

ZONING AND LAND USE BASICS

Wake County Bar Association
Continuing Legal Education Program
October 21, 2026





INTRODUCTORY CONCEPTS

- Defining “land use regulation”
 - Common law nuisance
 - Restrictive covenants, easements, and other servitudes
 - Federal and state environmental laws
 - Other state statutes (e.g., NC Building Code)
 - Local development regulations



INTRODUCTORY CONCEPTS

“A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, North Carolina State Building Code enforcement, or any other regulation adopted pursuant to this Chapter, or a local act or charter that regulates land use or development.”

—NCGS § 160D-102(14)

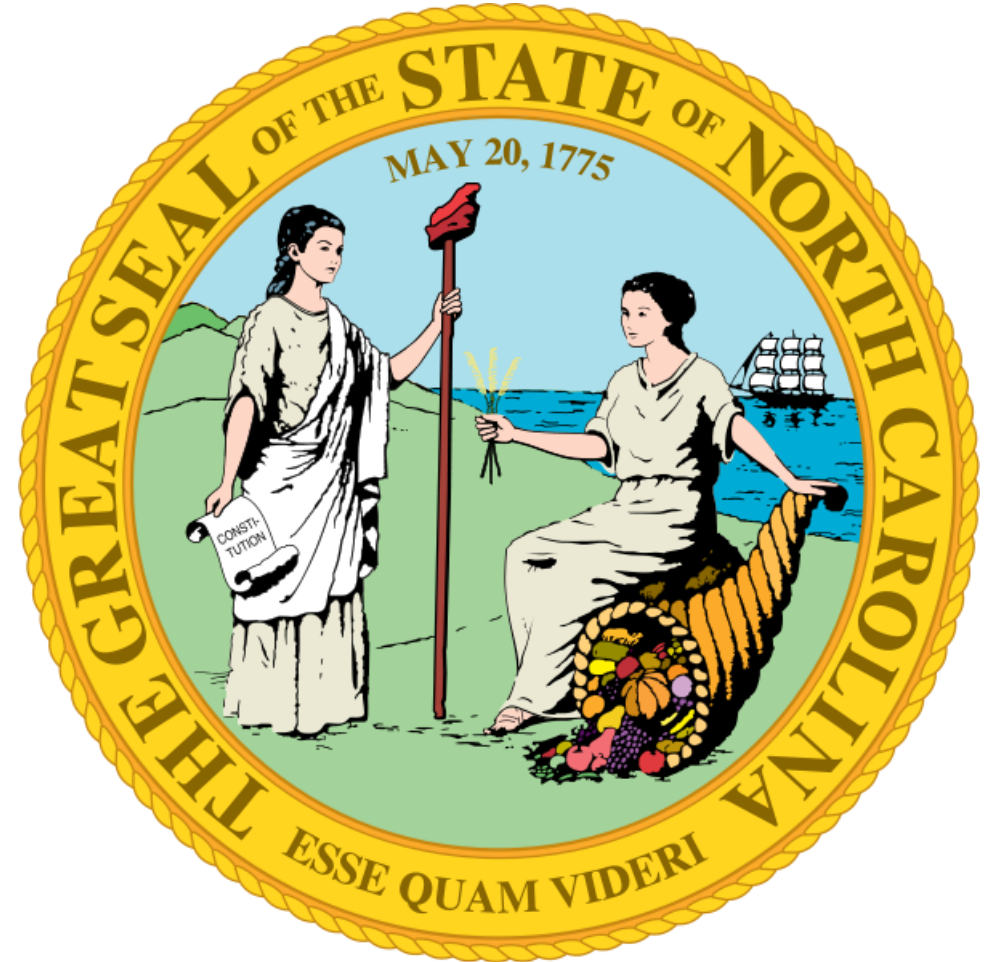
HISTORICAL CONTEXT

- 1885 – Modesto, CA bans wash houses from portions of city
- 1904 – Los Angeles establishes residential districts
- 1908 – Richmond, VA regulates building height & location
- 1916 – NYC adopts first comprehensive, city-wide zoning
- 1922 – US Dep't of Commerce publishes SZEa
- 1926 – USSC decides *Village of Euclid v. Ambler Realty Co.*



HISTORICAL CONTEXT

- 1923 – General Assembly adopts SZEAs for cities
- 1959 – General Assembly adopts enabling act for counties
- 2019 – General Assembly adopts consolidated enabling statutes (Chapter 160D)





LEGAL BASICS

“Zoning laws, when valid, are an exercise of the police power of the sovereign reasonably to regulate or restrict the use of private property to promote the public health, the public safety, the public morals or the public welfare. Thus, the power to zone is the power of the State and rests in the General Assembly originally.”

