BREAKING DOWN

Dealing with SB382

Winter Conference 2.17.25

OVERVIEW

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Quick intro to SB382

02 RAMIFICATIONS
Results of SB382

03 AMENDMENTS
Map & Text

04 STRATEGIES
To think about

05 QUESTIONS
They linger…

06 PENDING LEGISLATION
The fix…is in?

SUBPART III-K. LOCAL GOVERNMENT

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

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

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

(1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

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

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

SECTION 3K.1.(b) If any provision of this section is declared unconstitutional or invalid by the courts, it does not affect the validity of this section as a whole or any part other than the part so declared to be unconstitutional or invalid.

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

SL2024-57

- Passed by GA 12.11.24
- Changes NCGS§ 160D-601(d)
- Removes authority of local governments to **down-zone** land without prior owner consent

‘DOWN-ZONING’ MEANS:

1. Reduce Density
2. Reduce the Range of Permitted Uses
3. Create Nonconformities

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After June 14, 2024, no local government may:

1. Reduce density
2. Reduce the range of permitted uses
3. Create nonconformities on non-residentially-zoned land

WITHOUT THE PRIOR CONSENT OF AFFECTED LANDOWNERS

Govt-Initiated Zoning Map Amendments

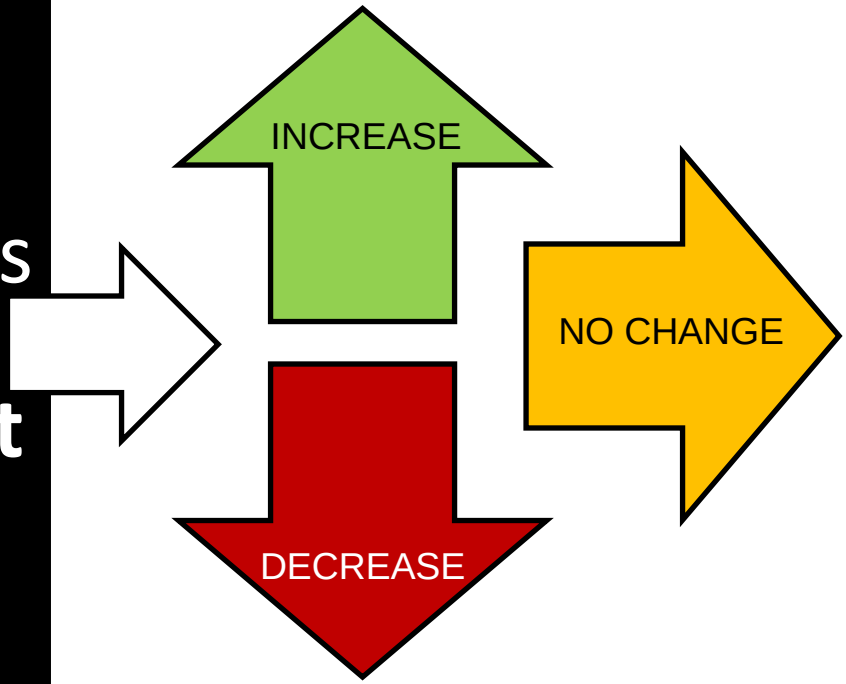
Regulatory Text Amendments

RAMIFICATIONS

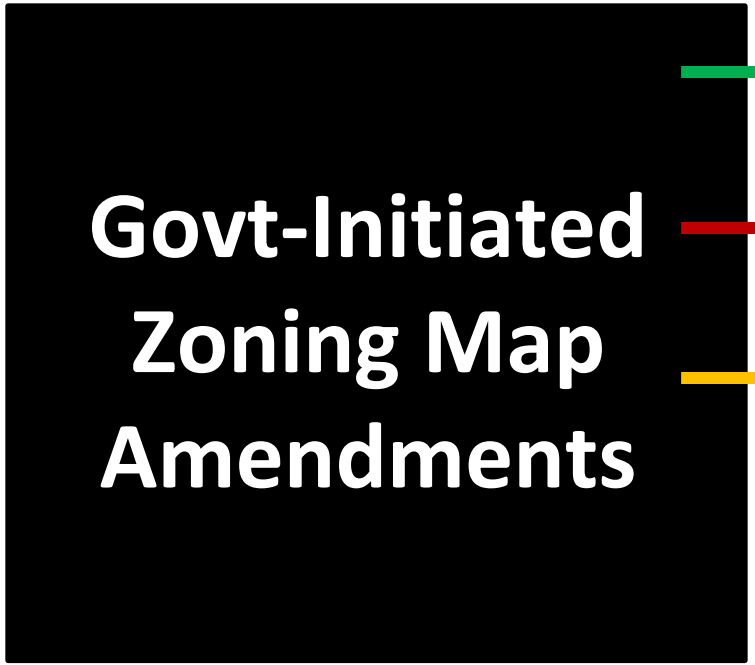
LIMITED TO AMENDMENTS

RAMIFICATIONS

What is the Amendment's Affect on **Development Potential**?



ZONING MAP AMENDMENTS



Upzoning? **No consent needed**

Downzoning? **Get consent**

Adding a New District?
No consent needed
(unless designating land, then determine impact on development potential)

01
CHANGES TO REVIEW PROCEDURE FOR USES

02
CHANGES TO WHERE USES ARE ALLOWED

03
SPLIT/CONSOLIDATE EXISTING DISTRICT(S)

ZONING TEXT AMENDMENTS

04
CHANGES TO DIMENSIONAL STANDARDS

05
CHANGES TO DEVELOPMENT STANDARDS

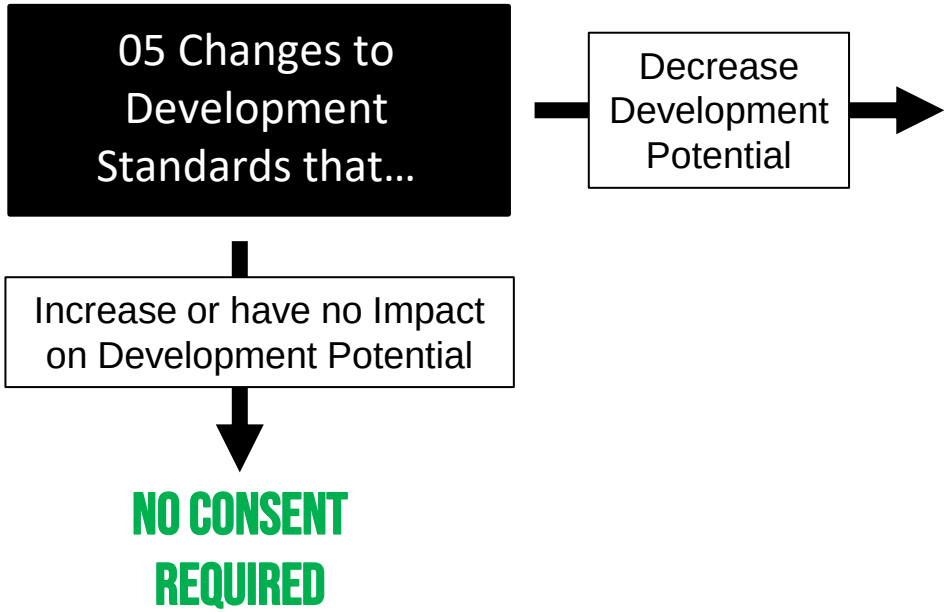
ZONING TEXT AMENDMENTS

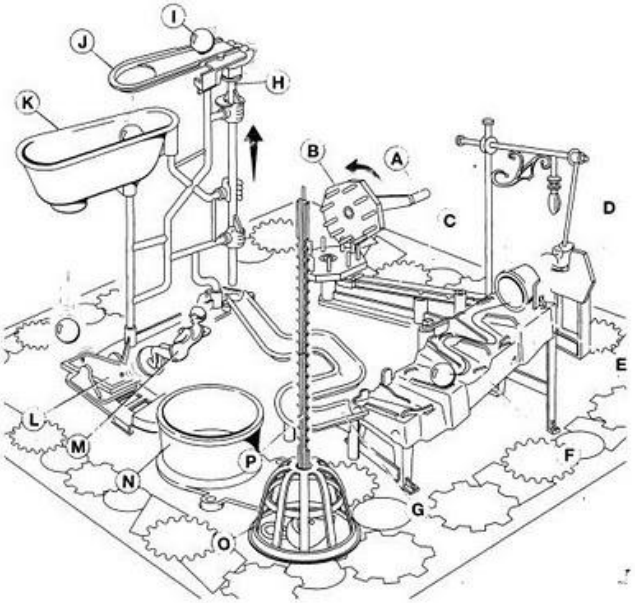
AMENDMENT TYPE	NO CONSENT REQUIRED	PRIOR CONSENT REQUIRED
01 Changes to Review Procedure for Uses	Going from Discretionary Procedure to By-Right	Going from By-Right to Discretionary Procedure
02 Changes to Where Uses Are Allowed	Adding new Principal or Accessory Use(s)	Removing Principal or Accessory Use(s) *
03 Split/Consolidate Existing District(s)	Use Least Restrictive Standards (“upzone”)	Reduce Development Potential (“downzone”)
04 Changes to Dimensional Standards	Reduce setbacks/lot width or increase lot coverage/height **	Action lowers potential density or creates nonconformity on non-residential lots

