



Appearance Standards and House Bill 150

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WHAT ARE APPEARANCE STANDARDS?



Many local governments in our state have adopted appearance standards typically utilizing their general zoning authority.

With respect to residential construction, these ordinances often regulate purely aesthetic details of private single family residences by specifying specific architectural designs. These often include type or style of exterior cladding; style or materials for roof construction; location or style of windows or doors; exterior building color; number, type and layout of interior rooms.

HOW WIDESPREAD IS THIS TYPE OF REGULATION?



According to a 2012 survey conducted by the UNC School of Government, 42% of 296 cities and counties responding to the survey (representing 77% of the state's residents) reported having some mandatory design standards.

While a smaller percentage (15%) reported mandatory design standards for single family residences outside of historical districts, the reported controls included: type or style of exterior cladding (9%), architectural style (8%), location or style of garage doors (5%), and exterior building color (3%). It appears that this trend is spreading.

WHAT ARE SOME EXAMPLES?



- The Town of Mint Hill requires that no more than 50% of all houses within a development be of material other than brick.
- The Town of Huntersville provides that for certain lots, front-loaded garages must be recessed 10' behind front façade of house.
- The Town of Apex requires that all entry doors shall have built-in windows; if a solid door is allowed, adjacent side windows must be installed.
- The City of Jacksonville requires that no three adjacent homes may have the same front façade and no home directly across the street shall have same front façade elevation.

OTHER EXAMPLES



- The Town of Whispering Pines requires a blinking light on the front porch, bushes every 4', an "L shaped" house design, a two car garage, and a driveway that cannot be wider than 16'.
- Village of Pinehurst requires at least 4 design elements out of a list which includes windows (e.g., bay, box or bow); shutters; two or more front façade projections of 2' or greater; porch with at least two columns; chimney; dormer; a minimum of 4 windows on the front and rear facades; decorative garage door; decorative main door; etc.
- The Town of Leland prohibits or restricts: building orientation, design, façade materials, glazing, roof pitch requirements, painted balconies and porches to be made of wood, balcony and bay window placement, scale, proportion, etc.

WHAT'S THE HARM?



Design and aesthetic controls directly increase housing costs without any corresponding benefit. These costs often price out entry level housing and first time homebuyers.

For example, Ken Anson, President of Regent Homes which built over 300 homes in 2012 in the Charlotte region mostly for first time home buyers reported that purely aesthetic mandates increased the price of his average \$142,000 home by \$3,000 in just one jurisdiction imposing such controls.

Aesthetic mandates vary from jurisdiction to jurisdiction requiring builders to modify plans and engineering specifications to accommodate such variation. This unnecessarily increases the price of housing.

IN SHORT



By making housing unnecessarily more expensive, the impact of regulation such as this translates into less entry level housing, fewer first-time home buyers, limited housing choice, and less diverse communities.

The private property rights of landowners and potential homeowners are adversely affected. Builders and developers know best what can and cannot be successfully marketed and they, not the local government, assume the financial risk.

ASETHETIC CONTROLS ARE SUBJECTIVE



“Beauty is in the eye of the beholder”

From the novel *Molly Brown*, 1878
by Margaret Wolfe Hungerford

LEGAL BASIS FOR AESTHETIC REGULATION



- Local governments are creatures of the General Assembly. They only have the powers that the General Assembly provides.
- Prior to 1972, regulations could not be based solely on aesthetic controls. In 1982, the Supreme Court loosened the standard and required a balancing test.
- In 2012, in striking down Cabarrus County's APFO, our Supreme Court held that the land use regulation powers of local governments only extend to those subjects of regulation that are ***explicitly*** stated by plain words of the enabling statutes and those powers are not independently defined by the statutes setting out the permissible "purposes" of land use regulation. *Lanvale Properties v. County of Cabarrus*

WHAT THIS MEANS



The General Assembly has never provided explicit authority to local governments to regulate aesthetics (except in limited circumstances, e.g., historic districts).

In fact, in a petition urging the Supreme Court to rehear the *Lanvale* case, the county argued: “This [opinion] ...calls into question the validity of a wide variety of types of regulations commonly contained in zoning ordinances—such as requirements dealing with parking, signs, lighting, landscaping, tree preservation, **architectural design, building materials and construction**, performance standards governing noise, glare and vibration and other matters—because they are not specifically mentioned in the zoning enabling legislation, sections 153A-340(a) and 153A-341.” Apparently untroubled by this result, the Supreme Court denied this petition to rehear the case.

House Bill 150



For the reasons noted earlier and to clarify the law, NCHBA and other groups sought the introduction of HB 150 (Zoning/Design & Aesthetic Controls) in last year's session. This bill is substantially similar to SB 731 which passed the Senate in the 2011 Session. The primary sponsors of HB 150 are Reps. Dollar, W. Brawley, Moffitt, and Jordan. The primary sponsors of the Senate version (SB 139) are Senators Gunn, Clodfelter, and Tarte.

This bill would prohibit local governments from regulating certain defined building design elements for structures subject to the NC Residential Code for One and Two Family Dwellings (single family residences, duplexes, and townhomes). The bill limits appearance standards through zoning, subdivision, or other ordinances recommended by a community appearance commission.

HB 150: Building Design Elements Defined



- “Building design elements” are defined as “exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the numbers and types of rooms; and the interior layout of rooms.”
- The phrase does not mean (prohibit regulation of): “(i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations...governing the permitted use of land or structures subject to the NC Residential Code for One and Two Family Dwellings.”

HB 150 Exceptions/Exclusions



- Property owners may voluntarily consent to regulation of building design elements during the zoning amendment or development approval process.
- The prohibition does not affect private covenants or other contractual agreements among property owners.
- The bill does not affect design requirements for local historic districts or a historic district on the National Register of Historic Places; to structures designated as historic landmarks; to safety codes; to regulations adopted as a condition of participation in the National Flood Insurance Program; nor does it alter existing authority to regulate manufactured homes.

Progress/Status of HB 150



- HB 150 passed the House Regulatory Reform Local Government Subcommittee on 03/14/13.
- It passed the House on 2nd reading with a strong bipartisan vote of 94-22 on 03/19/13.
- It passed the House on 3rd reading with an even stronger bipartisan vote of 98-18 on 03/20/13.
- HB 150 received near unanimous approval by the Senate Commerce Committee and the bill was reported on 04/23/13.
- The bill is eligible for consideration in the upcoming short session.



Questions?

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