—*Zopfi v. City of Wilmington*, 273 N.C. 430 (1968)



LEGAL BASICS

“The General Assembly, in turn, may delegate zoning authority to the legislative body of a municipality. ... The power to zone is subject to the limitations of the enabling act.”

— *Wally v. City of Kannapolis*, 365 N.C. 449 (2012)

General Assembly



Local Gov'ts

ENABLING STATUTES

“A local government may adopt zoning regulations. [A] zoning regulation may regulate and restrict 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 spaces; the density of population; the location and use of buildings, structures, and land.”

—NCGS § 160D-702



ENABLING STATUTES

“A local government may divide its territorial jurisdiction into zoning districts of any number, shape, and area deemed best suited to carry out the purposes of this Article. Within those districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.”

—NCGS § 160D-703



ENABLING STATUTES

“A subdivision regulation may provide for ... orderly growth and development ... for the coordination of transportation networks and utilities within proposed subdivisions ... and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and general welfare.”

—NCGS § 160D-804



ENABLING STATUTES

- NCGS § 160D-920 ➔ environmental
- NCGS § 160D-922 ➔ erosion / sedimentation
- NCGS § 160D-925 ➔ stormwater control
- NCGS § 160D-926 ➔ watersheds
- NCGS § 160D-940 ➔ historic preservation
- NCGS § 160D-1102 ➔ building code administration



LOCAL REGULATIONS

Zoning Review Boards / Officials

- Governing Board → board of elected officials that adopts governing ordinances / regulations for the locality
- Planning Board → board established to review, recommend, and advise on implementation of local regulations (*see* NCGS § 160D-301)
- Board of Adjustment → board established to hear and decide quasi-judicial matters and appeals of administrative decisions (*see* NCGS § 160D-302)
- Administrative Staff → local planners, inspectors, enforcement officers, and other staff who help develop, administer, and enforce regulations (*see* NCGS § 160D-402)

LOCAL REGULATIONS

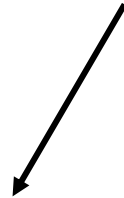
Comprehensive Land Use Plan

- Each locality must adopt plan as condition for adopting / applying zoning regulations (*see* NCGS § 160D-501(a))
- Purpose ➔ “sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development” (*see* NCGS § 160D-501(a1))
- Plans “shall be considered by the planning board and governing board when considering proposed amendments to zoning regulations” (*see* NCGS § 160D-501(c))
- But plans are “advisory in nature without independent regulatory effect” (*see id.*)

LOCAL REGULATIONS

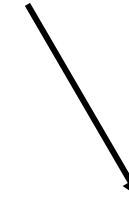
Zoning Ordinance

Text



Creates zones, establishes substantive and procedural requirements for development, outlines enforcement processes, etc.

Map



Correlates each parcel within local jurisdiction with a specific zone created in the text
(*see* NCGS § 160-105)