* Temporary uses?

** Ok to create nonconformities on lots in residential districts

ZONING TEXT AMENDMENTS

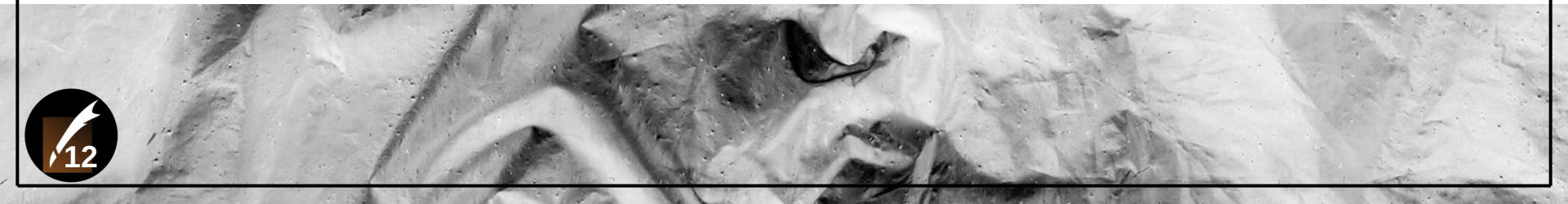




STRATEGIES

STILL OK

TO INCREASE DEVELOPMENT POTENTIAL



STILL OK

TO PREPARE NEW ZONING DISTRICTS *

(* Just make them available, don’t lay them on the ground)

STILL OK

TO CREATE NONCONFORMITIES IN RESIDENTIAL DISTRICTS *

(* Just don’t lower density or remove uses)

STRATEGIES

‘Lean-in’ to Conditional Zoning – it allows you to maintain reversion option and seek consent as a COA

New Districts are ‘Residential’ – this permits future amendments that might otherwise create nonconformities

STRATEGIES

Establish a consent form, and use it even when down-zonings are owner-initiated

You will need to track (GIS?) the lots subject to consent

STRATEGIES

There is now a need to distinguish between pre-382 nonconformities (that are not subject to consent) versus post-382 nonconformities that may only exist because of consent

STRATEGIES

The 10-Step Legacy Lot Approach

For those working on new codes…

1. Carry forward the draft Code language with all development standards, design standards, proposed district changes, etc.

2. Abolish pre-existing nonconforming status as part of adoption

3. Upon adoption, all lots in the planning jurisdiction are classified as legacy lots until determined to be conforming or nonconforming (determination can be requested separately, or as part of a development application)

4. Legacy lots with existing development may continue, maintain, and be transferred…but **can not be changed** in significant ways until determined to be conforming or nonconforming

5. Legacy lots that are vacant can be developed either based on the rules in place prior to Code adoption or the new Code (owner's choice)

