

The Legality of Saying “No” to Rezoning

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It’s been said in a myriad of ways in a range of venues by Wake Forest residents that the town is experiencing too much development growth too fast. “Why aren’t our local leaders stopping or slowing construction?” residents wonder. “Why can’t they just say no?”

There are a variety of reasons why Wake Forest residents are unsettled; The town population is seeing a rise of over 200% decennially since 2000.¹ Bypass 98/Dr Calvin Jones Highway saw 19,000 vehicles a day in 2011 until developers bought the neighboring lots. As of 2024, bracketed by businesses, restaurants, stores, and apartment complexes, Bypass 98/Dr Calvin Jones Highway sees 33,000 vehicles a day. Likewise, Wait Avenue went from 7,000 vehicles a day in 2003 to 20,000 by 2024.² Additionally, Wake Forest has seen a marked decrease in its namesake tree canopy over the past twenty years to about 40% coverage in 2020.³ There are multiple construction and development sites throughout Wake Forest at any given time, as shown in Wake Forest’s Active Development Map.⁴

Most of the construction and development can be tied to Wake Forest’s Unified Development Ordinance (UDO).⁵ The document defines zoning restrictions, parking lots, exterior building materials, and minimum landscape buffers, among other things that give uniformity to development.

¹ https://www.wakeforestnc.gov/sites/default/files/uploads/planning/Demographics/final_2025_demographic_profile.pdf

² <https://ncdot.maps.arcgis.com/apps/mapviewer/index.html?layers=9a4c0ef17ee2456c8fb745fe85de6baf>

³ https://s3.us-west-1.amazonaws.com/wakegov.com.if-us-west-1/s3fs-public/documents/2023-09/Wake%20County_FINAL_pages_R_0.pdf

⁴ <https://www.wakeforestnc.gov/planning/development>

⁵ <https://www.wakeforestnc.gov/planning/unified-development-ordinance>

The recent Draft UDO,⁶ which had public hearings and community input in 2024, incorporates several Town Planning documents such as the Community and Comprehensive Transportation Plans and a Zoning Map.⁷

The Draft UDO was set to be enacted in 2025 until it was removed from consideration for additional legal review after the North Carolina General Assembly passed Senate Bill 382, The Disaster Recovery Act of 2024 – Part III in December 2024.⁸ At least one of the reasons the Draft UDO was removed for review was because the bill prohibits local governments from down-zoning (reducing the legal residency of a zone, such as dropping from 5 homes per acre to 3 or none, without the local government first receiving permission from the property owner).

Construction can also be tied to Wake Forest's Zoning Map, which strictly designates what can and cannot be built where.⁹ Where the UDO gives parameters on design and appearance, zoning dictates density and utilization.

From time to time, developers and the property owner will approach the Wake Forest Planning Department. The developer may wish to build apartments, but the site is in a zone that limits more than 3 dwellings per acre, GR-3. The developer and property owner ask the Board to approve a rezoning where it is 10 dwellings, GR-10, or residential mixed use, RMX. Town Planning staff work with the developer and property owner to evaluate the appropriate zone for the project. Pursuant to state law, timely notice is sent to the owners of neighboring properties alerting them to the proposed zoning change of the nearby lot, followed by a meeting where affected neighbors can ask questions and share concerns.¹⁰

The Planning Board reviews the request and evaluates if it meets the criteria laid out in the UDO. People may speak in public comment at the Planning Board meeting to share new or additional questions and concerns regarding the rezoning request.

Should the rezoning be found consistent with the UDO, the Planning Board will forward the request to the Board of Commissioners. State law requires there to be at least one public

⁶ https://www.wakeforestnc.gov/sites/default/files/uploads/planning/udo/exhibit_1_wake_forest_udo_draft_for_adoption_consideration.pdf

⁷ https://www.wakeforestnc.gov/sites/default/files/uploads/planning/udo/boc_ws_presentation_9.3.24.pdf

⁸ <https://www.ncleg.gov/BillLookUp/2023/S382>

⁹ https://www.wakeforestnc.gov/sites/default/files/uploads/planning/maps/zoning_march2026.pdf

¹⁰ https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160D/GS_160D-602.pdf

hearing.¹¹ At this hearing, people can come forward and speak publicly on the proposed rezoning. The public hearing is closed, and the Board may vote on whether or not to approve the rezoning request by the developer and property owner.

After closing the public hearing and having considered the request, but before the Board of Commissioners can approve the rezoning request, North Carolina General Statute §160D-605 requires the Board to state whether the new zoning is “consistent or inconsistent with an adopted comprehensive or land-use plan.” §160D-801 restricts the Board from denying or approving plats outside the standards set in the UDO.

If the Board denies a rezoning despite its alignment with ordinance standards, the Board decision may land the Town in legal trouble.

In the case of *Schooldev East LLC v Town of Wake Forest* (2022), the Wake Forest Board of Commissioners denied a permit to build a charter school because the development plan failed to adequately meet connectivity standards and zoning requirements in the UDO. Schooldev sued the Town of Wake Forest for violating state law by conditioning permit approval on road and pedestrian connectivity. Wake County Superior Court and Court of Appeals sided with the Town of Wake Forest, but the Town lost after Schooldev appealed to the North Carolina Supreme Court.¹² As a result, the Town paid a settlement of \$725,000 to Schooldev.¹³

The UDO is the guideline by which the Board of Commissioners operate. If the Board of Commissioners want to say “No” to rezoning and development, they must first change the policy in the UDO. Additionally, no policy laid out in the UDO may contradict state law. Regardless of resident outcry against the rezoning, if the proposed zoning is consistent with set policy and state law the Board of Commissioners is legally obligated to approve the rezoning request.

The above illustrates why it is important for Wake Forest residents to be active, engaged, and vocal participants when the Town of Wake Forest conducts public outreach and hearings regarding amendments to the UDO and Zoning Map. Residents can show up to speak in public

¹¹ https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160D/GS_160D-1005.pdf

¹² <https://appellate.nccourts.org/opinions/?c=2&pdf=41041>

¹³ https://granicus-aasmp-peak-files.s3.amazonaws.com/uploads/attachment/pdf/4048029/Resolution_-_Schooldev_Settlement.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIATHOFOHMMEOCNXD2W%2F20260604%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20260604T174126Z&X-Amz-Expires=3600&X-Amz-SignedHeaders=host&X-Amz-Signature=5370b6a7a257437bd538e8a0c2cf1a3a4c7c3aae0ae98e3a98238867f5f77b08

comment in the Planning Board meetings¹⁴ and regular Board of Commissioner meetings.¹⁵ Residents can also petition their representatives in the North Carolina General Assembly to change state law so that the law can be reflected in the UDO.¹⁶

¹⁴ <https://www.wakeforestnc.gov/planning-board>

¹⁵ <https://www.wakeforestnc.gov/board-commissioners>

¹⁶ <https://www.ncleg.gov/FindYourLegislators>