LOCAL REGULATIONS



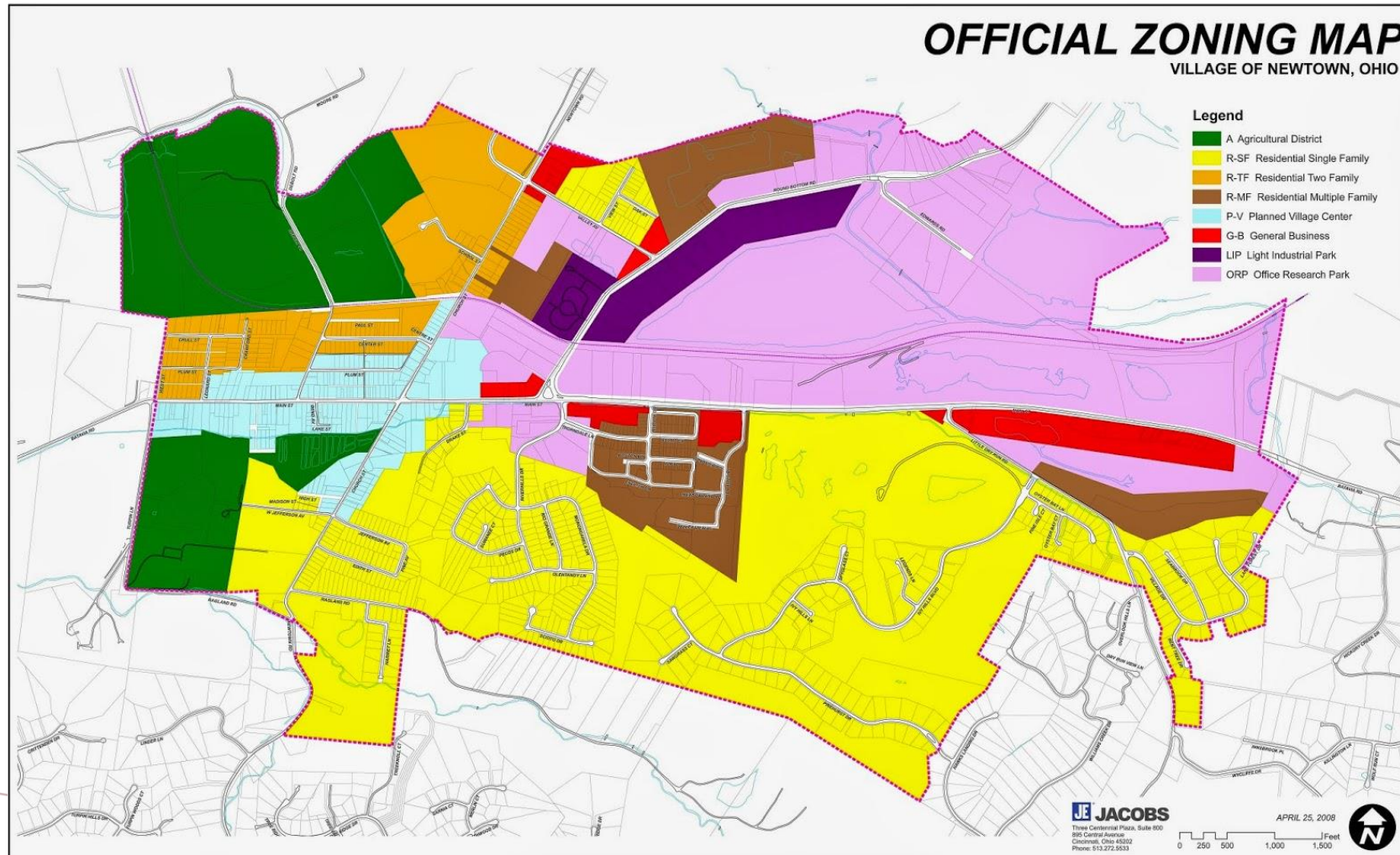
Raleigh
Planning

RALEIGH,
NORTH CAROLINA

Part 10:

**Unified
Development
Ordinance**

LOCAL REGULATIONS



LOCAL REGULATIONS

Subdivision Regulations

- Typically require approval of preliminary and final subdivision plats, as well as installation of infrastructure and other improvements (*see* NCGS § 160D-804)
 - Dedication of street / utility rights-of-way
 - Construction or funding of road improvements
 - Dedication or funding of recreation areas and open spaces
 - Construction of community service facilities
 - Reservation of school sites



LOCAL REGULATIONS

Local Regulatory Approvals

- Legislative
- Quasi-Judicial
- Administrative

LOCAL REGULATIONS

- **Legislative approvals**

- Decisions adopting, amending, or repealing the ordinance, policies, and standards that make up the local regulatory system (*see* NCGS § 160D-102(19))
- Must be submitted to planning board for review and comment (*see* NCGS §§ 160D-501,-604)
- Must be adopted by ordinance of governing board after public legislative hearing (*see* NCGS § 160D-601, -1003, -1005)
- Examples ➔ adoption of comprehensive plan, adoption of initial regulations, amendments to text, amendments to map (i.e., rezonings), approval of development agreement, etc.