STRATEGIES

The 10-Step Legacy Lot Approach

For those working on new codes…

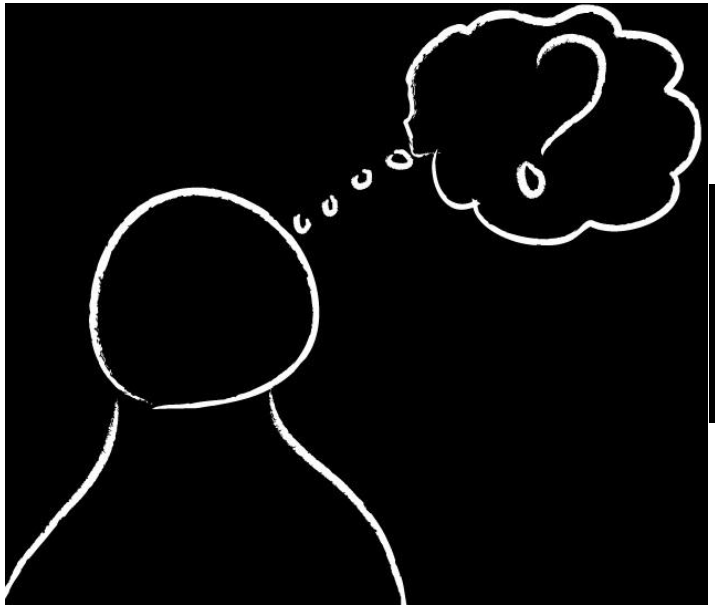
6. Gov't will determine if a vacant legacy lot that is developing will remain a legacy lot, or if it becomes conforming or nonconforming

7. A legacy lot may only become conforming if it complies with all the rules in place at the time the determination is requested

8. A legacy lot may become nonconforming even if it doesn't meet all the Code standards, but the owner must **consent** to being nonconforming

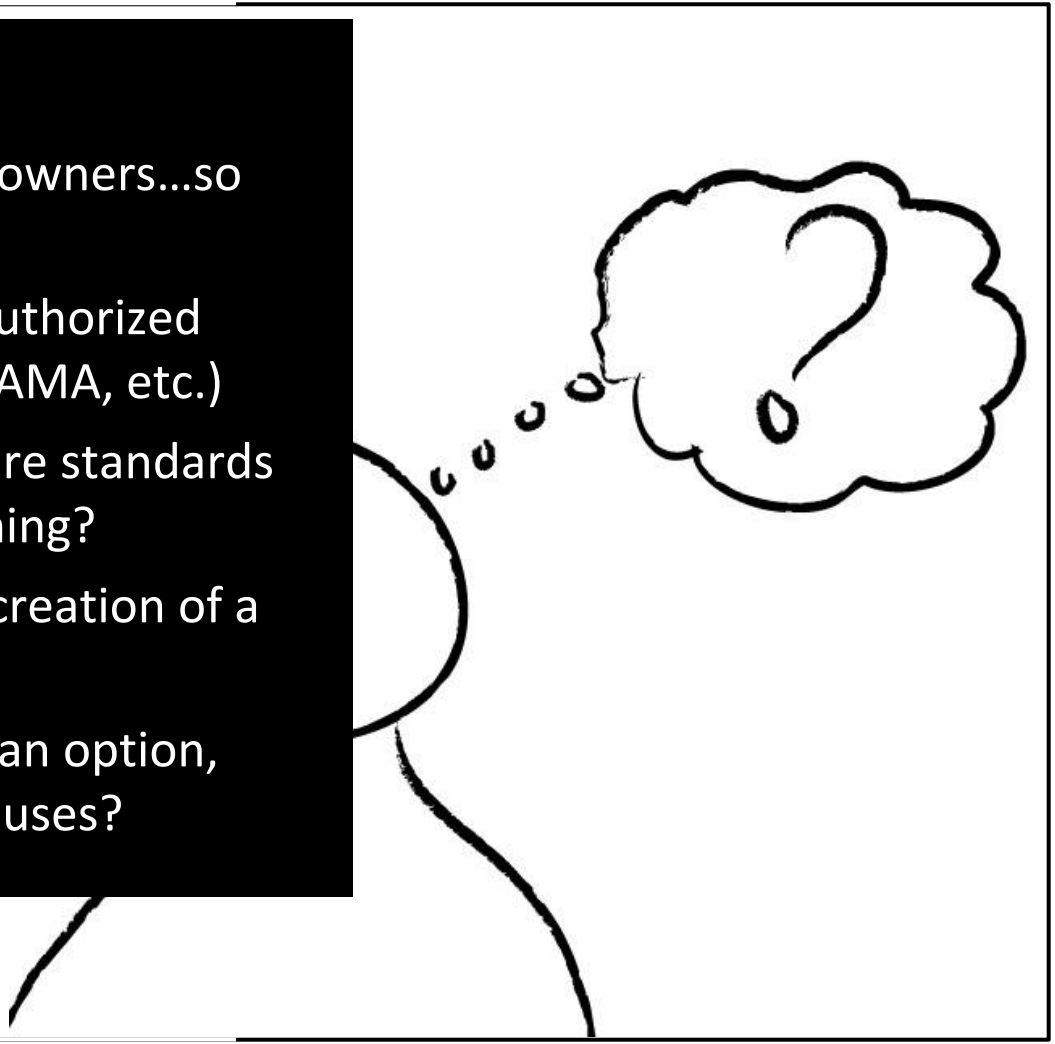
9. The landowner's consent is what allows the legacy lot to become a nonconforming lot with development that may be changed in accordance with the Code's provisions – no consent, no change

