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Coates' Canons Blog: Can the City Tell Me What My New House Has to Look Like?

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Article: https://canons.sog.unc.edu/can-the-city-tell-me-what-my-new-house-has-to-look-like/

This entry was posted on August 03, 2015 and is filed under Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Legislation, Zoning

A fast-growing suburban town would like to encourage walkable mixed use neighborhoods. The planning board has proposed adding a new zoning district that would allow higher residential densities provided certain standards are met. The proposed standards include requirements for sidewalks, front porches, and that garage entrances be accessed only from the rear of the property.

A second town is concerned that most of the new subdivisions built in town in the past few years have included only entry-level housing. The newly adopted comprehensive plan encourages all new large residential developments to provide a full range of housing affordability in order to provide adequate housing opportunities for everyone. A council member now urges action to secure a greater variety of housing, with a particular aim of encouraging more mid- and high-end housing. She has proposed amending the town’s low density residential zoning district to require that all new houses in that district have masonry siding. She suggests an alternative may be to prohibit use of vinyl siding in this zoning district.

A small resort town wants to preserve its distinctive architectural character. To that end, a local civic group has asked the town council to consider requiring that new houses constructed in existing neighborhoods generally match the scale, colors, and architectural style of existing neighboring homes. The group has also asked that residential structures offered for weekly rental be limited to no more than six bedrooms. The group contends that very large residences offered for short-term rental have land use impacts more akin to a small motel than a residence, so this regulation is needed in order to minimize problems with noise, traffic, and parking and to preserve the existing residential character of their neighborhoods.

Do North Carolina cities and counties have the authority to adopt regulations like these proposals?

Newly enacted legislation specifies that North Carolina and local governments do not have the authority to adopt most of these proposed regulations.

Zoning regulations have always addressed aspects of the design of new development. The nation’s first comprehensive zoning ordinance, adopted by New York City in 1916, regulated which land uses could be located in particular zones, set the maximum height for buildings in different areas, and required differing setbacks from the street and property lines depending on the district designated.

Over the decades a variety of design standards have been incorporated into many zoning ordinance. Most zoning ordinances followed New York’s example and include height limits and required structures to be set back from property lines a specified distance with the specific limits varying for each different zoning district. Commercial developments are often required to have an integrated, coherent design. New construction in historic districts is required to be congruent with character of the district. Development that requires a special or conditional use permit is commonly required to be harmonious with the neighborhood or compatible with that surrounding development. A number of local governments now have “neighborhood conservation districts” to prevent in-fill development that is radically different from the existing neighborhood. Some communities have anti-monotony requirements for new subdivisions so that all of the houses do not look exactly alike. And several local governments are experimenting with zoning regulations that focus on the form of new structures – their design, scale, and placement on the lot – rather than the land uses occurring within the structures.

The development community in North Carolina has been concerned that some local governments have gone too far with imposing design standards for residential development. A regulatory requirement for particular types of siding was the most frequently cited concern, but limits on where garages can be placed (such as banning placing garages as the most prominent feature at the front of a house, so-called “snout houses”) and other regulations were also cited as governmental overreach. Bills to restrict local authority to adopt residential design standards previously passed both houses of the

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General Assembly. Limits on residential design standards were approved by the Senate in 2011 (S. 731) and were approved by the House in 2013 (H. 150) and in 2014 (H. 734). See this **post** from Rich Ducker discussing the 2013 bill and local government authority regarding community appearance standards generally.

This year both houses of the General Assembly adopted a version of the limits similar to those proposed in 2013. S.L. 2015-86 (S. 25) became effective law in North Carolina as of June 19, 2015 and applies to all zoning ordinances adopted before, on, or after that date. The law adds new subsections to G.S. 160A-381 for cities and 153A-340 for counties.

Applicability. The restrictions apply to any regulation of buildings subject to the N.C. Residential Code for One- and Two-Family Dwellings. All single family homes and duplexes are covered. Townhouses are also covered if they are built to the single-family code. The restrictions do not apply to multi-family housing or non-residential buildings. The restrictions do not apply to private restrictive covenants, only to design standards imposed by government regulation.

Limits. The law prohibits regulation of “building design elements.” These cannot be regulated directly. Nor can they be regulated indirectly through a plan consistency review (such as putting the design standards in the adopted plan rather than in the zoning ordinance and then having the zoning ordinance require that new development be consistent with the plan).

