



Middle Housing

Question 1: For "middle housing," confirm that the changes only apply to districts that allow DETACHED single-family. This doesn't require the uses to be allowed in a Multifamily district, correct?

Answer 1: 160D-707(b) provides that,
"A local government shall allow all middle housing types in areas zoned for residential use [emphasis added], including those that allow for the development of detached single-family dwellings."

Based upon the above, we believe that duplex, triplex, quadplex, and townhouse housing types are required to be allowed in all zoning districts that allow any type of residential use, including zoning districts that only allow for multi-family housing, and not just those zoning districts that allow only detached single-family dwellings. The caveat is that the land must be served by public or community water or sewer. The legislation exempts historic areas from the requirement.

Question 2: Does the change preclude an applicant from proposing a zoning condition that eliminates certain housing types? I believe the intent is to require local government to allow all of those types.

Answer 2: While the provisions would not seem to preclude an applicant from proposing such a condition, other parts of the Statutes limit conditions that are not lawful, and this bill may have the effect of making such conditions unlawful.

Question 3: 160D-707 - can you clarify it is water "or" sewer as well, correct - bill says being served by one or more

Answer 3: 160D-707(c) provides that,
"This section shall only apply to areas that are served, or through extension may be served, by one or more of the following [emphasis added]:
(1) A local government water system.
(2) A local government sewer system.
(3) A public water system.
(4) A wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under Part 1 of Article 21 of Chapter 143 of the General Statutes."



Based upon the above, we believe that the provisions of 160D-707, Middle housing is residential zones, would apply to areas served, or through extension may be served, by at least one of the mentioned infrastructures. It is important to note the “or through extension may be served;” without additional criteria it is difficult to answer how this would be determined and by whom, and whether extension would be required or obligated, and who could or would be required to satisfy any extension.

Question 4A: On the middle housing proposal, what if the property has public water but a septic system? Does the provision still apply?

Answer 4A: Similar to Q3, based upon the language, a property served by a public water system but no sewer or centralized wastewater system, and within a zoning district where residential uses were allowed, would be subject to the allowance of middle housing types.

Question 4B: If a developer wants conditional zoning for single family residential, would that be allowed?

Answer 4B: It is not entirely certain based upon the language of the bill. Similar to Q2, the provisions may have the effect of precluding the imposition of conditions precluding middle housing types.

Question 5: For middle housing, can we require they meet minimum lot size for the density (units/acre)?

Answer 5: 160D-707(c) provides that, “A local government may regulate middle housing pursuant to the provisions of this Chapter, provided that the regulations do not act to discourage development of middle housing types through unreasonable costs or delay.”

Based upon the language it would seem that regulations may be established for middle housing, but that the regulations would not be able to result in ‘unreasonable costs or delay’, assumedly in construction or permitting. The proposed provisions lack clarity on this point, but presumably minimum lot size and/or density limits would not be able to have the effect of precluding middle housing types from a zoning district entirely.

Question 6: Is density allowed to be exceeded by the inclusion of middle housing?

Answer 6: Similar to Q5, the proposed provisions lack clarity on this point, but it may be density limits would need to be reevaluated to ensure that they do not



have the effect of precluding middle housing types from a zoning district entirely.

Question 7: Our ordinance currently allows townhomes in single family districts but restricts to 30%. Can we still restrict by %?

Answer 7: Provided the regulations do not preclude middle housing types from a zoning district and provided they do not result in unreasonable costs or delay, it should be acceptable to establish a maximum percentage.

Question 8: We require multifamily to obtain approval of conditional zoning. If that is not possible can we require a special use permit.

Answer 8: Based on the proposed language (“...shall allow all middle housing types...,” “...may regulate middle housing..., provided that the regulations do not act to discourage development of middle housing types through unreasonable costs or delay.”) it is questionable whether middle housing types may be subjected to a discretionary approval process. Other parts of the bill limit the use of a conditional rezoning process as the only means of establishing a particular use type.

Accessory Dwelling Units

Question 9: Can the required setbacks for the detached accessory dwelling unit be different from other types of detached accessory structures?

*Answer 9: 160D-917(c) provides that,
“In permitting accessory dwelling units under this section, a local government shall not do any of the following:*

(3) Establish development setbacks that differ from the development setbacks applicable for a similarly situated lot in the same zoning classification.”

Based upon the language, it is not clear whether a local government would be able to establish setbacks specific to ADUs, but it may be that setbacks specific to all detached accessory structures or all detached accessory structures containing habitable area, different from those that may apply to principal structures, could be established.

Question 10: For ADUs, can a lesser development setback be permitted than that for the principal dwelling?



Answer 10: *Related to the Q9, based upon the language, it is not clear whether a local government would be able to establish setbacks specific to ADUs, but it may be that setbacks specific to all detached accessory structures or all detached accessory structures containing habitable area, different from those that may apply to principal structures (including lesser setbacks), could be established.*

Question 11: Can we still regulate the maximum building footprint for an accessory dwelling structure and its architectural compatibility to the primary single-family residence?

Answer 11: *Regulation of maximum lot coverage, footprint, or floor area of ADUs, or requirements for architectural compatibility insofar as those are statutorily compliant, does not seem to be prohibited based upon the language.*

Question 12: How does the "accessory dwelling unit" impact the watershed density calculations and minimum lot sizes?