10. Nonconforming rules in new Code allow modification of uses, structures, and site elements with generous compliance triggers



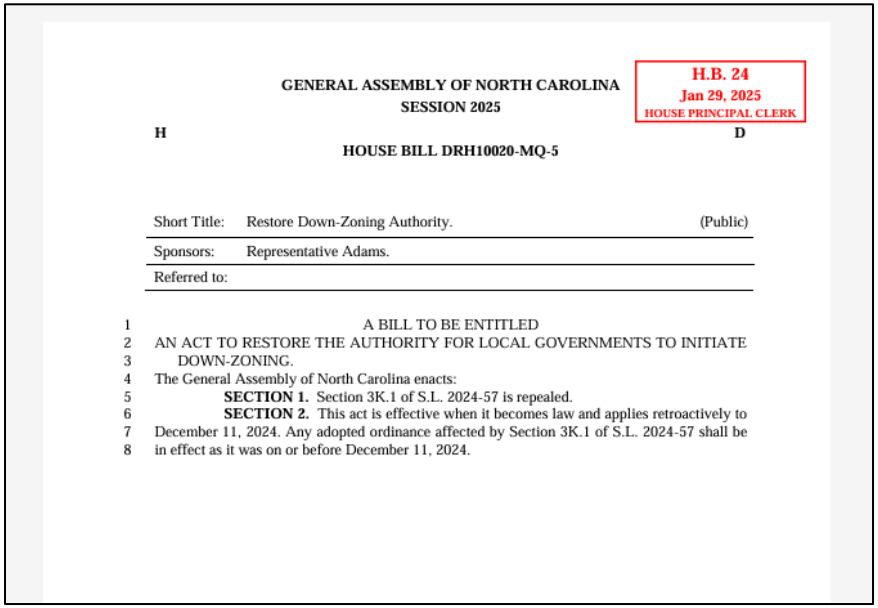
QUESTIONS

- Can consent be withdrawn?
- Properties in probate don’t have owners…so what about that?
- What about development rules authorized outside of 160D? (Flood, WSW, CAMA, etc.)
- Does changing public infrastructure standards render development nonconforming?
- Can mandatory fee-in-lieu avoid creation of a nonconformity?
- If a temporary use is removed as an option, does that count as a reduction in uses?



PENDING LEGISLATION

- HB 24 Restore Down-Zoning Authority
- HB 25 Restore Down-Zoning Authority Stanly & Catawba Counties
- SB 11 (S27) Restore Down-Zoning Authority / Multiple Counties
- HB 68 Restore Down-Zoning Authority Granville & Vance Counties
- SB 65 Restore Down-Zoning Authority to Buncombe County



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

H.B. 24
Jan 29, 2025
HOUSE PRINCIPAL CLERK

H D

HOUSE BILL DRH10020-MQ-5

Short Title:	Restore Down-Zoning Authority.	(Public)
Sponsors:	Representative Adams.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO RESTORE THE AUTHORITY FOR LOCAL GOVERNMENTS TO INITIATE DOWN-ZONING.

The General Assembly of North Carolina enacts:

SECTION 1. Section 3K.1 of S.L. 2024-57 is repealed.

SECTION 2. This act is effective when it becomes law and applies retroactively to December 11, 2024. Any adopted ordinance affected by Section 3K.1 of S.L. 2024-57 shall be in effect as it was on or before December 11, 2024.

CODEWRIGHT PLANNERS

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THANK YOU FOR THE CHANCE TO SHARE SOME IDEAS!