalities.⁹¹ In Cary, just nineteen percent of zoned residential land allows multifamily housing by right.⁹² Huntersville, a fast-growing suburb of Charlotte, permits just one to two single-family units per acre on eighty percent of its residential land.⁹³ In Greensboro, ninety-three percent of residential land has a minimum parking requirement.⁹⁴ In fact, eighty-six percent of the municipal land in the Charlotte-Concord-Gastonia metro statistical area—an area with a population of nearly three million—has a minimum parking requirement.⁹⁵ To make matters worse, only twenty percent of land in Charlotte-Concord-Gastonia permits building more than two single-family units per acre.⁹⁶ What this demonstrates is that county and city leaders alike have an affinity for zoning tools that operate around the edges, making new development less dense and more expensive.

Another one of local government's most beloved zoning tools is conditional use zoning.⁹⁷ Over half of North Carolina municipalities utilize it, and its use is highest with larger cities—seventy-seven percent of cities with populations greater than twenty-five thousand utilize conditional use designations.⁹⁸ While conditional use zoning is not inherently exclusionary, the

90. See *infra* Appendix A. For data on the growth rate of these counties, see *infra* notes 104–06 and accompanying text.

91. For an ongoing survey of North Carolina's zoning ordinances at both the county and local level, see *North Carolina: State Zoning Snapshot*, NAT'L ZONING ATLAS, <https://edit.zoningatlas.org/statsrollup/state/59/> [<https://perma.cc/HPA9-VPQ9>]. As of the writing of this Piece, roughly half of N.C. jurisdictions had been analyzed. *Id.* According to the Atlas, over eleven million acres of state land was subject to local zoning regulations. *Id.*

92. See *Cary, NC: Jurisdiction Zoning Snapshot*, NAT'L ZONING ATLAS, <https://edit.zoningatlas.org/statsrollup/jurisdiction/5692/> [<https://perma.cc/BVA9-5SCT>].

93. See *Huntersville, NC: Jurisdiction Zoning Snapshot*, NAT'L ZONING ATLAS, <https://edit.zoningatlas.org/statsrollup/jurisdiction/5640/> [<https://perma.cc/KAA5-679U>].

94. See *Greensboro, NC: Jurisdiction Zoning Snapshot*, NAT'L ZONING ATLAS, <https://edit.zoningatlas.org/statsrollup/jurisdiction/9914/> [<https://perma.cc/LT89-FKAY>].

95. See *Charlotte-Concord-Gastonia, NC-SC: Metro Area Zoning Snapshot*, NAT'L ZONING ATLAS, <https://edit.zoningatlas.org/statsrollup/cbsa/558/> [<https://perma.cc/5TTQ-G9LZ>].

96. See *id.*

97. See *supra* text accompanying notes 34–38; David Owens, *What Conditions Can Be Included in Conditional Zoning?*, COATES' CANONS: N.C. LOC. GOV'T L. (Nov. 11, 2021), <https://canons.sog.unc.edu/2021/11/what-conditions-can-be-included-in-conditional-zoning/> [<https://perma.cc/RX8V-5XRJ>] [hereinafter Owens, *Conditional Zoning*].

98. Owens, *Conditional Zoning*, *supra* note 97.

costs associated with conditional use zoning are often onerous.⁹⁹ Not to mention, the “conditions” that must be satisfied to rezone a single-family lot to a multifamily lot are often increased requirements for the aforementioned parking minimums, setback requirements, and site plan requirements.¹⁰⁰ Accordingly, conditional use zoning is almost exclusively utilized by wealthy developers, and not North Carolinians looking to rezone their private land for some other purpose.¹⁰¹

A quick survey of today’s zoning laws indicates that in just a hundred years, zoning has gone from a nonentity to a must-have for nearly every local government in North Carolina.

B. *The Present Crisis*

North Carolina recently surpassed eleven million residents, which marks a 16.1% population increase in just fifteen years.¹⁰² By the early 2030s, North Carolina is expected to be the country’s seventh-largest state, and experts project that the state will have 14.2 million people in 2050.¹⁰³

99. *See id.*

Changing a zoning designation is extremely difficult, costly, and time-consuming. There must be a public hearing (with at least two public meeting notices beforehand); the planning board must perform a review; a majority of city council members must approve the rezoning; and the city council must produce a public statement that outlines why a zoning change would constitute “a public necessity.”

TANNER, *supra* note 14, at 7. While process varies from jurisdiction to jurisdiction, it can “take anywhere from a few months to a few years in the city of Raleigh.” *Id.* Accordingly, conditional use zoning is truly only utilized by those with financial means to navigate these extensive processes. *See id.*

100. TANNER, *supra* note 14, at 7. Some of the most common conditions for a rezoning imposed by North Carolina municipalities are site plans (fifty-eight percent), detailed use types (fifty-two percent), setbacks (forty-one percent), landscape and buffers (thirty-eight percent), and parking minimums (twenty-nine percent). *See 2018 Survey, supra* note 18, at 19.

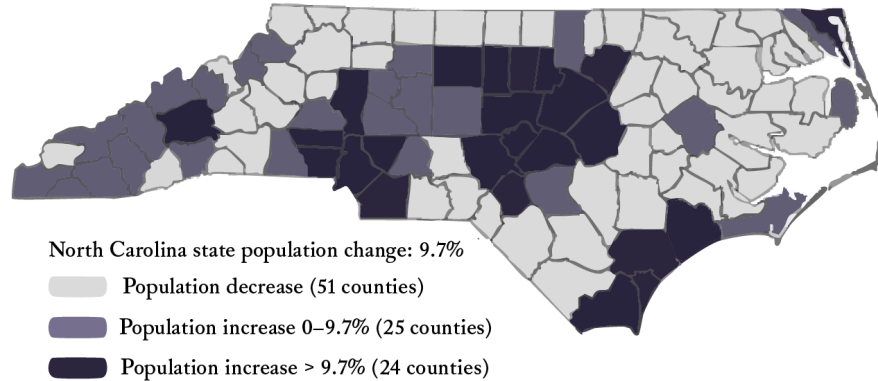
101. *See* TANNER, *supra* note 14, at 7.

102. *See* Michael Cline, *North Carolina Now Home to Over 11 Million People*, N.C. OFF. OF STATE BUDGET & MGMT. (Dec. 20, 2024), <https://www.osbm.nc.gov/blog/2024/12/20/north-carolina-now-home-over-11-million-people> [<https://perma.cc/945A-WRF2>]; *Standard Population Estimates, Vintage 2023 and Population Projections, Vintage 2024*, N.C. OFF. OF STATE BUDGET & MGMT. (Jan. 15, 2025), <https://www.osbm.nc.gov/facts-figures/population-demographics/state-demographer/countystate-population-projections> [<https://perma.cc/S2MQ-6R8P>].

103. Michael Cline, *NC to Become 7th Most Populated State in Early 2030s*, N.C. OFF. OF STATE BUDGET & MGMT. (Feb. 3, 2025), <https://www.osbm.nc.gov/blog/2024/01/23/nc-become-7th-most-populated-state-early-2030s> [<https://perma.cc/YXE3-TKW8>].

Figure 1: Population Increase by County in North Carolina¹⁰⁴

From 2010 to 2020, 24 out of 100 North Carolina counties grew faster than the statewide average



Source: "Projected Population Change in North Carolina Counties: 2010–2020," North Carolina Office of State Budget and Management, updated February 1, 2022.

This growth is not isolated to a single part of the state. It is predicted that between 2024 and 2029, the state's ten fastest-growing counties will include coastal areas like Brunswick (15.3% population increase), Currituck (11.3%), and Pender (10.2%).¹⁰⁵ Other quick growers include Raleigh's Wake County (8.6%) and surrounding counties, Johnston (12.2%), Franklin (10.5%), and Chatham (7.6%).¹⁰⁶ Surprisingly, Mecklenburg County, home to Charlotte, is not predicted to be one of the state's top ten in growth, but surrounding counties like Iredell (9.2%), Lincoln (8.4%), and Cabarrus (8.0%) are.¹⁰⁷

As of 2023, the state had 4.4 million households and nearly five million total housing units.¹⁰⁸ North Carolina's housing units have grown by just 15% from 2010 to 2023.¹⁰⁹ North Carolina's 2023 housing vacancy rate was at its

104. This figure was adapted from TANNER, *supra* note 14, at 2 fig. 1.

105. BOWEN NAT'L RSCH., HOUSING SUPPLY GAP ANALYSIS: STATE OF NORTH CAROLINA II-1 (2024) [hereinafter BOWEN REPORT], https://ncchamber.com/wp-content/uploads/Housing_Supply_Gap_Analysis.pdf [<https://perma.cc/7VS2-82UN>].

106. *Id.* at II-2.

107. *Id.*

108. See North Carolina, U.S. CENSUS BUREAU (2023), https://data.census.gov/profile/North_Carolina?g=040XX00US37 [<https://perma.cc/WL3A-Y28Z> (staff-uploaded archive)]; see also *QuickFacts: North Carolina*, U.S. CENSUS BUREAU (2023), <https://www.census.gov/quickfacts/fact/table/NC/HSG445222> [<https://perma.cc/YC97-QXZ2> (staff-uploaded archive)].

109. U.S. CENSUS BUREAU, U.S. DEP'T OF COM., NORTH CAROLINA: 2010 POPULATION AND HOUSING UNIT COUNTS 2 tbl. 2 (2012), <https://www2.census.gov/library/publications/decennial/2010/cph-2/cph-2-35.pdf> [<https://perma.cc/RDH8-T5PB>]. North Carolina had 4,327,528 housing units in 2010 compared with 4,979,204 housing units in 2023. See *id.*; *QuickFacts: North Carolina*, *supra* note 108.

lowest ever, just 0.5%,¹¹⁰ which is well below the typical housing market's range of 2 to 3%.¹¹¹

On balance, this means North Carolina needs at least 900,000 houses over the next decade just to keep up with growth.¹¹² Given this reality, why are few developers flocking to North Carolina to meet the demand for housing? The simple answer: exclusionary zoning has made it impossible to do so. Housing prices factor into the "value of the land," "the cost of construction," and "the value of the right to build on that piece of land."¹¹³ As housing prices have risen, there are three solutions: "(1) consumers buy or use less, (2) producers make more, or (3) entrepreneurs come up with substitutes."¹¹⁴ Parking minimums, setback requirements, and other anti-density requirements make it far more costly for developers to build, and as a result, the cost of a house goes up.¹¹⁵

Economists estimate that as much as 23.8% of a new home's price is attributable to government regulations.¹¹⁶ This financial cost of overregulation can be seen in five North Carolina markets which were rated "severely unaffordable" for having a median housing cost that was five times greater than

110. Federal Reserve Bank of Saint Louis, *Home Vacancy Rate for North Carolina*, FED. RSRV. ECON. DATA (Mar. 18, 2025), <https://fred.stlouisfed.org/series/NCHVAC> [<https://perma.cc/86VV-JHSA>].

111. See BOWEN REPORT, *supra* note 105, at II-10. As of 2024, the state's housing availability rate was still only 0.8%. *Id.*

112. TANNER, *supra* note 14, at 2. Another recent study suggested that the housing supply gap in 2029 would be 764,478 houses. See BOWEN REPORT, *supra* note 105, at II-13. This gap is most pronounced in Mecklenburg and Wake, with both counties needing more than 100,000 housing units over the next five years. *Id.* at II-17. When considering the proportion of housing needed relative to the total households in a county, it is clear that the gap in the Triangle region is growing—Chatham (33.5%), Lee (26.0%), Orange (22.3%), Durham (21.4%), and Wake (21.3%) make up five of the seven counties with gaps greater than twenty percent of the county's current total households. *Id.* at II-20.

113. TANNER, *supra* note 14, at 7.

114. *Id.*

115. See *id.*; VANESSA BROWN CALDER, CATO INST., ZONING, LAND-USE PLANNING, AND HOUSING AFFORDABILITY 1–2 (2017), <https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability> [<https://perma.cc/7UVN-283F> (staff-uploaded archive)]; *How Zoning Regulations Affect Affordable Housing*, NAT'L ASSOC. OF HOME BUILDERS (Nov. 11, 2024), <https://www.nahb.org/blog/2024/11/zoning-regulation-and-affordable-housing> [<https://perma.cc/ED9H-YJQG>].

116. See PAUL EMRATH, GOVERNMENT REGULATION IN THE PRICE OF A NEW HOME: 2021: SPECIAL STUDY FOR HOUSING ECONOMICS 2 (2021), <https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2021/special-study-government-regulation-in-the-price-of-a-new-home-may-2021.pdf> [<https://perma.cc/58X4-6W5C>]. A 2017 study found that in thirty-six states increased zoning regulations led to a rise in housing prices. CALDER, *supra* note 115, at 1. "Estimates of the impact of zoning are only imprecise approximations. But even if they greatly overstate the benefits of zoning deregulation and the real benefits are only one-half or one-third as large as studies suggest, the effects would still be enormously significant." See Braver & Somin, *supra* note 83, at 10.

median income.¹¹⁷ The five severely unaffordable markets were Asheville (median housing price was 6.9 times median income), Durham (6.1 times), Wilmington (5.8 times), Charlotte (5.4 times), and Raleigh (5.1 times).¹¹⁸ But this problem goes beyond North Carolina's urban areas—a whopping forty-one of the state's counties had a median for sale price greater than \$400,000 in 2024.¹¹⁹

The result of this unaffordability? Many North Carolinians are priced out of the housing market entirely and end up leaving the state.¹²⁰ Those who stay move to the outskirts of Charlotte or Raleigh, overtake the state's rural areas,¹²¹ commute long distances for work, and contribute to the state's worsening traffic congestion.¹²²

Renters are also hurt by the lack of housing supply. Tenants have few alternative housing options, and therefore, landlords have a lower incentive to keep tenants satisfied.¹²³ No one feels the crunch of rising rent prices more than low-income North Carolinians, who in many cases spend more than half of their income on housing.¹²⁴ For individuals making less than eighty percent of area median income, the rental gap continues to outpace the need for “for sale” housing.¹²⁵ Meanwhile, the need for “for sale” housing, and housing in general,

117. URBAN REFORM INST., DEMOGRAPHIA UNITED STATES HOUSING AFFORDABILITY 11 tbl. 3 (2023), <https://www.newgeography.com/files/Demographia-US-Housing-Affordability-2023-Edition.pdf> [<https://perma.cc/5RR4-U2S2>]. Housing affordability is best understood as the “relationship between house prices and incomes,” hence, “a price to income ratio” is the best way to understand how affordable a housing market is. *Id.* at 4.