The law provides a list of what cannot be regulated. The prohibition covers:
1) Exterior building color;
2) Type or style of exterior cladding material;
3) Style or materials of roofs or porches
4) Exterior nonstructural architectural ornamentation;
5) Location or architectural styling of windows and doors, including garage doors;
6) Location of rooms; and
7) Interior layout of rooms.

There are several items that are explicitly listed as not being “building design elements” and that can be regulated. These are:
1) Height, bulk, orientation on the lot, location of structure on a lot;
2) Use of buffering or screening to minimize visual impacts, to mitigate impacts of light or noise, or to protect the privacy of neighbors; and
3) Regulations governing permitted uses of land or structures.

Exceptions. The law creates a number of exceptions to this prohibition of design regulations.
Perhaps most importantly for new developments, design standards may be applied if the owners of all of the property involved voluntarily consent to them. In this instance the standards can only be imposed if done as “part of and in the course of” seeking a zoning amendment or a zoning, subdivision, or other development regulation approval. This tracks existing law that requires landowner consent for property to be placed in a conditional or conditional use district and requires mutual consent for conditions imposed. G.S. **160A-383(b)**, **153A-342(b)**. Design standards developed and agreed to by the owners of all affected property can still be incorporated into conditional zoning, special use permits, or development agreements.

There is some debate as to how this provision should be interpreted, with some in the development community contending only design standards proposed by the developer are “voluntary.” Others contend it matters not who proposes the standards (the owner, the local government, or the neighbors) as long as it is clear the owners consent to their imposition. How the proposal originates is unlikely to matter legally, but care must be exercised to clearly demonstrate that the owner has indeed voluntarily consented to the imposition of the design standards. The courts will not accept just calling a regulatory requirement “voluntary” when compliance has in fact been uniformly mandated. **Lanvale Properties, LLC v. County of Cabarrus**, 366 N.C. 142, 731 S.E.2d 800 (2012).

There are other specific exceptions to the prohibition listed in the law, primarily preserving historic district regulations, where building design elements are a central feature of the regulatory scheme. Building design elements can still be regulated in these circumstances:
1) Within designated local historic districts;
2) Within historic districts on the National Register;

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3) For designated local, state, or national landmarks;
4) Those directly and substantially related to safety codes;
5) For manufactured housing; and
6) Those adopted as a condition of participation in the flood insurance program.

Implications. Zoning ordinances can still set height and size limits for structures and specify where on a lot structures may be located. They can specify setbacks and maximum lot coverages. Zoning statutes expressly authorize cities and counties to regulate "the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, the location and use of buildings, structures and land." G.S. **160A-381**, **153A-340**. The new law states that it "clarifies and restates the intent of existing law," so these aspects of zoning regulation of residential structures are clearly still valid.

Very importantly, the uses to which structures are put can still be regulated. There has been concern that an inability to regulate location and layout of rooms could lead to unscrupulous builders labeling a structure as "single-family" when in actuality they are building a multi-unit or group housing structure. The construction must still meet all building code requirements and if the structure is indeed put to a use that is not allowed, zoning enforcement is appropriate at that time.

Architectural details can be regulated in historic districts (and these districts can be established based on their "special significance in terms of their history, prehistory, architecture, and/or culture"). Regulations for commercial and multifamily structures are not affected by the new law. Landowners can voluntarily agree to imposition of design regulations. Private restrictive covenants can still dictate architectural review for single family homes.

So of the proposals listed at the outset, which are prohibited and which are authorized under North Carolina law? The first town cannot dictate that new houses have porches or where the garage door is located but can still require sidewalks in residential subdivisions. The second town certainly cannot mandate a particular type of siding for new houses. The resort town cannot require use of its distinctive architectural style outside of designated historic districts. However, while the resort town probably cannot set a maximum number of bedrooms for new residences, it can regulate the scale and size of new houses and prohibit commercial uses in residential areas (and the question of whether short-term rentals are a residential or commercial use is a topic for another day).

But in most other situations, local governments in North Carolina no longer have the authority, if they ever did, to tell homeowners what color their house can be painted, what materials can be used for their windows and siding, or what architectural style must be used for a new house.

Links

- canons.sog.unc.edu/?p=7122
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-383
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-342
- appellate.nccourts.org/opinions/?c=1&pdf=29022
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-381
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-340

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