LOCAL REGULATIONS

- Types of legislative approvals

- Text amendment → revisions to the text of a local zoning or subdivision ordinance
- Map amendment → revisions to the official zoning map that change the district in which a specified parcel is located (*see* NCGS 160D-102(34))
- Development agreement → agreements between a developer and local government that describe the terms of development (e.g., permitted uses, public facilities, applicable conditions and restrictions, etc.) and are binding on the parties for the duration of the agreement (*see* Article 10 of Chapter 160D)

LOCAL REGULATIONS

- **Quasi-judicial approvals**

- Decisions that apply the locality's ordinances and policies to individual cases involving the finding of facts and requiring the exercise of discretion (*see* NCGS § 160D-102(28))
- Typically made by the locality's board of adjustment (although can be made by other bodies, such as planning board or governing board) after a public evidentiary hearing (*see* NCGS §§ 160D-406, -705)
- Examples → variances, special use permits, appeals of administrative decisions, some subdivision approvals, some site plan approvals, etc.

LOCAL REGULATIONS

- **Types of quasi-judicial approvals**
 - Variance → relief mechanism from “strict letter of a zoning regulation” where “unnecessary hardship would result” from strict application (*see* NCGS § 160D-705(d))
 - Special use permit → permit allowing certain uses in a particular zoning district only after applicant proves specific criteria set forth in the ordinance (*see* NCGS §§ 160D-102(30), -705(c))
 - Administrative appeal → appeal from administrative decision made by staff, which the reviewing board may reverse, affirm, or modify (*see* NCGS §§ 160D-405, -406)

LOCAL REGULATIONS

- **Administrative approvals**

- Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in the regulations (*see* NCGS § 160D-102(1))
- Typically made by the locality's administrative staff (*see* NCGS §§ 160D-402, -403, -404)
- Examples → some subdivision approvals, some site plan approvals, interpretive determinations, notice of violations, etc.

LOCAL REGULATIONS

- **Types of administrative approvals**

- Subdivision approval → approval of any division of a parcel into two or more lots, building sites, or other divisions created for the purpose of sale or development (*see* NCGS § 160D-802(a))
- Site plan approval → approval of any scaled drawing showing the relationship between lot lines and existing or proposed uses, buildings, or structures (*see* NCGS § 160D-102(29))
- Interpretive determination → written determination regarding the applicability or interpretation of a development regulation to a given state of facts (*see* NCGS § 160D-403(b1))
- Notice of violation → written notice asserting that work or activity has been undertaken in violation of a local development regulation (*see* NCGS § 160D-404(a))

RELATED DOCTRINES

- **Nonconformities**

- Pre-existing use, lot, or structure that was lawfully established and existing on the effective date of the current regulations but is now out of compliance because of those regulations
- Such uses are “entitled to constitutional protection,” and thus allowed to continue despite their failure to comply (*see Godfrey v. Zoning Bd. of Adjustment of Union County*, 317 N.C. 51 (1986))
- But nonconformities “are not favored” and localities can regulate them by attrition, amortization, or other means (*see Huntington Props., LLC v. Currituck County*, 153 N.C. App. 218 (2002))

RELATED DOCTRINES

- **Vested Rights**

- A right to complete the development or use of property allowed by the applicable land use regulations based on the issuance of a valid development approval
- Statutory vesting → rights established pursuant to statute based on the issuance of a permit, subdivision approval, site-specific vesting plan, multi-phased development, or development agreement (*see* NCGS §§ 160D-108, -108.1)
- Common law vesting → rights established via substantial expenditures in good faith reliance on a valid approval that would result in the party's detriment if not honored (*see Walton North Carolina, LLC v. City of Concord*, 257 N.C. App. 227 (2017))

RELATED DOCTRINES

- **Land Use Exactions**

- A condition of development approval that requires land, facilities, or money to be dedicated, constructed, or granted to the government (*see Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1 (2022))
- Pursuant to *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024), such conditions must have—
 - An “essential nexus” to a land use interest articulated by the government; and
 - A “rough proportionality” to the development’s impact on that interest