118. *Id.* at 11 tbl. 3.

119. See BOWEN REPORT, *supra* note 105, at II-11; see also TANNER, *supra* note 14, at 2 (“[Between] 2010 [and 2022], the inflation-adjusted price of a house [in North Carolina] has increased by 31.5 percent.”). Surprisingly, the worst offenders included traditionally rural counties like Chatham (\$802,450), Jackson (\$789,000), and Currituck (\$725,000). *Id.*

120. “[T]he majority of the state’s population growth in recent years has been driven by a net immigration.” TANNER, *supra* note 14, at 13. The scarce housing supply in North Carolina has created a “competition” between out-of-staters and North Carolinians. *Id.* The out-of-staters are typically in a better financial position and can bid higher on houses in the most desirable locations, thus displacing locals, who eventually leave the state. *Id.* Consequently, half of Charlotte residents and forty percent of Greensboro and Raleigh residents were born outside North Carolina. *Id.*

121. The loss of rural land in North Carolina can be seen in Onslow and Johnston counties, both of which grew so much that they were reclassified from “rural” to “suburban” by the Office of State Budget and Management. *Id.* at 2. The loss of rural land is especially concerning for North Carolinians because the state has the nation’s second-largest rural population at 3,474,661. Michael Cline, *Making Sense of the New “Urban Area” Definitions*, N.C. OFF. OF STATE BUDGET & MGMT.: BLOG (Jan. 9, 2023), <https://www.osbm.nc.gov/blog/2023/01/09/making-sense-new-urban-area-definitions> [<https://perma.cc/6AEK-M73H>].

122. See TANNER, *supra* note 14, at 13. “In 2003, 53 counties had a majority residents who commuted to another county for work. In 2017, this number rose to 86.” *Id.* Those commuters drove an average of about 24.5 minutes to work. *Id.* For every ten miles they live outside the city, North Carolinian commuters “dump an additional 1.07 metric tons of carbon into the atmosphere.” *Id.*

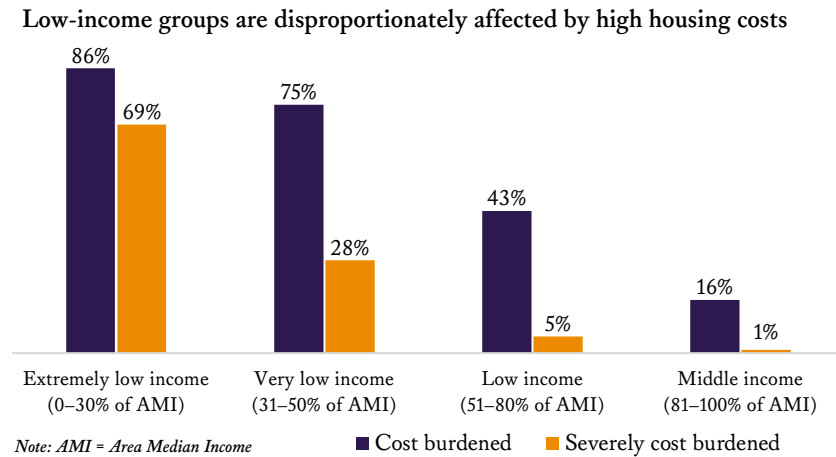
123. *Id.*

124. See *id.* at 11.

125. See BOWEN REPORT, *supra* note 105, at II-12.

is most pronounced among individuals making 121% to 150% of the area median income.¹²⁶

Figure 2: Disproportionate Impact of High Housing Costs¹²⁷



Source: "Housing Needs by State: North Carolina," National Low Income Housing Coalition.

North Carolina is not alone in this crisis.¹²⁸ The combination of "stubbornly high mortgage rates" and high housing prices resulted in 2024 being the "slowest housing market in three decades."¹²⁹ In just five years, the national median sale price for a house rose by 32%.¹³⁰ However, not every city is experiencing the national housing crisis in the same way. Houston, Texas, often regarded as the poster child of zoning elimination,¹³¹ saw housing prices rise by only 320% between 1980 and 2020.¹³² Meanwhile, the national average

126. See *id.* The state's housing gap is broken up as follows: less than or equal to 30% Area Median Income ("AMI") (12.4%); 31%–50% AMI (6.8%); 51%–80% AMI (13%); 81–120% AMI (21.8%); 121%–150% (32.1%); 151%+ AMI (14.0%). *Id.* This demonstrates that the housing gap is more pronounced in the income groups nearest to the AMI. *Id.*

127. This figure was adapted from TANNER, *supra* note 14, at 12 fig. 8.

128. Ronda Kaysen, *Can the U.S. Climb Out of Its 'Unprecedented' Housing Crisis?*, N.Y. TIMES (Dec. 11, 2024), <https://www.nytimes.com/2024/12/11/realestate/housing-market-2024-2025.html> [<https://perma.cc/EX8R-6TQ7> (staff-uploaded, dark archive)].

129. *Id.*

130. *Id.*

131. For a discussion of the merits of Houston's approach to zoning, see GRAY, *supra* note 24, at 143–61. But see Christopher Serkin, *A Case for Zoning*, 96 N.D. L. REV. 749, 796–97 (2020) (arguing that Houston's lack of zoning has led to more urban sprawl and more control in the hands of private parties like homeowners' associations).

132. TANNER, *supra* note 14, at 9.

was a whopping 504%, and Charlotte's housing increased by 450%, meaning that Houston was a full 180% below the national average.¹³³

Ultimately, the rise in home unaffordability coincides with the rise in exclusionary zoning across our state. Necessarily, addressing the widespread use of zoning regulations is essential to tackle the state's housing affordability problem.

III. LEGAL LANDSCAPE OF EXCLUSIONARY ZONING IN NORTH CAROLINA

With zoning at the forefront of our state's housing crisis, one might expect a flurry of legal challenges or legislation aimed at addressing the negative impact of over-zoning on our state. However, the last several decades demonstrate that neither North Carolina's courts nor its general assembly are interested in limiting the zoning power of municipalities.

Recent events in Summerfield are especially illustrative. Summerfield, a bedroom community of Greensboro, formally incorporated in 1996.¹³⁴ From its beginning, the town banned many housing types,¹³⁵ and in its 2021 UDO, continued to outright ban most forms of multifamily housing, including apartments.¹³⁶ At the time of adoption, the town attorney specifically called out this exclusion as a legal issue, stating that the town might need to "put [in] more

133. *See id.*; *How Much an Average Home Has Cost in the United States Over Time*, MADISON TR. CO. (2023), <https://www.madisontrust.com/wp-content/uploads/2024/05/average-home-cost-over-time-3.png> [<https://perma.cc/2U99-T4W3>].

134. Ren Larson, *Divisions and Subdivisions*, ASSEMBLY (May 15, 2023), <https://www.theassemblync.com/business/summerfield-greensboro-development/> [<https://perma.cc/4W4C-Y684>].

135. *See id.* Summerfield tripled in size in the 1990s. *Id.* When Greensboro expanded into unincorporated Guilford County, many Summerfield residents did not want to become part of Greensboro. *Id.* As a result, the town adopted regulations that produced high-income housing with one-acre minimum lots. *Id.*

136. SUMMERFIELD, N.C., UNIFIED DEV. ORDINANCE art. 4.E (2021) (noting the absence of a multifamily housing zoning designation). Although Summerfield does not have a multifamily designation, the town does have zoning types for duplexes and triplexes, however it is unclear how utilized those designations are. *Id.* Despite being a town of roughly 11,150, Summerfield's UDO is a staggering 451 pages long. *See* SUMMERFIELD, N.C., UNIFIED DEVELOPMENT ORDINANCE (2021); *QuickFacts: Summerfield Town, North Carolina*, U.S. CENSUS BUREAU (2023), <https://www.census.gov/quickfacts/fact/table/summerfieldtownnorthcarolina/POP010210> [<https://perma.cc/3974-KZH2> (staff-uploaded archive)]. That makes Summerfield's UDO less than a hundred pages shorter than Raleigh's and less than two hundred pages shorter than Charlotte's. *Supra* note 77 and accompanying text. This is true despite Raleigh having a population of 482,295, which is nearly fifty times greater than Summerfield's. *QuickFacts: Raleigh City, North Carolina*, U.S. CENSUS BUREAU (2023), <https://www.census.gov/quickfacts/fact/table/raleighcitynorthcarolina/PST045224> [<https://perma.cc/KLY4-TAE9> (staff-uploaded archive)]. Meanwhile, Charlotte has a population of 911,311, nearly ninety times greater than Summerfield's. *QuickFacts: Charlotte City, North Carolina*, U.S. CENSUS BUREAU (2023), <https://www.census.gov/quickfacts/fact/table/charlottecitynorthcarolina/PST045224> [<https://perma.cc/A6MJ-MDNR> (staff-uploaded archive)].

dense housing, maybe even apartments, God forbid,” to avoid legal challenges.¹³⁷

Summerfield’s restrictions were first challenged by a proposal by developer David Couch that goes back as far as 2016.¹³⁸ Couch owns 963 acres of land in Summerfield that he proposed turning into a mixed-use development, known as Villages of Summerfield Farms, with luxury apartments and other housing types, amounting to upwards of 4,000 housing units.¹³⁹ Initially, the town suggested amending the planned development ordinance to allow for Couch’s proposal, but after fierce community backlash, the town rejected the addition of apartments, only allowing for one acre minimum lot sizes with at most a duplex or a triplex.¹⁴⁰ After years of exploring legal channels, Couch realized he had no legal claim besides the almost insurmountable task of demonstrating that the zoning policies violated the Fair Housing Act.¹⁴¹

After failing to convince the town to amend its rules on multifamily housing and ruling out any direct legal challenge, Couch shifted his focus to advocating for legislative action.¹⁴² Notably, Couch used his outsized influence as one of North Carolina’s richest developers and his geographic proximity to General Assembly leadership to push for a zoning change.¹⁴³ Ultimately, in 2024, the North Carolina General Assembly passed House Bill 909, which

137. Larson, *supra* note 134.

138. *Id.*

139. See Chris Burritt, *What’s Next After Summerfield De-Annexation*, CONNECT2 NW GUILFORD (July 18, 2024), <https://www.connect2nwguilford.com/articles/featured-stories/whats-next-after-summerfield-de-annexation/> [https://perma.cc/4HB4-E7EJ] [hereinafter Burritt, *What’s Next*]. For an overview of the Villages of Summerfield Farms project, see *Master Plan*, VILLS. OF SUMMERFIELD FARMS (2025), <https://villagesofsummerfieldfarms.com/goals> [https://perma.cc/JQP9-276K (staff-uploaded archive)]. Some of the plan’s highlights include a network of greenway trails, a variety of cottage court housing communities, mixed-use villages, and apartment buildings scattered among single-family housing types. See *id.* The project aims to provide houses in the range of \$250,000 to \$2,000,000. *Frequently Asked Questions*, VILLS. OF SUMMERFIELD FARMS (2025), <https://villagesofsummerfieldfarms.com/frequently-asked-questions> [https://perma.cc/P4NB-T76B (staff-uploaded archive)].

140. Larson, *supra* note 134.

141. See *id.*; Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. § 3601). This Comment explores the impossibility of a legal challenge like this to exclusionary zoning policies in the subsequent section. See *infra* Section III.A. In 2024, the NAACP sued Summerfield, alleging that the town’s exclusionary zoning policies discriminated against minorities and violated the Fair Housing Act. Scott D. Yost, *Greensboro NAACP Files Civil Rights Complaint Against Summerfield*, RHINO TIMES (Mar. 22, 2024), <https://www.rhinotimes.com/news/greensboro-naacp-files-civil-rights-complaint-against-summerfield/> [https://perma.cc/S3XD-LGBC].

142. Larson, *supra* note 134.

143. David Couch lives in the district of North Carolina Senate President Pro Tempore Phil Berger. *Id.* Additionally, Couch is the CEO of Blue Ridge Companies and has directly overseen the construction of over \$800 million in residential units. *David Couch*, VILLS. OF SUMMERFIELD FARMS (2025), <https://villagesofsummerfieldfarms.com/team/davidcouch> [https://perma.cc/9G66-M5R5].

included a provision de-annexing Couch's land from Summerfield.¹⁴⁴ The state house representative for Summerfield referred to the bill as "the biggest de-annexation in North Carolina's history."¹⁴⁵ As a result, many of the restrictions that previously hindered the Summerfield Farms development disappeared, and within a few months, the county rezoned the property to allow for Couch's mixed-use development.¹⁴⁶

At every step of the way, the Summerfield saga demonstrates not only the impossibility of direct legal challenges to local zoning regulations but also the unwillingness of the General Assembly to tackle them head on. Rather than revoke Summerfield's power to have a blanket ban on apartments, the General Assembly performed legislative gymnastics, jumping through hoops to reach an improbable resolution: Couch got his development, and Summerfield got to keep its law.

This puzzling approach is emblematic of how North Carolina has handled these kinds of zoning disputes in both its courts and its legislature. This Part first discusses how North Carolina courts' deferential approach to legal challenges to zoning has led to results like that in Summerfield. Second, it explains how the General Assembly's approach to its power over local governments, and its recent rejections of zoning reforms, demonstrate a similarly deferential legislative strategy to local zoning power.

A. *Legal Challenges to Exclusionary Zoning*

Summerfield's zoning restrictions were not challenged in North Carolina courts as being unreasonable because North Carolina, following the tradition of *Village of Euclid, Ohio v. Ambler Realty Co.*,¹⁴⁷ has long given significant deference to zoning laws.¹⁴⁸ Generally, a zoning regulation is to be upheld unless it is

144. H.B. 909 § 10, 156th Gen. Assemb., Reg. Sess. (N.C. 2024). The land in question, spanning from Summerfield Road to Interstate 73, now falls in the jurisdiction of Guilford County, meaning that Couch no longer pays property taxes in Summerfield. Burritt, *What's Next*, *supra* note 139.