Answer 12: *Uncertain exactly, except the accessory dwelling units would presumably count as built-upon area. If a local ordinance counted ADUs towards maximum density, then there is a conflict and it may be that additional density from ADUs would be pre-supposed.*

Substantial Compliance and Vesting

Question 13: Can the local government provide a definition of substantial compliance for the purposes of determining completeness or is that a moving target based on when the applicant feels they are ready?

Answer 13: *Based upon the proposed language, and without further clarification, it would likely be a recommended practice for local governments to define substantial compliance with respect to the sufficiency of information required by an ordinance or regulation.*

Downzoning

Question 14: On the downzoning changes can we downzone if an owner requests it?

Answer 14: *160D-702(d) provides that, "A local government shall not adopt or enforce an ordinance downzoning property, as defined in G.S. 160D-601(d), that has access to public water or public sewer, unless*



the local government can show a change in circumstances that substantially affects the public health, safety, or welfare.

Down-zoning is not prohibited. Assuming that the local government can show a change in circumstances that substantially affects the public health, safety, or welfare, regardless the party initiating the action (and assuming compliance with 160D-601(d), then yes, a down-zoning initiated by an owner of affected property would not be precluded.

Question 15: Would local governments be precluded from remove a use from a zoning district that was considered down-zoning?

Answer 15: No, assuming that the local government can show a change in circumstances that substantially affects the public health, safety, or welfare, thereby warranting the change.

Limits on Authority/Conditional Zoning

Question 16: We are prohibited from allowing uses only through conditional zoning. Would a special use permit still be an option?

Answer 16: 160D-703(e)(2) precludes local governments from allowing "a particular land use only through conditional zoning." The language does not seem to preclude allowing a use only through a special use permit.

Remedies

Question 17: Pursuant to 160D-703.1., does this mean any regulation that's invalidated? If a sign section was invalidated, would that allow them to choose another district? I don't believe that's the intent...but clarity is needed.

Answer 17: Based upon the language, it would seem to apply to any regulation enacted under zoning authority. Strongly agree that more clarity is needed.

Transportation Impact Analysis

Question 18: What if the NCDOT TIA has a glaring error in the calculations, etc?

Answer 18: Presumably any known errors in a traffic impact analysis should be brought to the attention of NCDOT during the course of their review. If



the TIA is approved, even with errors, then it is conclusive evidence that traffic is not a problem.

Question 19: TIA as basis for denial: is this purposely embedded only within the Appeals section?

Answer 19: Unknown.

Reporting

Question 20: Do the reports only have to contain permit applications for rezonings, Special Uses, Variance, Appeals, etc. or all permits that we issue?

Answer 20: The bill would require that local governments engaged in development permitting review submit a report containing, in part, (1) the number of development permit applications received, and (2) the number of development permit applications denied and the reason for the denial. As referred to in 160D-108(j)(2), "development permit" is as defined in G.S. 143-755(e)(2), which provides the following:

"Development permit. – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:

- | | |
|---|--|
| <ul style="list-style-type: none"> <i>a. Zoning permits.</i> <i>b. Site plan approvals.</i> <i>c. Special use permits.</i> <i>d. Variances.</i> <i>e. Certificates of appropriateness.</i> <i>f. Plat approvals.</i> <i>g. Development agreements.</i> | <ul style="list-style-type: none"> <i>h. Building permits.</i> <i>i. Subdivision of land.</i> <i>j. State agency permits for development.</i> <i>k. Driveway permits.</i> <i>l. Erosion and sedimentation control permits.</i> <i>m. Sign permit."</i> |
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Question 21: If you can't downzone why report the number?

Answer 21: A good question, nonetheless, the proposed bill requires this number to be reported.

General Comments/Questions (no responses provided)



- We're going to have to establish a clear distinction between allowed building types and other zoning requirements such as use and density.
- Do we know what group/organization the bill came from?
- I believe most local governments are against losing control over growth management planning and regulations.
- If the intent of the bill is to help make housing more affordable, this seems to fall flat of that goal. It's still market based- building more homes in "exclusive" neighborhoods doesn't lower the cost, just raises the stock of unaffordable housing.
- bullet points to be shared with elected officials is highly recommended
- yes. draft suggested modifications and take a formal position.
- If we take a position, it should be taken by the different amendments proposed. Not all or nothing. We should at least point out all of the areas that need clarity.
- I think a letter highlighting the difficulties this will impose on the local governments would be helpful.
- take a position that recognizes the bill as an attempt to prohibit exclusionary zoning, but has a lot of issues
- I think that this Bill need a lot more detail before I would feel comfortable with it. It muddies the waters the way it is written.
- yes, take a position making them aware of negative implications of this bill.
- "No one is safe when the General Assembly is in session."
- 100% need to take a position on changes that are necessary to actually make the bill clear enough to administer. A "best practices" position would also be desirable, though not as essential, as I don't know how unified the chapter is.
- I think we take a formal position and point out the unintended consequences (such as never being able to remove a use from a zoning district as that is a downzoning).



- letters to members pointing out negative impacts of this bill, especially middle housing
- a comparison of this and other states' (e.g., Oregon's HB 2001) legislative approaches to similar issues would be really helpful
- what is the likelihood this gets passed as is?
- if suburbanites are afraid of these housing types they need to live in restricted neighborhoods.
- In terms of equity... HOA or CC&R properties wouldn't be subject to the Middle Housing: "Nothing in this section affects the validity or enforceability of private covenants or other contractual agreements among property owners relating to dwelling type restrictions."