JUDICIAL CHALLENGES

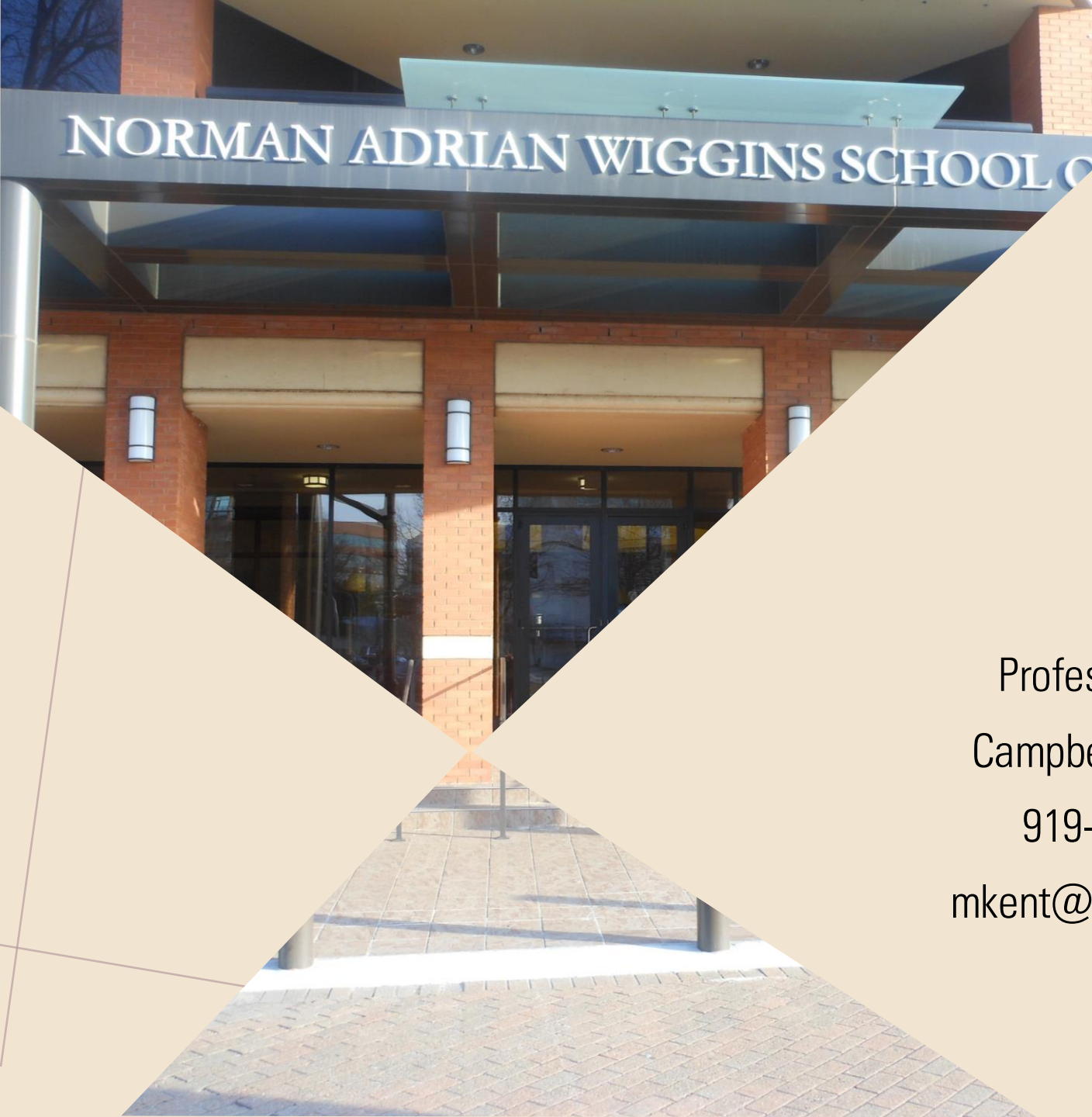
- NCGS § 160D-1401 → pursuant to Uniform Declaratory Judgment Act
- NCGS § 160D-1402 → appeal of quasi-judicial decisions via petition for certiorari
- NCGS § 160D-1403 → appeal of decisions on subdivision plats
- NCGS § 160D-1403.1 → original civil action for “declaratory relief, injunctive relief, damages, or other remedies” based on specific claims (e.g., unconstitutional, ultra vires, taking, arbitrary, etc.)



JUDICIAL CHALLENGES

- NCGS § 160D-1405 → statutes of limitations
 - Map amendments and development agreements = 60 days after adoption
 - Text amendments = 3 years from date party first has standing to challenge
 - Review of quasi-judicial decision = 30 days after decision is effective or after written copy of decision is provided
 - Otherwise = “as provided in Subchapter II of Chapter 1 of the General Statutes”





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THANK YOU!

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