145. Burritt, *What's Next*, *supra* note 139.

146. DJ Simmons, *Guilford County Planning Board Approves Rezoning Majority of De-Annexed Summerfield Land*, WFDD (Aug. 23, 2024), <https://www.wfdd.org/2024-08-23/guilford-county-planning-board-approves-rezoning-majority-of-de-annexed-summerfield-land> [<https://perma.cc/AWE8-FVYN>]. A year later, Greensboro annexed eighty acres of Couch's development, and the city is contemplating an annexation of the other 898 acres. Chris Burritt, *Developer Couch Seeks Greensboro's Biggest Annexation*, BUS. N.C. (July 29, 2025), <https://businessnc.com/developer-couch-seeks-greensboros-biggest-annexation/> [<https://perma.cc/2MLT-32S6> (staff-uploaded archive)].

147. 272 U.S. 365 (1926).

148. See *id.* at 394–96; Adam Lovelady, *Impermissible Considerations for Legislative Development Decisions*, COATES' CANONS: N.C. LOC. GOV'T L. (Oct. 15, 2021), <https://canons.sog.unc.edu/2021/10/impermissible-considerations-for-legislative-development-decisions/> [<https://perma.cc/6ZZP-5ECZ>]. The Supreme Court of North Carolina first adopted the deferential approach to local zoning in *Harden v. City of Raleigh*, 192 N.C. 395, 135 S.E. 151 (1926), a case that occurred mere months after the United States Supreme Court decided *Euclid*. *Id.* at 397–98, 135 S.E. at 153.

found to be arbitrary and capricious.¹⁴⁹ This rule has gone unchallenged for a hundred years and until recently, has faced very little criticism.¹⁵⁰

Largely, North Carolina's tweaking of this formulation has mirrored, and sometimes predated, federal changes. In *Clinard v. City of Winston-Salem*, the Supreme Court of North Carolina struck down explicit racial zoning.¹⁵¹ Further limits on discriminatory zoning laws took effect following *Village of Arlington Heights v. Metropolitan Housing Development Corp.*¹⁵² and the passage of the Federal and North Carolina Fair Housing Acts.¹⁵³

Outside of the fair housing context,¹⁵⁴ North Carolina courts have sparingly limited local zoning power so long as there is "some valid land use rationale" for a decision.¹⁵⁵ That rationale can be evidenced by planning board

149. *Euclid*, 272 U.S. at 395. It's worth noting that in *Euclid*, the Court upheld "severe zoning restrictions that categorically banned the construction of multi-family housing in large parts of the city of Euclid." Braver & Somin, *supra* note 83, at 6. The trial court found that the "true object of the ordinance" in *Euclid* was to "classify the population and segregate them according to their income or situation in life." *Id.* at 7. Prophetically, the trial judge "warned that upholding the *Euclid* ordinance would set a precedent empowering municipalities to use zoning ordinances for purposes of racial exclusion." *Id.* at 8.

150. See generally Braver & Somin, *supra* note 83 (arguing that *Euclid* should be limited or overturned). As Professors Braver and Somin observe, "Scholars and policy analysts across the political spectrum have advocated policy changes to cut back on exclusionary zoning," but there has been "no modern in-depth scholarly analysis [that] has advocated overturning or severely limiting *Village of Euclid*." *Id.* at 3. They go on to argue that "exclusionary zoning is generally unconstitutional under originalist understandings of the Takings Clause." *Id.* at 4.

151. *Clinard*, 217 N.C. 119, 121, 6 S.E.2d 867, 868–69.

152. 429 U.S. 252 (1977). Unlike *Euclid*, there has been some scholarship and legal challenges to *Arlington Heights*. See, e.g., Robert G. Schwemm, *Reflections on Arlington Heights: Fifty Years of Exclusionary Zoning Litigation and Beyond*, 57 UIC L. REV. 389 (2024) (arguing that *Arlington Heights* curbed "race-based challenges to restrictive zoning").

153. See Fair Housing Act, Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. § 3601); Fair Housing Act, ch. 522, 1983 N.C. Sess. Laws 441 (codified at N.C. GEN. STAT. § 41A-4).

154. Although the state supreme court has seldom done so, North Carolina's Court of Appeals has put forth some restrictions on local zoning power in certain situations. Lovelady, *supra* note 148. North Carolina courts have addressed local zoning power to make decisions based on ownership status. *Id.* In *Graham Court Associates*, the court found that an ordinance "requir[ing] different permitting and standards for condominiums as compared to apartments" violated N.C. GEN. STAT. 160D-104's requirement that zoning regulations "attach to and run with the land." *Id.* (citing *Graham Court Assoc.'s. v. Town Council of Chapel Hill*, 53 N.C. App. 543, 551, 281 S.E.2d 418, 423 (1981)). Key to the court's rationale was that zoning is inherently about land use, and that the land use impacts of a multifamily apartment complex are similar regardless of whether they are owner- or renter-occupied. Lovelady, *supra* note 148. More recently, the North Carolina Court of Appeals has held that an ordinance requiring a property owner to live on the property to build an accessory dwelling unit was similarly unconstitutional. *City of Wilmington v. Hill*, 189 N.C. App. 173, 178, 657 S.E.2d 670, 673 (2008).

155. Lovelady, *supra* note 148. "There must be a legitimate rationale for a land use decision—the appropriateness of land uses, the policies of the comprehensive plan, the availability of public infrastructure and services for example." *Id.*

discussions, written development ordinances, or comprehensive plans.¹⁵⁶ This zoning-friendly test has almost always been satisfied.

North Carolina zoning expert, Professor Adam Lovelady, identified only two instances where North Carolina courts found a local zoning regulation to be arbitrary and capricious.¹⁵⁷ One such instance was in *Gregory v. County of Harnett*.¹⁵⁸ In *Gregory*, the court held that a downzoning, which was approved merely three days after a rejection of an identical request, was arbitrary and capricious.¹⁵⁹ The court reasoned that there was “no evidence in the record that the Commissioners considered the character of the land, the suitability of the land for the uses permitted in the proposed zoning district, the comprehensive plan or the existence of changed circumstances justifying the rezoning.”¹⁶⁰ Similarly, in *Town of Green Level v. Alamance County*,¹⁶¹ the court found that a county’s zoning proposal was arbitrary and capricious because the ordinance was adopted without reviewing the comprehensive plan and did not advance any health, safety, or other purpose.¹⁶²

Otherwise, the history of successful legal challenges in North Carolina to zoning ordinances is incredibly bare. However, a string of recent cases suggests that the Supreme Court of North Carolina is rethinking the heavy deference given to local municipalities. *Schooldev East, LLC v. Town of Wake Forest*,¹⁶³ a case decided by the Supreme Court of North Carolina in January 2025, suggests that the court’s long history of deference to local zoning may be undergoing a change.

In *Schooldev*, the court held that ambiguous local zoning ordinances must be interpreted “in favor of the free use of property” because property rights

156. *Id.*

157. *See id.*

158. 128 N.C. App. 161, 493 S.E.2d 786 (1997).

159. *Id.* at 164–65, 493 S.E.2d at 788–89. The goal of the downzoning in this case was to prevent the spread of an existing trailer park that was near several other residential neighborhoods. *Id.*, 493 S.E.2d at 788–89.

160. *Id.* at 165, 493 S.E.2d at 789. The court reached this conclusion because the commissioners almost exclusively based their decision to downzone on complaints by citizens living near a trailer park. *Id.* at 165, 493 S.E.2d at 788–89. One commissioner even suggested that the downzoning would decrease crime but presented no evidence other than alluding to “the type of people who live in manufactured home parks.” *Id.* at 165, 493 S.E.2d at 789.

161. 184 N.C. App. 665, 646 S.E.2d 851 (2007).

162. *Id.* at 674–75, 646 S.E.2d at 857. Specifically, the zoning in *Town of Green Level* was adopted with the goal of preventing expansion of the county’s extraterritorial jurisdiction. *Id.*, 646 S.E.2d at 857. Although the town argued that they were protecting water resources in their county, the new zoning laws allowed for manufacturing uses, and thus, it was determined that the only goal was to block the county’s extraterritorial jurisdiction. *Id.*, 646 S.E.2d at 857.

163. 386 N.C. 775, 909 S.E.2d 181 (2024).

have a “foundational place . . . in our constitutional order.”¹⁶⁴ At issue was the Town of Wake Forest’s UDO and a provision that required new schools to have sidewalks and bicycle access to nearby neighborhoods.¹⁶⁵ A charter school applying for a permit was denied approval by Wake Forest’s planning board because the proposed plan failed to provide “pedestrian and bicycle connectivity to *all* residential areas surrounding the campus.”¹⁶⁶ However, the UDO provision was ambiguous, and thus, the court ruled that the ambiguity should be resolved in favor of the property owner.¹⁶⁷

In another recent case, *Arter v. Orange County*,¹⁶⁸ the Supreme Court of North Carolina plainly stated that “[l]ocal governments have a responsibility to enact clear, unambiguous zoning rules.”¹⁶⁹ Like in *Schooldev*, the provision in *Arter* was ambiguous because of a conflict between a table within the ordinance and the text of the ordinance itself.¹⁷⁰ Ultimately, the ordinance provided clear resolution by stating that the text of the ordinance controlled, and hence, the court ruled in favor of the county.¹⁷¹

A caveat here is that both *Schooldev* and *Arter* rely on a flurry of precedent from the Supreme Court of North Carolina that suggest the state has a “longstanding public policy [of resolving ambiguities in] favor[of] ‘the free and unrestricted use and enjoyment of land.’”¹⁷² Nonetheless, both of these cases represent recent and rare examples of the court weighing in on the adequacy of a local zoning regulation and in the case of *Arter*, even stating how zoning

164. *Id.* at 789, 909 S.E.2d at 192. The idea that zoning ordinances should be interpreted this way has its roots in *Yancey v. Heafner*, 268 N.C. 263, 266, 150 S.E.2d 440, 443 (1966) (“It has been held that well-founded doubts as to the meaning of obscure provisions of a Zoning Ordinance should be resolved in favor of the free use of the property.” (quoting YOKLEY, ZONING LAW AND PRACTICE § 184 (2d ed. supp. 1962))). The idea that property rights are fundamental is seen in North Carolina case law as early as 1787’s *Bayard v. Singleton*, 1 N.C. (Mart.) 5 (1787). In *Bayard*, the court held that the fundamental right to property is as old as the state, referencing the North Carolina Constitution’s “law of the land” clause. *Id.* at 9; see also N.C. CONST. OF 1776, DECLARATION OF RIGHTS § XII (“That no Freeman ought to be taken, impri[s]oned, or di[ss]eized of his freehold, Liberties or Privileges, or outlawed or exiled, or in any Manner de[s]troyed, or deprived of his Life, Liberty, or Property but by law of land.”). This language remains enshrined in the North Carolina Constitution. See N.C. CONST. art. I, § 19. It is commonly understood that North Carolina’s founders, like many of our nation’s founders, were inspired by John Locke’s Second Treatise. See generally JOHN LOCKE, SECOND TREATISE OF GOVERNMENT § 138 (Harlan Davidson, Inc. 1982) (1689) (“Thirdly, the supreme power cannot take from any man any part of his *property* without his own consent. For the preservation of property being the end of government, and that for which men enter into society . . .”).

165. *Schooldev*, 386 N.C. at 786, 909 S.E.2d at 190.

166. *Id.*, 909 S.E.2d at 190.

167. *Id.* at 789, 909 S.E.2d at 192.

168. 386 N.C. 352, 904 S.E.2d 715 (2024).

169. *Id.* at 352, 904 S.E.2d at 716.

170. *Id.* at 357, 904 S.E.2d at 719.

171. *Id.* at 357–58, 904 S.E.2d at 719.

172. *Schooldev*, 386 N.C. at 789, 909 S.E.2d at 192 (citing Kirby v. N.C. Dep’t of Transp., 368 N.C. 847, 853, 786 S.E.2d 919, 924 (2016)).

ordinances should be drafted. This level of “weighing-in” by the court is uncommon in an area of law where the norm is for the court to defer to a local government’s every whim. Overall, the recent cases suggest only a minor change in what has been a hundred years of consistent and unwavering adherence to *Euclid*.

Applying this history of deference to the Summerfield development situation, it is obvious why no direct challenge was brought to Summerfield’s law. No matter how unreasonable a rule banning multifamily housing may be, there are still many rationales for such a rule that would survive *Euclid*—such as limiting traffic, preventing overcrowding in schools, and preserving city infrastructure. In the case of Summerfield, these reasons are all part of a larger hostility toward growth that makes up the town’s very origin but nonetheless represent permissible reasons to survive being deemed arbitrary and capricious by a North Carolina court.

Accordingly, the present state of North Carolina’s legal landscape does not capture situations like that of Summerfield—where the law was not ambiguous—and suggests that even the most anti-growth zoning regulations will survive in our present judicial system.

B. *Attempts to Legislate Exclusionary Zoning*

The legislative workaround utilized in the Summerfield situation demonstrates the General Assembly’s view of its role in the zoning process. Because North Carolina is a Dillon’s Rule state,¹⁷³ the state has complete power over all zoning. It would be completely permissible for the General Assembly to simply pass a law invalidating Summerfield’s zoning ordinances and rejecting similar ones across the state.

Yet, the development in Summerfield showcases the political machinations that have riddled the history of zoning regulation in North Carolina. Historical practice demonstrates that the General Assembly believes that the state has the power to reject local zoning but should seldom use it.

In fact, until very recently, North Carolina had rarely amended its land use laws. “Chapter 160D of the North Carolina General Statutes,” passed in 2019, “[was] the first major recodification and modernization of city and county development regulations since 1905.”¹⁷⁴ However, this five-year undertaking made very little substantive changes to local land use power and instead involved compiling and organizing the state’s land use laws into a more digestible format.¹⁷⁵

173. *Supra* Subsection I.A.2.

174. OWENS & LOVELADY, *supra* note 43, at vii.

175. *See id.*

One area historically where the legislature, like its judicial counterpart, has weighed in, is in the realm of fair housing. Chapter 41A makes up the North Carolina Fair Housing Act.¹⁷⁶ The statute limits local government authority to “discriminate in land-use decisions or in the permitting of development based on race, color, religion, sex, national origin, handicapping condition, [or] familial status.”¹⁷⁷ The state Fair Housing Act also prevents discrimination against “affordable housing units for families or individuals with incomes below eighty percent (80%) of area median income.”¹⁷⁸ However, the state does acknowledge that local governments may have a legitimate interest in “limiting high concentrations of affordable housing” and thus permits denials based on that premise.¹⁷⁹

Despite this rather limited history of legislative intervention in zoning, the recent affordable housing crisis has triggered a series of proposed bills aimed at increasing the number of affordable housing units. These attempts have largely been met with ire because fighting for local zoning reform almost always has severe negative political consequences with very little political upside.¹⁸⁰ One reason is that the majority of voters often benefit from the status quo, so although opposing zoning reforms that allow for new housing may decrease total social utility, the homeowners are actually increasing their share of it, because limits on supply inherently mean that the price of housing goes up.¹⁸¹ The political consequences are stark since “homeowners are more likely to vote than renters” and thus carry more political capital.¹⁸² Largely, attempts by state officials to preempt local zoning codes often result in a game of “whack-a-mole” as municipalities develop new ways to block development.¹⁸³

176. State Fair Housing Act, ch. 522, 1983 N.C. Sess. Laws 441 (codified at N.C. GEN. STAT. § 41A (2025)).

177. *Id.* § 41A-4(g).

178. *Id.*

179. *Id.* Practically speaking, this is a large loophole for local municipalities seeking to stifle the construction of affordable housing.

180. There are several reasons for this. State legislators are re-elected every two years. With their representation being hyperlocal, the big issue in a state legislative race very well could be a local zoning ordinance. Quite frequently, exclusionary zoning policies are very popular with the individuals who already live in a town and are even more popular with the power players and local officials who often help legislators to get elected. See Alex Sernyak, Note, *Stop Subsidizing the Suburbs: Property Tax Reform and Ending Exclusionary Zoning*, 31 N.Y.U. ENV'T L. REV. 243, 270 (2023). Hence, the actors that want zoning reform frequently have little sway in local politics and often do not live in the town where reform is desired, meaning that they do not even vote for the elected officials. See *id.* Accordingly, it is easy to see how the political calculus of local zoning reform weighs heavily toward inaction by state officials. See *id.*

181. *Id.*

182. *Id.*

183. *Id.* In North Carolina, System Development Fees represent an example of a state-created power given to localities to limit development. N.C. GEN. STAT. § 162A-8; see also Kara Millonzi, 2023

1. Failures to Legislate

The rise in legislative discussion about affordable housing and zoning reform, despite the aforementioned political difficulties, is noteworthy. In the 2015–2016 legislative session, only three bills were proposed containing the term “affordable housing,” and none became law.¹⁸⁴ In 2017–2018, there were eighteen, with three becoming law.¹⁸⁵ In 2019–2020, there were twenty-four, with three becoming law.¹⁸⁶ Affordable housing legislation spiked in the 2021–2022 session, with thirty-five bills mentioning it.¹⁸⁷ But only four became law, and almost all of those “affordable housing” mentions were technical or budgetary in nature.¹⁸⁸ Similarly, the 2023–2024 session saw thirty-one mentions of affordable housing with only a handful of technical/budgetary bills becoming law.¹⁸⁹ Thus far, the 2025–2026 session is nearly identical.¹⁹⁰

The types of legislation proposed to promote affordable housing can be broken up into two primary categories: (1) subsidies to provide greater access to affordable housing, and (2) direct legislative interference with local zoning authority.

Updates to System Development Fee Law, COATES’ CANONS: N.C. LOC. GOV’T L. (Oct. 25, 2023), <https://canons.sog.unc.edu/2023/10/2023-updates-to-system-development-fee-law/> [<https://perma.cc/8VWY-QZUF>]. System Development Fees allow local municipalities to charge new developments a fee per house to hook up to the municipalities’ water and sewer. *See id.* The fees, first implemented in 2017, have been widely adopted across the state. *See id.*

184. N.C. GEN. ASSEMB., “affordable housing”, 3 results (Nov. 11, 2025), <https://www.ncleg.gov/Search/BillText/0/0/2015/?sSearchText=affordable%20housing&sSortBy=0> [<https://perma.cc/QVD9-FY49>] (filtered by “Bill Text” and “2015–2016 Session”) (showing three bills introduced addressing affordable housing).

185. N.C. GEN. ASSEMB., “affordable housing”, 18 results (Nov. 11, 2025), <https://www.ncleg.gov/Search/BillText/0/0/2017/?sSearchText=affordable%20housing&sSortBy=0> [<https://perma.cc/LDT3-23EL>] (filtered by “Bill Text” and “2017–2018 Session”) (showing eighteen bills introduced addressing affordable housing).

186. N.C. GEN. ASSEMB., “affordable housing”, 24 results (Sep. 19, 2025), <https://www.ncleg.gov/Search/BillText/0/0/2019/?sSearchText=affordable%20housing&sSortBy=0> [<https://perma.cc/MW5C-GB8E>] (filtered by “Bill Text” and “2019–2020 Session”) (showing twenty-four bills introduced addressing affordable housing).

187. N.C. GEN. ASSEMB., “affordable housing”, 35 results (Sep. 19, 2025), <https://www.ncleg.gov/Search/BillText/0/0/2021/?sSearchText=affordable%20housing&sSortBy=0> [<https://perma.cc/HZD4-M3C4>] (filtered by “Bill Text” and “2021–2022 Session”) (showing thirty-five bills introduced addressing affordable housing).

188. *Id.*

189. N.C. GEN. ASSEMB., “affordable housing”, 31 results (Sep. 19, 2025), <https://www.ncleg.gov/Search/BillText/0/0/2023/?sSearchText=affordable%20housing&sSortBy=0> [<https://perma.cc/S2E4-9ZY4>] (filtered by “Bill Text” and “2023–2024 Session”) (showing thirty-one bills introduced addressing affordable housing).

190. N.C. GEN. ASSEMB., “affordable housing”, 30 results (Sep. 19, 2025), <https://www.ncleg.gov/Search/BillText/0/0/2025/?sSearchText=affordable%20housing&sSortBy=0> [<https://perma.cc/NLY2-23ZY>] (filtered by “Bill Text” and “2025–2026 Session”) (showing thirty bills introduced addressing affordable housing).

The first set of bills focuses on providing funding to local affordable housing funds and the state housing trust fund.¹⁹¹ In turn, these funds are used for downpayment assistance, first time homebuyer vouchers, and looser lender policies for those below average median income.¹⁹² These bills do not interfere with local zoning directly and thus miss many of the issues triggering the housing crisis as outlined in Section II.B.¹⁹³ While subsidizing low-income housing may be a piece of resolving the housing crisis, it is unlikely that such reforms alone can resolve the housing affordability crisis in North Carolina because they largely increase demand for housing while failing to address the underlying supply issues crippling the housing market.¹⁹⁴ The shortcoming of

191. See S.B. 750, 157th Gen. Assemb., Reg. Sess. (N.C. 2025); S.B. 446, 157th Gen. Assemb., Reg. Sess. (N.C. 2025); H.B. 645, 156th Gen. Assemb., Reg. Sess. (N.C. 2023). These bills have all been proposed by Democratic members and do not see the same bipartisan support that the second set of bills garner. However, names of these bills like “Restore the American Dream” and “Expand Workforce Housing” demonstrate that North Carolina’s politicians increasingly understand the state’s housing shortage to be in direct conflict with fundamental American values. See S.B. 750, *supra*; S.B. 446, *supra*. None of these bills ever moved beyond mere proposal status. Hence, I will discuss them only in passing, as they are better understood as a collective effort to increasingly fund housing opportunities for low-income individuals because they fail to address supply-side issues. See *Senate Bill 750*, N.C. GEN. ASSEMB.: BILL LOOKUP (2025), <https://www.ncleg.gov/BillLookup/2025/S750> [<https://perma.cc/57WU-NAER>]; *Senate Bill 446*, N.C. GEN. ASSEMB.: BILL LOOKUP (2025), <https://www.ncleg.gov/BillLookup/2025/S446> [<https://perma.cc/2T62-2Y8Y>]; *House Bill 645*, N.C. GEN. ASSEMB.: BILL LOOKUP (2023), <https://www.ncleg.gov/BillLookup/2023/H645> [<https://perma.cc/RV9C-FHLB>]. This is further underscored by 2022’s NC Affordable Housing Act, H.B. 1114, which tried to provide \$100,000,000 in recurring funds to the N.C. Housing Trust Fund to resolve the affordability crisis. H.B. 1114, 155th Gen. Assemb., Reg. Sess. (N.C. 2022). However, the N.C. Housing Trust Fund’s purpose is not to help decrease the cost of building a home, but rather to help “finance supportive housing.” *Our Financing*, N.C. HOUS. FIN. AGENCY, <https://www.nchfa.com/about-us/our-financing> [<https://perma.cc/G7UZ-ZRY9>]. These bills, while seeking to address affordable housing, do so in a way that (1) leaves in place harmful zoning regulations that increase the price of homes, and (2) helps to reinforce them by providing financing for those very same price-inflated homes. See Christina Mojica, *From Shortage to Stability: Why Vouchers Need Housing Supply to Work*, REASON FOUND. (Dec. 31, 2024), <https://reason.org/commentary/from-shortage-to-stability-why-vouchers-need-housing-supply-to-work/> [<https://perma.cc/94MZ-U442>]. H.B. 1114 also proposed making housing discrimination on the basis of “source of income” a violation of the state fair housing act. See H.B. 1114, *supra*. Similar subsidy-like approaches have been implemented at the federal level through programs like the Federal Low-Income Housing Tax Credit, which Representative Wiley Nickel, a former United States Congressman from Cary, recently proposed extending. Chantal Allam, ‘Carrot Versus Stick’: Could Developers Be Enticed To Maintain Affordable Housing?, NEWS & OBSERVER (July 15, 2024), <https://www.newsobserver.com/news/business/real-estatenews/article289874124.html> [<https://perma.cc/22K7-7YM8> (staff-uploaded archive)].

192. TOBIAS J. PETER, AM. ENTER. INST., *ACHIEVING HOUS. ABUNDANCE THROUGH STATE AND LOC. LAND USE ZONING REFORM* 20 (Jan. 17, 2024), <https://www.aei.org/wp-content/uploads/2024/01/Tobias-Peter-Joint-Economic-Committee-testimony-written-1.17.2024-FINAL-v2.pdf?x85095> [<https://perma.cc/5D58-E2FW> (staff-uploaded archive)].

193. See *supra* Section II.B.

194. See Mojica, *supra* note 191. Noneconomic motivations for limiting local zoning power also exist. As Professor Connolly points out, social justice advocates “point to single-family zoning’s racist origins, segregating effects, and elevation of nuclear families over other household structures,” as the

these proposals is that they fail to subsidize the physical construction of new housing and instead focus on bringing new potential homebuyers into the already fiercely competitive housing market.¹⁹⁵

The second set of bills is based on the premise that zoning restrictions must be reduced to “respond more freely to market demand.”¹⁹⁶ Under this theory, developers and builders in states like North Carolina would eagerly build more affordable housing—if free of the additional costs imposed by zoning ordinances.¹⁹⁷ These bills, H.B. 409,¹⁹⁸ S.B. 349,¹⁹⁹ and S.B. 317,²⁰⁰ each vary in scope.

H.B. 409, proposed in 2023, sought to streamline the creation of Accessory Dwelling Units (“ADU”) across North Carolina.²⁰¹ Under this proposal, North Carolinians would have a right to build at least one detached dwelling unit on their property if it was zoned for residential use.²⁰² Durham, Raleigh, Chapel Hill, and several other major municipalities have already legalized ADUs with some restrictions, which would be preempted by H.B. 409.²⁰³ Despite being a rather narrow proposal compared to other more ambitious forms of zoning overhaul, H.B. 409 went nowhere.²⁰⁴

S.B. 349 represented a more ambitious bipartisan proposal and was a full-fledged invocation of Dillon’s Rule by state officials.²⁰⁵ Rather than permit one particular “middle housing” use, S.B. 349 sought to legalize all forms of middle

primary reasons for zoning reform. Brian J. Connolly, *The Black Box of Single-Family Zoning Reform*, 65 B.C. L. REV. 2327, 2333 (2024). Meanwhile, “[e]nvironmentalists underscore the high greenhouse gas emissions attributable to low-density, single-family development’s inherent automobile dependence,” as a reason for reform. *Id.* Although these factors may motivate support for some of North Carolina’s proposed zoning reforms, most of the focus has been on the economics behind the housing crisis and not zoning’s racist origins nor its potential environmental impact.

195. See *supra* Section II.B.

196. Christopher Serkin, *Creating Density: The Limits of Zoning Reform*, 11 BRIGHAM-KANNER PROP. RTS. J. 183, 184 (2022).

197. *Id.* at 184–85.

198. H.B. 409, 156th Gen. Assemb., Reg. Sess. (N.C. 2023).

199. S.B. 349, 155th Gen. Assemb., Reg. Sess. (N.C. 2021).

200. S.B. 317, 156th Gen. Assemb., Reg. Sess. (N.C. 2023).

201. H.B. 409, 156th Gen. Assemb., Reg. Sess. (N.C. 2023).

202. *Id.*

203. Will Doran, *To Help With Affordable Housing, NC Lawmakers Look to Tiny Homes*, WRAL NEWS (Apr. 20, 2023, at 17:30 ET), <https://www.wral.com/story/to-help-with-affordable-housing-nc-lawmakers-look-to-tiny-homes/20821207/> [<https://perma.cc/NPV5-X6WF>]. These restrictions include parking requirements, owner-occupancy restrictions, connection to the primary dwelling’s utilities, and required setbacks, all of which make the construction of ADUs more expensive. See TANNER, *supra* note 14, at 15.

204. See *House Bill 409*, N.C. GEN. ASSEMB.: BILL LOOKUP (2023), <https://www.ncleg.gov/BillLookup/2023/H409> [<https://perma.cc/X3R2-KZ8B>]. ADU reforms across the country have had some success. Connolly, *supra* note 194, at 2392. The primary benefit of constructing an ADU is the ability to avoid “procedural hurdles” and “financing challenges” that are often prevalent when building a home. *Id.* However, a drawback is that ADUs “generally do not offer a path to homeownership.” *Id.*

205. S.B. 349, 155th Gen. Assemb., Reg. Sess. (N.C. 2021).

housing including duplexes, triplexes, quadplexes, and townhouses across the state.²⁰⁶ In effect, this bill would preempt virtually every single-family zoning district in the state.²⁰⁷ The law also severely limited the practice of “downzoning,”²⁰⁸ which occurs when a locality rezones a plot of land in a more restrictive way. Further, rezoning would only occur if a local government could demonstrate a “change in circumstances that substantially affects the public health, safety, or welfare,” justifying the downzoning.²⁰⁹ S.B. 349, dubbed “the most ambitious” zoning reform in North Carolina’s history,²¹⁰ went to a Senate committee before being withdrawn.²¹¹

However, two years later, a remnant of S.B. 349’s ambitious spirit was embodied in 2023’s S.B. 317, a bill titled “Addressing the Workforce Housing Crisis.”²¹² The purpose of the bill was to provide housing for “firefighters, law enforcement officers, teachers, nurses, first responders, and other vital workers.”²¹³ S.B. 317 actually pushed back on local zoning regulations by creating a new type of zoning that superseded most local zoning regulations, known as a “[w]orkforce housing development.”²¹⁴ The requirements to be classified as a workforce housing development were: (1) that the development was at least ten acres; and (2) that no fewer than twenty percent of the lots in the development be set aside for individuals making less than the area median income.²¹⁵ Importantly, developers who satisfied these criteria would be able to bypass local zoning restrictions on lot size, parking, sidewalks, and more.²¹⁶ For many developers, this cost saving could justify selling twenty percent of the lots at what would likely be a loss, since the sale price of a house sold to someone below the average median income would be substantially lower than what the

206. *Id.* However, many land-use restrictions, like restrictions on building height, size, and location, would have been permitted under S.B. 349. *See* TANNER, *supra* note 14, at 16. Additionally, limitations on density and environmentally based zoning requirements would have been permitted. *Id.*

207. Salim Furth & Joseph Colletti, *North Carolina’s SB 349 Is the Most Ambitious State Zoning Reform Yet*, CAROLINA J. (Apr. 13, 2021), <https://www.carolinajournal.com/opinion/north-carolinas-sb-349-is-the-most-ambitious-state-zoning-reform-yet/> [<https://perma.cc/8W22-72FF>].

208. *Id.*

209. S.B. 349, 155th Gen. Assemb., Reg. Sess. (N.C. 2021).

210. *See* Furth & Colletti, *supra* note 207.

211. *See* Senate Bill 349, N.C. GEN. ASSEMB.: BILL LOOKUP (2021), <https://www.ncleg.gov/BillLookup/2021/S349> [<https://perma.cc/F4LV-NHYU>].

212. S.B. 317, 156th Gen. Assemb., Reg. Sess. (N.C. 2023).

213. *Id.*

214. *Id.*

215. *Id.* § 3(b). Half of the workforce housing lots or ten percent of the total lots were to be set aside for individuals making less than eighty percent of the AMI. *Id.* § 3(b)(2)–(3).

216. *See id.* The bill specifically outlines several zoning restrictions that still apply, like vegetative buffer zones and other environmental regulations. *Id.*

house could go for on the market.²¹⁷ In turn, these developers could develop the other eighty percent of the land how they see fit to cover any losses from the twenty percent workforce housing.

S.B. 317's approach sought to change the economic incentives for developers without eliminating all local zoning powers. In effect, it represented the creation of a state zoning district that could be placed on large plots of land, likely outside town centers, as a way of providing the opportunity to buy a house to workers making modest incomes. However, despite a bipartisan majority of senators co-sponsoring the bill, it never moved.²¹⁸

Each of these attempts at exercising rightful legislative power over municipalities failed. This legislative paralysis is indicative of the overall trend that the Summerfield saga demonstrates. Every inch the legislature takes towards amending local zoning power creates more and more political backlash. S.B. 349 was too aggressive, but even moderate proposals like H.B. 409 and S.B. 317 demonstrate that it is not just the degree to which the state interferes with local zoning power that matters—it is also a matter of interfering at all. Despite the clear authority to revoke zoning power under Dillon's Rule, the state has consistently reinforced the idea that local governments have complete power over land use. Like Gollum coveting the one ring, local governments in North Carolina cling to their zoning power—viewing it as “their precious.”

2. Recent Momentum

Despite this disappointing series of rejections, S.B. 382, passed in December 2024, made it illegal for municipalities to downzone property without the written consent of all property owners directly affected by the downzoning.²¹⁹ Practically, this means that once a municipality designates a particular parcel for multifamily residential use, they will have a very difficult

217. It is hard to estimate the exact cost savings this arrangement would afford developers. If the National Association of Home Builders' figure outlined *supra* is correct, then twenty-five percent of the cost of a house is solely dedicated to many of these local zoning requirements, which demonstrates that a significant incentive would exist for developers to bypass these requirements in the development of new housing units. *See supra* note 116 and accompanying text.

218. The failure of S.B. 317 can largely be attributed to work done by the North Carolina League of Municipalities and the North Carolina Association of County Commissioners, both of which sent out alerts to their members opposing the bill. *See, e.g., Legislative Bulletin*, N.C. LEAGUE OF MUNS., Mar. 31, 2023, at 1–2. Meanwhile, the biggest proponents of the bill, the North Carolina Homebuilders Association and North Carolina Advocates for Justice, did not carry as much political clout as their counterparts.

219. S.B. 382, 156th Gen. Assemb., Reg. Sess. (N.C. 2024). The legislation also expanded the definition of downzoning to include “creating any type of nonconformity on land not in a residential zoning district.” *Id.* Downzoning already included “decreasing the development density of the land to be less dense than was allowed [previously]” and “reducing the permitted uses of the land . . . to fewer uses than were allowed [previously].” *Id.*

time zoning it for single-family use.²²⁰ The bill passed the North Carolina House 63–46 and then passed the Senate 30–19 before it was vetoed by Governor Cooper, who was promptly overridden.²²¹ Just a month after S.B. 382’s passage, several Republican House members who voted for the bill introduced H.B. 24, “An Act to Restore the Authority for Local Governments to Initiate Down-Zoning.”²²² Despite this immediate backlash, S.B. 382 marks a potential change in the tide, as a general assembly that has been historically deferential to the zoning power of local governments has, at the very least, restricted the downzoning power.

Whether S.B. 382’s passage will carry momentum into the 2025–2026 biennium remains uncertain. One proposal to further limit local zoning power, H.B. 765, the “Save the American Dream Act,”²²³ garnered immediate criticism,²²⁴ and like its predecessors, promptly died.²²⁵ However, many of the bill’s provisions were added by the House to S.B. 205, which means the bill is alive for the rest of the biennium.²²⁶ Among the most notable changes would be the addition of a ninety day “shot clock,” which would require municipalities to review rezoning applications within ninety days.²²⁷ Failure to move on an application would trigger approval by default.²²⁸ The bill would also prohibit waiting periods for zoning reapplications.²²⁹ Lastly, the bill requires local

220. It is foreseeable that municipalities will try to navigate around this by utilizing conditional use zoning in combination with single-family zoning types more frequently. *See supra* notes 34–38 and accompanying text.

221. *See Senate Bill 382*, N.C. GEN. ASSEMB.: BILL LOOKUP (2024), <https://ncleg.gov/BillLookup/2023/S382> [<https://perma.cc/9ATV-9LWB>]. Governor Cooper vetoed the bill, likely not because of this provision but because other provisions in the bill took away some Governor appointments to the Board of Elections, Utilities Commission, and North Carolina Highway Patrol. *See ROY COOPER*, N.C. GOVERNOR, OBJECTIONS AND VETO MESSAGE ON SENATE BILL 382 (Nov. 26, 2024), <https://webservices.ncleg.gov/ViewBillDocument/2023/9566/0/S382-Bill-NBC-14728> [<https://perma.cc/C9AJ-NKDD> (staff-uploaded archive)].

222. *See H.B. 24*, 157th Gen. Assemb., Reg. Sess. (N.C. 2025). The bill never went anywhere, but its proposal alone suggests that there was some buyer’s remorse from members who had voted for S.B. 382. *See id.*; *see also* Dylan Phillips, *House Bill Proposed to Overturn New Down-Zoning Law*, BRUNSWICK BEACON (Feb. 6, 2025), https://www.newsargus.com/brunswick_beacon/news/house-bill-proposed-to-overturn-new-down-zoning-law/article_e74199fd-f477-57c8-a442-24704bfa2b7c.html [<https://perma.cc/QL5T-LS8Z>].

223. H.B. 765, 157th Gen. Assemb., Reg. Sess. (N.C. 2025).

224. *See Mary Helen Moore*, *NC Lawmakers Want to Encourage Homebuilding. Cities, Counties Don’t Like How They Plan To Do It.*, WUNC (Apr. 23, 2025), <https://www.wunc.org/politics/2025-04-23/nc-legislature-affordable-housing-bill-765-zoning-local-goverment> [<https://perma.cc/ZF7V-MSAZ>].

225. Kelly Kenoyer, *House Bill Could Create Automatic Approval of Development if Officials Don’t Meet Deadlines*, WHQR (June 17, 2025), <https://www.whqr.org/local/2025-06-17/house-bill-could-create-automatic-approval-of-development-if-officials-dont-meet-deadlines> [<https://perma.cc/FD34-ZGDX>].

226. *See S.B. 205*, 157th Gen. Assemb., Reg. Sess. (N.C. 2025).

227. *Id.* §12(b).

228. *Id.*

229. *Id.* §13.

governments to designate one staff member to review development applications.²³⁰ While this may present a financial burden to smaller municipalities, the goal here seems to be to de-politicize the zoning process by removing elected city councils from the initial application review process.²³¹

At face value, the changes proposed by this shell of the Save the American Dream Act appear minor, but collectively they represent an aggressive attempt to weaken local governments' ability to slow-walk new development. Hence, whether S.B. 382 is a harbinger of a new era of housing policy in North Carolina depends largely on how S.B. 205 fares over this biennium.

IV. RECOMMENDATIONS

Exclusionary zoning, once a useful tool, has worn out its welcome in North Carolina. Properly addressing the housing affordability crisis necessitates action that reduces the proliferation of local zoning ordinances that have restricted the state's housing supply. While it may seem worthwhile to advocate for better zoning policies and decisions at the local level, examples like the Summerfield saga demonstrate that municipalities ultimately serve the individuals who live within their city limits—not the people of the State of North Carolina. This means that local governments rarely have an incentive to avoid zoning policies that harm the state as a whole.

As such, there are three things that should be done to challenge local government zoning power: (1) the Supreme Court of North Carolina should walk away from *Euclid*'s "arbitrary and capricious" standard and instead build on the approaches developed in *Schooldev* and *Arter*; (2) the General Assembly should continue the work of S.B. 382 and revoke traditional local zoning powers through pending legislation like S.B. 205; and (3) the Legislature should pass S.B. 317 and other policies that give developers market incentives to build affordable housing.

First, the Supreme Court of North Carolina should build on the approaches taken in *Schooldev* and *Arter*. Where the United States Supreme Court's *Euclid* holding tells courts to almost never question a local government, *Schooldev* and *Arter* represent recent cases where North Carolina has encountered an ambiguity in a zoning ordinance and dove deeper. By placing weight behind the "free use of property," rather than local government's zoning authority, North Carolina courts can better balance the competing interests that underly suggested zoning policies. Often forgotten in the age of *Euclid* deference are the property owners whose rights are affected by zoning decisions that in some cases are only ad hoc justifications. The court should consider further weighing the rights of property owners affected by zoning decisions,

230. See *id.* §11.

231. See Kenoyer, *supra* note 225.

even in places like Summerfield, where the zoning ordinance is not ambiguous. A stricter standard of review under *Euclid*, or an analysis that surrenders *Euclid* entirely and instead focuses on the Takings Clause,²³² would better protect the interests of property owners and reel in local governments.

Second, the General Assembly should consider legislation that utilizes Dillon's Rule to restore zoning power to the state. While S.B. 382 was a rather small step, it is conceivable that the North Carolina General Assembly could revoke local power to create zoning designations altogether. In fact, as of 2024, six states, California, Maine, Montana, Oregon, Vermont, and Washington, have adopted legislation preempting single family zoning.²³³ While it is unlikely North Carolina will preempt single family zoning in the way envisioned by S.B. 349, the state should strongly consider reducing local government authority to enforce parking minimums, setbacks, height restrictions, and burdensome lot size minimums. This would follow the General Assembly's own pattern of revoking zoning power from out-of-control municipalities, much like they did in 2015 with the law that revoked municipal authority to zone house color.²³⁴ S.B. 205 represents another minor move in the right direction. Forcing municipalities to process applications within ninety days is a safe way to ensure good-faith review. Such a "shot clock" requirement would carve into the 23.8% of housing cost attributable to zoning by cutting the cost associated with a lengthy application period.

Lastly, North Carolina's legislature should consider unique ideas like S.B. 317. The key to S.B. 317's approach is that it provides an avenue to bypass local zoning authority, while still leaving local authority intact in many places. In this way, the bill is far savvier than an approach that just preempts all local zoning authority. Moreover, S.B. 317 is particularly clever for its targeted approach toward the affordable housing crisis. The bill gives reasonable housing opportunities to those at and below area median income, which would in turn give those individuals opportunities to build the generational wealth that comes through homeownership. Without innovative solutions like this—that make it economically feasible for developers to sell houses below market rate—the hope of the American Dream of homeownership is at risk, because homeownership will remain in the hands of the wealthiest North Carolinians alongside the state's newest transplants. Eliminating the environmental, societal, and economic costs of the housing crisis necessitates making it economically attractive for developers to build the new housing our state needs—a law enabling developers to bypass local zoning restrictions is a creative fix.

232. See Braver & Somin, *supra* notes 83, 149, for a summary of this argument.

233. See Connolly, *supra* note 194, at 2368.

234. See *supra* note 81.

CONCLUSION

North Carolina stands at a crossroads. A century of zoning has driven the cost of housing to record highs. To secure the American Dream's promise of homeownership to the next generation of North Carolinians, our state's judges and legislators must act. The best way to reduce local government's zoning power is to: (1) adopt stricter standards of judicial review of zoning provisions; (2) pass legislation reducing local government authority over zoning; and (3) pass legislation bypassing existing local government zoning regulations. Without one or all of these steps, the legal invincibility of zoning regulations could bear an inevitable and depressing end—a crisis of unaffordability that forces North Carolina natives to live out their days in the more affordable South Carolina.

JOEL E. GILLISON**

** J.D. 2026, University of North Carolina School of Law; B.A. 2019, University of North Carolina. Thank you to the *North Carolina Law Review* Volume 104 board and staff for helping to make this Piece a reality. I would also like to thank my incredible wife, Amanda, for her constant loving presence and persistent patience as I worked on this Piece.

Appendix A: Single-Family Zoning Across All 100 NC Counties

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|--------------------------|--|----------------|------------------|----------|
| Alamance ²³⁶ | None | None | None | None |
| Alexander ²³⁷ | 4 to 16 units per acre | 40 ft. | None | Yes |
| Alleghany ²³⁸ | None | None | None | None |
| Anson ²³⁹ | 4.356 units per acre | 35 ft. | Yes | Yes |
| Ashe ²⁴⁰ | 1 unit per acre | None | None | None |
| Avery ²⁴¹ | None | None | None | None |
| Beaufort ²⁴² | None | None | None | None |
| Bertie ²⁴³ | None | None | None | None |

235. I only consider minimum lot sizes/density requirements for the county's R-1 designation, which is typically the densest single-family zoning district. In cases where a county does not have an R-1 designation, I consider its densest detached single-family zoning designation. Similarly, the listed height, parking, and setback requirements are for single-family R-1 homes or the comparable densest zoning designation. If a range is listed, it is because the county has stricter density requirements for properties based on their status on public water and sewer. Generally, properties not hooked up to public utilities have a stricter density requirement.

236. ALAMANCE CNTY. PLAN. DEP'T & PIEDMONT TRIAD COUNCIL OF GOV'T, ALAMANCE COUNTY LAND DEVELOPMENT PLAN (2007), <https://www.alamance-nc.com/planning/wp-content/uploads/sites/21/2013/10/Land-Development-Plan.pdf> [<https://perma.cc/M8EB-G4SU>]. Alamance stands out as an outlier among counties with no zoning. *See supra* note 18.

237. ALEXANDER COUNTY, N.C., LAND DEVELOPMENT CODE art. II, § 154-27(B), tbl. 2.1 (2024), <https://alexandercountync.gov/pdf/land-development-code.pdf> [<https://perma.cc/HUF2-YTZ6>].

238. *See* Alleghany County, N.C., Property Rights Protection Ordinance attach. A at 40–41 (May 15, 2006), <https://www.alleganycounty-nc.gov/ordinances/1-324.pdf> [<https://perma.cc/24JP-SU5E> (staff-uploaded archive)]. As the table demonstrates, counties with no zoning are typically rural counties. *See supra* note 18 (explaining how “unzoned” counties cluster in North Carolina’s mountains and coast).

239. Anson County, N.C., Zoning & Subdivision Ordinance §§ XI.13 tbl., XIII.6.4 (May 7, 2024) (amended Jan. 7, 2025), <https://www.co.anson.nc.us/DocumentCenter/View/1089/Zoning-and-Subdivision-Ordinance---May-7-2024---Amended-January-7-2025> [<https://perma.cc/M4DM-ZYR5> (staff-uploaded archive)]. Anson does not have an R-1 zoning type, its densest is R-10. *Id.* § VIII.2.4.

240. *See* ASHE COUNTY, N.C., CODE OF ORDINANCES § 156.45 (2023), https://codelibrary.amlegal.com/codes/ashecounty/latest/ashecounty_nc/0-0-0-3043#JD_156.45 [<https://perma.cc/JF8K-WV5K> (staff-uploaded archive)].

241. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

242. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

243. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|--------------------------|--|----------------|------------------|----------|
| Bladen ²⁴⁴ | 1.452 to 4.356 units per acre | 40 ft. | Yes | Yes |
| Brunswick ²⁴⁵ | 4.356 to 7.26 units per acre | 50 ft. | Yes | Yes |
| Buncombe ²⁴⁶ | 1.452 to 5.445 units per acre | 35 ft. | None | Yes |
| Burke ²⁴⁷ | 2 to 4 units per acre | 35 ft. | Yes | Yes |
| Cabarrus ²⁴⁸ | 2.5 units per acre | 40 ft. | Yes | Yes |
| Caldwell ²⁴⁹ | None | 35 ft. | Yes | Yes |
| Camden ²⁵⁰ | 1.089 units per acre | 35 ft. | None | Yes |
| Carteret ²⁵¹ | 2.178 to 2.904 units per acre | 50 ft. | Yes | Yes |

244. BLADEN COUNTY, N.C., ZONING ORDINANCE app. A §§ 8.3(a), 10.1.8 tbl. 10-1 (2021), https://library.municode.com/nc/bladen_county/codes/code_of_ordinances [<https://perma.cc/ERQ5-RJGA> (staff-uploaded archive)].

245. BRUNSWICK COUNTY, N.C., UNIFIED DEVELOPMENT ORDINANCE §§ 4.3.3 tbl. 4-1, 6.12.6(A) (Mar. 16, 2015), <https://www.brunswickcountync.gov/874/Unified-Development-Ordinance> [<https://perma.cc/M5HD-PJRH> (staff-uploaded archive)]. Brunswick's R-1 equivalent is MR-3200. *See id.* § 4.4.1(C).

246. *See* BUNCOMBE COUNTY, N.C., CODE OF ORDINANCES art. VI § 78-642 tbl. 2 (Supp. No. 35 2024) (amended 2025), https://library.municode.com/nc/buncombe_county/codes/code_of_ordinances [<https://perma.cc/HAQ6-23G9> (staff-uploaded archive)].

247. BURKE COUNTY, N.C., ZONING ORDINANCE 3-14, 3-25, 3-27, 6-8 (2021), <https://www.burkenc.org/DocumentCenter/View/272/Burke-County-Zoning-Ordinance-PDF> [<https://perma.cc/BB52-U2C6> (staff-uploaded archive)].

248. Cabarrus County, N.C., Development Ordinance §§ 5-6(3), 10-11(2) (Jan. 18, 2022), <https://www.cabarruscounty.us/files/assets/public/v/1/planning-and-development/planning-and-zoning/documents/development-ordinance.pdf> [<https://perma.cc/7JR9-TSQR> (staff-uploaded archive)]. Cabarrus's R-1 equivalent is MDR. *See id.* § 3-7.

249. CALDWELL COUNTY, N.C., ZONING ORDINANCE §§ 80D.3, 80D.6 (2008) (amended 2018), <https://caldwellcountync.org/DocumentCenter/View/496/Zoning-Ordinance-PDF> [<https://perma.cc/AD3E-M9EL> (staff-uploaded archive)]. Caldwell's densest residential zoning is R-15. *See id.* § 80D.

250. Camden County, N.C., Unified Development Ordinance § 3.5.5. (Feb. 4, 2019) (amended 2022), <https://www.camdencountync.gov/DocumentCenter/View/454/Unified-Development-Ordinance-Chapter-151-PDF> [<https://perma.cc/UJY7-QDP6> (staff-uploaded archive)]. Camden's R-1 equivalent is NR. *See id.*

251. CARTERET COUNTY, N.C., CODE OF ORDINANCES §§ 1008, 2002, 3002 (Supp. No. 81 2024), https://library.municode.com/nc/carteret_county/codes/code_of_ordinances?noDeId=CACOCOOR [<https://perma.cc/ZUE9-RC6M> (staff-uploaded archive)]. R-15 is the equivalent R-1 single-family district. *See id.* § 1008.

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|--------------------------|--|----------------|------------------|----------|
| Caswell ²⁵² | 1.452 units per acre | None | Yes | Yes |
| Catawba ²⁵³ | 6.2 units per acre | 45 ft. | None | Yes |
| Chatham ²⁵⁴ | 1.089 units per acre | 75 ft. | None | Yes |
| Cherokee ²⁵⁵ | None | None | None | None |
| Chowan ²⁵⁶ | 8.712 units per acre | 35 ft. | Yes | Yes |
| Clay ²⁵⁷ | None | None | None | None |
| Cleveland ²⁵⁸ | 2 units per acre | None | Yes | None |
| Columbus ²⁵⁹ | 2.178 units per acre | None | Yes | Yes |

252. Caswell County, N.C., Unified Development Ordinance §§ 5.5, 9.6.10 (Sep. 16, 2013) (amended 2017), https://www.caswellcountync.gov/_files/ugd/ddda14_06e5ed5d24534d1990a43d59e409e5b6.pdf [<https://perma.cc/T5G5-WBKB> (staff-uploaded archive)]. Caswell County's zoning regulations only apply to the Hyco Lake area, and not the entire county. *Id.* art. 5 ("Article 5 applies only to the zoned Hyco Lake area of Caswell County . . ."). In this area, the densest residential district is "RR," or "Resort Residential." *See id.* § 5.3.

253. Catawba County, N.C., Unified Development Ordinance §§ 44-404, tbl. 44-404-1 (Feb. 5, 2007) (amended 2023), https://catawbacountync.gov/site/assets/files/10_593/udo_2007_updated_through_2023_toc_cover.pdf [<https://perma.cc/BB9U-BCV2> (staff-uploaded archive)]. Catawba's R-1 equivalent is R-7. *See id.* § 44-416.

254. Chatham County, N.C., Unified Development Ordinance § 2.2.7, tbl. 2.2.7-1 (Nov. 18, 2024), https://www.recodechathamnc.org/_files/ugd/1d382f_3ec161a7d3a1410386_161a76379e0c8.pdf [<https://perma.cc/6XUV-X9US> (staff-uploaded archive)].

255. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

256. Chowan County, N.C., Zoning Ordinance §§ 6.01, tbl. 6-1, 10.03, tbl. 10-1 (Oct. 2, 2006), https://www.chowancounty-nc.gov/index.asp?Type=B_BASIC&SEC=%7B60CC2A8D-8C91-4266-A092-8206C3D8F31A%7D [<https://perma.cc/C94L-GMFG> (staff-uploaded archive)]. Chowan's R-1 equivalent is R-5. *See id.* § 4.02(A).

257. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

258. CLEVELAND COUNTY, N.C., CODE art. VIII, §§ 12-121(d), 12-142(11) (1990) (Supp. No. 71 2024), https://library.municode.com/nc/cleveland_county/codes/code_of_ordinances?nodeId=CD_ORDCLCONOCA [<https://perma.cc/VP7L-QDTE> (staff-uploaded archive)]. Cleveland's R-1 equivalent is R. *See id.* § 12-121(d).

259. Columbus County, N.C., Land Use Regulations Ordinance art. 7, §§ 1.2, 7.2 (Feb. 21, 2022), <https://columbusco.org/sites/default/files/uploads/planning/land-use-regulation-ordinance.pdf> [<https://perma.cc/6BM8-3XLQ> (staff-uploaded archive)]. RA-20 is the densest residential district in Columbus County. *See id.* art. 7, § 1.

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|---------------------------|--|----------------|------------------|----------|
| Craven ²⁶⁰ | None | None | None | None |
| Cumberland ²⁶¹ | 8.712 units per acre | None | Yes | Yes |
| Currituck ²⁶² | 1.089 to 1.742 units per acre | 35 ft. | Yes | Yes |
| Dare ²⁶³ | 2.178 to 2.904 units per acre | 35 ft. | Yes | Yes |
| Davidson ²⁶⁴ | 1.452 units per acre | 35 ft. | None | Yes |
| Davie ²⁶⁵ | 5.445 units per acre | None | Yes | Yes |
| Duplin ²⁶⁶ | None | None | None | None |
| Durham ²⁶⁷ | 8.712 units per acre | 80 ft. | None | None |

260. See *supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1. Although Craven County does not fall in the category of “no zoning,” almost all of the county’s zoning ordinances have to do with the Marine Corps Air Station. See *Frequently Asked Questions*, CRAVEN CNTY., N.C., <https://www.cravencountync.gov/Faq.aspx?TID=31> [<https://perma.cc/8JS6-JQR7> (staff-uploaded archive)].

261. Cumberland County, N.C., Zoning Ordinance §§ 1104, 1202 (June 20, 2005) (amended 2021), https://www.cumberlandcountync.gov/docs/default-source/planning-documents/ordinances/county/completed/county-zoning-ordinance__03-15-2021.pdf?sfvrsn=756f7756_0 [<https://perma.cc/PV2E-QHGB> (staff-uploaded archive)]. Cumberland’s R-1 equivalent is R-5. See *id.* § 304(M).

262. Currituck County, N.C., Unified Development Ordinance §§ 3.4.2(F), 5.1.3, tbl. 5.1.3.C (July 18, 2025), <https://www.currituckcountync.gov/wp-content/uploads/UDO.pdf> [<https://perma.cc/CU5T-VA7F> (staff-uploaded archive)]. Currituck’s “SFM,” or “Single-Family Residential-Mainland,” designation is its standard residential zoning designation for mainland homes. See *id.* § 3.4.2(A).

263. DARE COUNTY, N.C., CODE OF ORDINANCES app. A art. II, §§ 22-17(d), 22-17(f) (2023), https://codelibrary.amlegal.com/codes/darecounty/latest/dareco_nc/0-0-0-1 [<https://perma.cc/XVM9-HG7J> (staff-uploaded archive)].

264. Davidson County, N.C., Zoning Ordinance art. IV, § VI.13 (June 14, 2011) (amended 2025), <https://www.co.davidson.nc.us/DocumentCenter/View/3619/Davidson-County-Zoning-Ordinance-PDF> [<https://perma.cc/5Q7B-YY65> (staff-uploaded archive)]. RM-2 serves as the densest residential single-family zone. See *id.* art. III, § III.2(E).

265. DAVIE COUNTY, N.C., CODE OF ORDINANCES §§ 155.142(B), 155.053(F) (2013), https://codelibrary.amlegal.com/codes/daviecounty/latest/davieco_nc/0-0-0-1 [<https://perma.cc/N2F6-BG88> (staff-uploaded archive)]. R-12 is the densest single-family zoning district in Davie County. See *id.* § 155.142(A).

266. See *supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

267. Durham County, N.C., Unified Development Ordinance § 7.1.2 (Jan. 1, 2006) (amended 2024), <https://www.durhamnc.gov/DocumentCenter/View/54014/Durham-Unified-Development-Ordinance-UDO-Print-Version?bidId=> [<https://perma.cc/N5GC-GGCM> (staff-uploaded archive)]. While single-family detached homes can be built in a number of Durham’s zoning designations, RC is the densest. See *id.*

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|--------------------------|--|----------------|------------------|----------|
| Edgecombe ²⁶⁸ | 2.17 units per acre | 35 ft. | Yes | Yes |
| Forsyth ²⁶⁹ | 6.223 units per acre | 40 ft. | None | Yes |
| Franklin ²⁷⁰ | 1.452 to 4.356 units per acre | 35 ft. | Yes | Yes |
| Gaston ²⁷¹ | 1.452 units per acre | 45 ft. | Yes | Yes |
| Gates ²⁷² | 1 unit per acre | 35 ft. | Yes | Yes |
| Graham ²⁷³ | None | None | None | None |
| Granville ²⁷⁴ | 0.91 to 1.37 units per acre | 35 ft. | None | Yes |
| Greene ²⁷⁵ | 1.452 units per acre | None | None | Yes |

268. Edgecombe County, N.C., Unified Development Ordinance §§ 3.2.5(C), 6.8.4, tbl. 6.8.4(F) (Nov. 1, 2021) (amended 2024), <https://cms5.revize.com/revize/edgecombenc/Departments/Planning,%20Inspections%20&%20E-911/Edgecombe%20County%20UDO%207-1-24.pdf> [https://perma.cc/49W8-A7YU (staff-uploaded archive)]. Edgecomb's R-1 equivalent is R-20. *See id.* § 3.2.5(A).

269. Winston-Salem/Forsyth County, N.C., Unified Development Ordinances § 4.5.9 tbl. 4.5.9 (Dec. 19, 2024), https://www.udoclearcode.org/_files/ugd/eea745_9c63c96b976c4022_8671e49a53a87e0c.pdf [https://perma.cc/7RRG-QM46]. RS-7 is the densest single-family detached zoning in Forsyth County. *Id.* § 4.5.9(A)(1).

270. Franklin County, N.C., Unified Development Ordinance § 5.5 tbl. 5-2 (June 7, 2021), <https://www.franklincountync.gov/DocumentCenter/View/841/Article-5---Zoning-Districts-and-Standards> [https://perma.cc/MT82-Q4YP]. R-8 is the densest residential zoning district. *Id.*

271. Gaston County, N.C., Unified Development Ordinance §§ 6.2.1, 7.1-2(A)-(F) tbl. 7.1-2(A),(E),(F) (May 8, 2024), https://library.municode.com/nc/gaston_county/codes/unified_development_ordinance?nodeId=UNDEOR_CH6ZODI [https://perma.cc/7QK2-4GR3] https://library.municode.com/nc/gaston_county/codes/unified_development_ordinance?nodeId=UNDEOR_CH7USBULOST_S7.5BUDIST [https://perma.cc/3C87-596B].

272. GATES COUNTY, N.C., CODE OF ORDINANCES § 155.113(B) (2021), [https://gatescountync.gov/vertical/Sites/%7BC4993D33-7F3A-4388-B179-2EC1739C7E2E%7D/uploads/2021_Gates_County_Ordinances_amended_3.16.2022\(1\).pdf](https://gatescountync.gov/vertical/Sites/%7BC4993D33-7F3A-4388-B179-2EC1739C7E2E%7D/uploads/2021_Gates_County_Ordinances_amended_3.16.2022(1).pdf) [https://perma.cc/RN2S-GDK3].

273. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

274. GRANVILLE COUNTY, N.C., CODE OF ORDINANCES §§ 32-63, 32-262 tbl. 04.100A-B (2025), https://library.municode.com/nc/granville_county/codes/code_of_ordinances?no deId=COOR_CH32LADECO_ARTIIESZODI_DIV2STPUINDI_S32-63REDIR- [https://perma.cc/24FL-ZQGN]. R-25 is the densest single-family residential district in Granville. *Id.*

275. Greene County, N.C., Zoning Ordinance § 7.2 tbl. 7.1 (June 5, 2017), <https://greencountync.gov/wp-content/uploads/2021/05/Proposed-Zoning-Ordinance.pdf> [https://perma.cc/3DC9-GGZQ].

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|--------------------------|--|----------------|------------------|----------|
| Guilford ²⁷⁶ | 7 units per acre | 50 ft. | None | Yes |
| Halifax ²⁷⁷ | 5.445 units per acre | 35 ft. | Yes | Yes |
| Harnett ²⁷⁸ | 2.178 to 2.904 units per acre | 35 ft. | None | Yes |
| Haywood ²⁷⁹ | None | None | None | None |
| Henderson ²⁸⁰ | 4 to 12 units per acre | 40 ft. | None | Yes |
| Hertford ²⁸¹ | 1.452 to 2.094 units per acre | None | Yes | Yes |
| Hoke ²⁸² | 4 units per acre | 35 ft. | Yes | Yes |
| Hyde ²⁸³ | None | None | None | Yes |

276. Guilford County, N.C., Unified Development Ordinance § 4.2.7(B) (Apr. 1, 2021), <https://online.encodeplus.com/regs/guilfordcounty-nc-udo/doc-viewer.aspx?secid=43#secid-50> [<https://perma.cc/U58X-8EA7>]. RS-7 is the densest single family residential zoning. *Id.* § 4.2.7(A)

277. HALIFAX COUNTY, N.C., CODE OF ORDINANCES app. A §§ 1303, 1600 (2025), https://library.municode.com/nc/halifax_county/codes/code_of_ordinances?nodeId=COOR_APXAZ_O_ARTXIIISPDL_S1303REDI [<https://perma.cc/9RFY-PAAY>]. R-8 is the densest single-family residential zoning. *Id.* § 1303.

278. Harnett County, N.C., Unified Development Ordinance art. IV § 14.2 (July 21, 2025), <http://www.harnett.org/planning/downloads/official-adopted-udo-amended-2025-july.pdf> [<https://perma.cc/X7TN-ETZE>]. RA-20M is the densest residential district, even though it is actually a residential/agricultural district. *Id.*

279. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

280. HENDERSON COUNTY, N.C., CODE § 42-27 tbl. 2.1 (2007), <https://www.hendersoncountync.gov/code-document/article-ii-zoning-district-regulations> [<https://perma.cc/4UPN-XCHR>].

281. Hertford County, N.C., Unified Development Ordinance § 9.3.3 (March 24, 2024), <https://cms9files.revize.com/hertfordcounty/Revised%20Copy%2010625.pdf> [<https://perma.cc/CED6-PUDV>]. RA-30 is the densest residential district. *Id.*

282. Hoke County, N.C., Zoning Ordinance §§ 5.15.3–4, 9.2 (Aug. 5, 2025), <https://www.hokecounty.net/DocumentCenter/View/64/Hoke-County-Zoning-Ordinance?bidId=> [<https://perma.cc/6KPN-EQ8Y> (staff-uploaded archive)].

283. HYDE COUNTY, N.C., CODE OF ORDINANCES § 36-74(g) (2022), https://library.municode.com/nc/hyde_county/codes/code_of_ordinances [<https://perma.cc/BA7S-P26Y>]. Although Hyde County has some zoning ordinances, they are mostly administered through the county's Coastal Area Management Agreement, which essentially sets the parameters for municipal zoning. *See* CAMA CORE LAND USE PLAN, HYDE CNTY., N.C. (2008), https://cms2.revize.com/revize/hydecountry/departments/docs/Hyde_County_CAMA_Land_Use_Executive_Summary.pdf [<https://perma.cc/WPP6-XE89>].

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|-------------------------|--|----------------|------------------|----------|
| Iredell ²⁸⁴ | 5.445 units per acre | 35 ft. | Yes | Yes |
| Jackson ²⁸⁵ | 1 to 5 units per acre | 40 ft. | Yes | Yes |
| Johnston ²⁸⁶ | 1.089 to 1.452 units per acre | 40 ft. | None | Yes |
| Jones ²⁸⁷ | None | None | None | None |
| Lee ²⁸⁸ | 7 units per acre | 40 ft. | Yes | Yes |
| Lenoir ²⁸⁹ | 2.904 to 6.223 units per acre | None | Yes | Yes |
| Lincoln ²⁹⁰ | 1.33 units per acre | 35 ft. | Yes | Yes |
| McDowell ²⁹¹ | 4 units per acre | None | None | Yes |
| Macon ²⁹² | None | None | None | None |

284. IREDELL COUNTY, N.C., LAND DEVELOPMENT CODE §§ 2.10.1 tbl. 2.15, 2.10.2 (2024), <https://www.iredellcountync.gov/DocumentCenter/View/437/Land-Development-Code-PDF> [https://perma.cc/9GCC-S2S2 (staff-uploaded archive)]. R-8 is the densest single-family housing designation. *Id.*

285. Jackson County, N.C., Unified Development Ordinance § 9.4.2(g) (2019), <https://www.planning.jacksonnc.org/pdfs/04-18-23-UDO-Amendments-Accepted-Changes.pdf> [https://perma.cc/PA9C-6JRE]. The R-1 district is SF. *Id.*

286. JOHNSTON COUNTY, N.C., CODE OF ORDINANCES ch. 14 § 14-76(d)–(g) (2011), https://codelibrary.amlegal.com/codes/johnstoncounty/latest/johnstoncounty_nc/0-0-0-1789 [https://perma.cc/H2TP-NWAA]. Johnston's densest single-family residential designation is RR. *Id.* § 14-76(a).

287. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

288. LEE COUNTY, N.C., CODE OF ORDINANCES § 4.7 tbl. 4.7-1 (2023), https://library.municode.com/nc/lee_county/codes/code_of_ordinances?nodeId=COOR_APXAUNDEOR_ART4ZODIRE_4.7DIDERE [https://perma.cc/72YR-5WD5]. R-6 is the densest residential designation. *Id.*

289. Lenoir County, N.C., Zoning Ordinance art. 4 § 4.5 (Nov. 6, 2023), <https://drive.google.com/file/d/1efABU4x6aoeaRRqoRDgoR7Jg5soCzF0E/view> [https://perma.cc/7YJH-Y33Y].

290. Lincoln County, N.C., Unified Development Ordinance § 2.4.5 (Nov. 17, 2008), <https://www.lincolncountync.gov/DocumentCenter/View/23346/UDO-MASTER-amended-2024-6-17-Density-and-Lot-Size?bidId=> [https://perma.cc/JHW2-588D (staff-uploaded archive)]. R-MR is the densest single-family-detached designation. *Id.* § 2.1.1.A(8).

291. McDowell County, N.C., Zoning Ordinance § 1001.001 (Aug. 5, 1996), https://www.mcdowellgov.com/departments/planning/ordinances/Zoning_Ordinance.pdf [https://perma.cc/HAT2-CKC6].

292. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|----------------------------|--|----------------|------------------|----------|
| Madison ²⁹³ | 1 unit per acre | 35 ft. | Yes | Yes |
| Martin ²⁹⁴ | None | None | None | None |
| Mecklenburg ²⁹⁵ | 8 units per acre | 40 ft. | Yes | Yes |
| Mitchell ²⁹⁶ | None | None | None | None |
| Montgomery ²⁹⁷ | 2.178 units per acre | None | Yes | Yes |
| Moore ²⁹⁸ | 2.178 units per acre | 40 ft. | None | Yes |
| Nash ²⁹⁹ | 7.26 units per acre | None | None | Yes |
| New Hanover ³⁰⁰ | 8.712 units per acre | 40 ft. | Yes | Yes |
| Northampton ³⁰¹ | 1.089 to 4.356 units per acre | 35 ft. | Yes | Yes |

293. Madison County, N.C., Land Use Ordinance §§ 3.6.4(a), 3.6.4(c), 3.6.4(e), 6.1 (June 29, 2021), https://www.madisoncountync.gov/uploads/5/9/7/0/59701963/mc_land_use_ordinance_revised_6.29.21__1_.pdf [<https://perma.cc/J7AS-ZR9D>].

294. See *supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

295. MECKLENBURG COUNTY, N.C., ZONING ORDINANCE §§ 9.205(1), 12.202 tbl. 12.202 (2021), <https://mecknc.widen.net/s/kgxt9kfsjb/zoning-ordinance> [<https://perma.cc/8JE4-JT8V>]. R-8 is the densest residential district. *Id.* § 9.205(1).

296. See *supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

297. MONTGOMERY COUNTY, N.C., CODE app. A, art. III, § 1.3, 1.7 (2017), https://library.municode.com/nc/montgomery_county/codes/code_of_ordinances?nodeId=COOR_A_PXAZO_ARTIIIESDIRE [<https://perma.cc/B3RM-ZBMA>].

298. Moore County, N.C., Unified Development Ordinance §§ 5.1.C, 7.9.A.1 (Aug. 19, 2025), <https://www.moorecountync.gov/DocumentCenter/View/502/Chapter-5---Dimensional-Standards-PDF> [<https://perma.cc/BP37-XFQQ> (staff-uploaded archive)]. RA-20 is the densest residential district. *Id.* § 5.1.C.

299. NASH COUNTY, N.C., CODE OF ORDINANCES § 9-4 tbl. 9-4-1 (2024), https://library.municode.com/nc/nash_county/codes/code_of_ordinances?nodeId=COOR_APXAUN_DEOR_ARTIXZO_9-4DEDIRE [<https://perma.cc/UQG4-T7F8>]. R-6 is the densest residential district. *Id.* § 9-1.2.

300. New Hanover County, N.C., Unified Development Ordinance §§ 3.2.11, 5.1.2.A (Feb. 3, 2020), <https://laserfiche.nhcgov.com/WebLink/browse.aspx?id=5146427&dbid=0&repo=NHC> [<https://perma.cc/G2FH-E446> (staff-uploaded archive)]. R-5 is the highest density residential district. *Id.* § 3.2.11.

301. Northampton County, N.C., Zoning Ordinance §§ II-3(B), II-3(C)(6)(b), II-3(C)(6)(f), IV (May 2, 2012), https://cms1files.revize.com/northampton/document_center/Zoning%20Ordinance%20%20122016%20R1.pdf [<https://perma.cc/5TDW-TT3W>]. R-10 is the densest residential zoning district. *Id.*

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|---------------------------|--|----------------|------------------|----------|
| Onslow ³⁰² | 8.712 units per acre | 45 ft. | None | Yes |
| Orange ³⁰³ | 14.52 units per acre | 25 ft. | None | Yes |
| Pamlico ³⁰⁴ | None | None | None | None |
| Pasquotank ³⁰⁵ | 1 to 2.904 units per acre | 35 ft. | None | Yes |
| Pender ³⁰⁶ | 2.904 to 3.63 units per acre | 35 ft. | None | Yes |
| Perquimans ³⁰⁷ | 2.904 units per acre | 35 ft. | Yes | Yes |
| Person ³⁰⁸ | 2 units per acre | 50 ft. | Yes | Yes |
| Pitt ³⁰⁹ | 3.48 units per acre | None | None | Yes |

302. Onslow County, N.C., Zoning Ordinance §§ 8.2 tbl. 8-1, 9.3 tbl. 9-2 (June 21, 2021), <https://www.onslowcountync.gov/DocumentCenter/View/23671/Zoning-Ordinance> [https://perma.cc/MAG4-V4VC]. R-5 is the densest residential zoning district. *Id.* § 8.2 tbl. 8-1.

303. ORANGE COUNTY, N.C., CODE OF TECHNICAL ORDINANCES UNIFIED DEVELOPMENT ORDINANCE § 3.3 (2025), <https://www.orangecountync.gov/DocumentCenter/View/23983/CURRENT-UDO-amended-100124?bidId=> [https://perma.cc/8JVL-XRNF (staff-uploaded archive)]. R-13 is the densest residential zoning district. *Id.*

304. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

305. Pasquotank County, N.C., Zoning Ordinance § 8.01 (Nov. 23, 1992), <https://static1.squarespace.com/static/5b0584b6aa49a1a281fb3205/t/64e8ae469678ce7a4b1e1b72/1692970566446/Official+Zoning+Ordinance+adopted+June+21+2021.pdf> [https://perma.cc/8F7T-G4H5]. R-15 is the densest residential zoning district. *Id.*

306. PENDER COUNTY, N.C., CODE app. 1, § 4.14 (2025), <https://pendercountync.gov/DocumentCenter/View/265/Pender-County-Unified-Development-Ordinance-UDO-PDF> [https://perma.cc/HBY2-6JKN (staff-uploaded archive)]. RP is the densest residential district. *Id.*

307. Perquimans County, N.C., Ordinance 107 art. VII, § 704 (July 1, 2002) (amended 2023), <https://www.perquimanscountync.gov/county-information/ordinances?download=366:zoning-ordinance-262012> [https://perma.cc/KHG5-GC43]. RA-15 is the densest residential zoning designation. *Id.*

308. Person County, N.C., Unified Development Ordinance §§ 5.2.2, 5.5.1(C) (2024), <https://www.personcountync.gov/home/showpublisheddocument/17827/638623445440900000> [https://perma.cc/3NMY-QTP8].

309. PITT COUNTY, N.C., CODE ch. 7, § 6 tbl. 6-1 (2025), <https://www.pittcountync.gov/DocumentCenter/View/806/Zoning-Ordinance-PDF-> [https://perma.cc/C885-8877]. SR is the densest single-family detached residential district. *Id.*

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|---------------------------|--|----------------|------------------|----------|
| Polk ³¹⁰ | 1 to 2 units per acre | 40 ft. | Yes | Yes |
| Randolph ³¹¹ | 1.089 units per acre | None | None | Yes |
| Richmond ³¹² | 2.178 units per acre | 35 ft. | None | Yes |
| Robeson ³¹³ | 2.178 to 2.904 units per acre | None | Yes | Yes |
| Rockingham ³¹⁴ | 1.45 to 6 units per acre | 35 ft. | None | Yes |
| Rowan ³¹⁵ | 2.178 to 4.356 units per acre | None | None | Yes |
| Rutherford ³¹⁶ | None | None | None | None |
| Sampson ³¹⁷ | 1 to 1.452 units per acre | 40 ft. | Yes | Yes |

310. Polk County, N.C., Zoning Ordinance §§ 4.7, 7.2 tbl. (Aug. 21, 2023), https://cms4files1.revize.com/polkcounty/departments/planning_and_zoning/docs/zon.ord.8.21.2023.boc.pdf [https://perma.cc/UF6Y-55E8 (staff-uploaded archive)].

311. Randolph County, N.C., Unified Development Ordinance art. 600, § 631 tbl. (July 15, 2021) (amended 2025), <https://www.randolphcountync.gov/DocumentCenter/View/1786/The-Unified-Development-Ordinance-PDF?bidId=> [https://perma.cc/222G-Q2BC (staff-uploaded archive)].

312. Richmond County, N.C., Zoning Ordinance § 3.2.3(2) (May 4, 2021), <https://www.richmondnc.com/DocumentCenter/View/7336/ZONING-ORDINANCE-> [https://perma.cc/6M62-8MD9 (staff-uploaded archive)]. CR is the R-1 equivalent. *Id.* § 3.2.3(1).

313. Robeson County, N.C., Zoning Ordinance §§ 3.10, 7.4(S) (Nov. 16, 2020), https://www.robesoncountync.gov/_files/ugd/269399_ab5c69eb5f7f4409b0a0b87cdefb88e3.pdf [https://perma.cc/Q7HU-UV2E].

314. Rockingham County, N.C., Unified Development Ordinance art. iv, div. 1, § 41.05 tbl. 41.05-1 (Aug. 16, 2021) (amended 2024), <https://www.rockinghamcountync.gov/files/documents/UDOAmmended5620241402100249092024AM.pdf> [https://perma.cc/YB2D-ZTWA]. RM is the densest single-family residential district. *Id.*

315. ROWAN COUNTY, N.C., CODE §§ 21-34(6)(g), 21-84 (2024), <https://www.rowancountync.gov/DocumentCenter/View/7414/Zoning-Ordinance-PDF?bidId=> [https://perma.cc/5MS8-JYPK (staff-uploaded archive)]. RS is the densest residential single-family district. *Id.*

316. See *supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

317. Sampson County, N.C., Zoning Ordinance §§ 904(B) tbl., 1601–02 (Oct. 4, 2004) (amended 2024), <https://www.sampsoncountync.gov/files/sharedassets/public/v/1/documents/planningzoning/zoning-ordinance-12012024.pdf> [https://perma.cc/9UKB-HHCH (staff-uploaded archive)].

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|-----------------------------|--|----------------|------------------|----------|
| Scotland ³¹⁸ | 2.178 to 6.223 units per acre | 35 ft. | Yes | Yes |
| Stanly ³¹⁹ | 2.904 to 5.445 units per acre | 35 ft. | None | Yes |
| Stokes ³²⁰ | 2.904 units per acre | 35 ft. | Yes | Yes |
| Surry ³²¹ | 1 unit per acre | 50 ft. | None | Yes |
| Swain ³²² | None | None | None | None |
| Transylvania ³²³ | None | None | None | None |
| Tyrrell ³²⁴ | None | None | None | None |
| Union ³²⁵ | 10.89 units per acre | 50 ft. | Yes | Yes |
| Vance ³²⁶ | 4.356 units per acre | 35 ft. | Yes | Yes |

318. Scotland County, N.C., Zoning Ordinance art. 8, § 8.2(a) tbl. (2022), <https://www.scotlandcounty.org/DocumentCenter/View/3918/Zoning-Ordinance-2022-signed-2-2> [<https://perma.cc/94F6-BY9H> (staff-uploaded archive)].

319. Stanly County, N.C., Ordinance No. 73-2 art. VII, § 701 tbl. (Mar. 18, 2024), <https://www.stanlycountync.gov/DocumentCenter/View/485/Mar-18-2024-Zoning-Ordinance-PDF> [<https://perma.cc/6YNC-XQXE> (staff-uploaded archive)]. R-8 is the densest residential district. *Id.* However, lots without water/sewer must meet the R-10 limits. *Id.*

320. Stokes County, N.C., Zoning Ordinance art. VIII, §§ 82.3, 82.3.1, 82.3.3–7, 82.3.9 (Mar. 1, 1983) (amended 2021), <https://cms9files.revize.com/stokescountync/Planning%20&%20Inspections/Documents/ZoningOrdinance22.pdf> [<https://perma.cc/69YS-GVR9> (staff-uploaded archive)]. R-15 is the densest single-family residential district. *Id.*

321. SURRY COUNTY, N.C., CODE ch. 154, app. A, § 154.006-15(A) tbl. (2024), https://codelibrary.amlegal.com/codes/surrycounty/latest/surrycounty_nc/0-0-0-9610 [<https://perma.cc/N8ZG-ACRW>]. RL is the densest single-family zoning district. *Id.*

322. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

323. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1. Transylvania has “partial” zoning for the Pisgah Forest area but no countywide zoning. *See* Transylvania County, N.C., Pisgah Forest Community Zoning Ordinance art. IV (May 10, 2010) (amended 2021), <https://www.transylvaniacounty.org/sites/default/files/departments/planning/docs/Pisgah%20Forest%20Community%20Zoning%20Ordinance%206-21-2021.pdf> [<https://perma.cc/CPA6-P6QV>].

324. *See supra* text accompanying notes 18–19; 2018 Survey, *supra* note 18, at 5 fig. 1.

325. Union County, N.C., Unified Development Ordinance §§ 5.030-B tbl. 5-2, 45.030 tbl. 45-1 (Oct. 6, 2014) (amended 2021), <https://www.unioncountync.gov/home/showpublisheddocument/1224/638442099343970000> [<https://perma.cc/S4HM-3XQV> (staff-uploaded archive)]. R-4 is the densest residential zoning district. *Id.*

326. VANCE COUNTY, N.C., CODE ch. 156, §§ 156.032(I)(1), (4), (7), 156.033 tbl. (2023), https://codelibrary.amlegal.com/codes/vancecounty/latest/vancecounty_nc/0-0-0-4690 [<https://perma.cc/CA5D-GVAK>]. R-10 is the densest residential designation. *Id.*

| County | Density for Single-Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|---------------------------|--|----------------|------------------|----------|
| Wake ³²⁷ | 8.71 units per acre | 35 ft. | Yes | Yes |
| Warren ³²⁸ | 1.45 to 2.904 units per acre | 35 ft. | Yes | Yes |
| Washington ³²⁹ | 2.178 units per acre | 45 ft. | None | Yes |
| Watauga ³³⁰ | 1 unit per acre | 40 ft. | Yes | Yes |
| Wayne ³³¹ | 4.356 to 5.445 units per acre | 35 ft. | Yes | Yes |
| Wilkes ³³² | 2.904 units per acre | 35 ft. | Yes | Yes |
| Wilson ³³³ | 4.356 units per acre | 35 ft. | Yes | Yes |

327. Wake County, N.C., Unified Development Ordinance §§ 5-11-2 n.4, 15-10-4 tbl. (Apr. 17, 2006) (amended 2025), https://library.municode.com/nc/wake_county/codes/unified_development_ordinance [https://perma.cc/HGS2-EJAW]. R-5 is the densest residential designation. *Id.*

328. WARREN COUNTY, N.C., CODE ch. 157, §§ 157.032 tbl. II-1, 157.085 (2021), https://codelibrary.amlegal.com/codes/warrenco/latest/warrenco_nc/0-0-0-1 [https://perma.cc/X755-7TED].

329. Washington County, N.C., Zoning Ordinance art. III.A, §§ E(a)–(b), F(a)(i) (May 3, 2021), <https://washconc.org/wp-content/uploads/2022/04/2021-Zoning-Ordinance-Updated-for-7-1-2021-160-D-changes-1.pdf> [https://perma.cc/2VMG-WSUD]. R-A is Washington County’s R-1 equivalent. *See id.* art. III.A, § A.

330. Watauga County, N.C., Planning & Development Ordinance ch. 10, art. V, §§ 1(C), 2(C) (Apr. 21, 2021) (amended 2021), https://www.wataugacounty.org/App_Pages/Dept/Planning/viewordinances.aspx?DbID=123 [https://perma.cc/GCT8-ARXR]. Rural/Residential is the densest residential designation. *Id.*

331. WAYNE COUNTY, N.C., CODE app. A, §§ 61 tbl., 71 tbl. 2 (2024), https://library.municode.com/nc/wayne_county/codes/code_of_ordinances?nodeId=COOR_APXAZO_ARTVIAPDI [https://perma.cc/3VQR-F9QM]. R-10 is the densest single-family residential zoning designation. *Id.*

332. Wilkes County, N.C., Zoning Ordinance §§ 82.3(a), 82.3(d)–(f), 72.7 tbl., <https://wilkescounty.net/DocumentCenter/View/129/Zoning-Ordinance-PDF?bidId=> [https://perma.cc/V2KB-CMZT (staff-uploaded archive)]. R-15 is the densest single-family residential zoning designation. *Id.*

333. Wilson County, N.C., Unified Development Ordinance §§ 8.01 tbl. 8-1, 10.01 tbl. 10-1 (Nov. 2, 2009) (amended 2024), <https://www.wilsoncountync.gov/home/showpublisheddocument/7298/638431600860770000> [https://perma.cc/GM82-22V4 (staff-uploaded archive)]. R-10 is the highest density single-family residential designation. *Id.*

| County | Density for Single- Family ²³⁵ | Height Maximum | Parking Minimums | Setbacks |
|-----------------------|---|-------------------|---------------------|----------|
| Yadkin ³³⁴ | 1.452 to 2.178 units per acre | 50 ft. | Yes | Yes |
| Yancey ³³⁵ | None | None | None | None |

334. YADKIN COUNTY, N.C., CODE ch. 111, §§ 111-309 tbl., 111-504 (2018), https://library.municode.com/nc/yadkin_county/codes/code_of_ordinances?nodeId=THCOYACONOCA [<https://perma.cc/9RDX-MVUA>]. RG is the densest single-family residential designation. *Id.*

335. *See supra* text accompanying notes 18–19; *2018 Survey*, *supra* note 18, at 5 fig. 1.

