Updating Your Zoning & Subdivision Code

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Michele R. Donato, Attorney, Lavallette, NJ

Eric Damian Kelly, FAICP, Planner/Attorney and Professor of Urban Planning, Ball State University, Muncie, IN, & Duncan Associates

Stuart Meck, FAICP/PP, Associate Research Professor, E.J. Bloustein School, Rutgers

Order of Presentation

- Meck—Common problems in zoning and subdivision codes
- Kelly—Tips and tricks for revising planning and zoning codes
- Donato—The Residential Site Improvement Standards (RSIS) and issues in interpretation and implementation

Municipal Land Use Law (MLUL)

- New Jersey is different than other states
- MLUL contains
  - Purposes
  - Definitions
  - Standards
  - Procedures
  - Limitations

MLUL—Important Sections

- 40:55D-2—Purpose of Act
- 40:55D-3 to 7—Definitions
- 40:55D-38 to 40—Mandatory and discretionary contents of subdivision and site plan ordinance
- 40:55D-41—Limitations on scope of a site plan ordinance
- 40:55D-65—Contents of zoning ordinance
- 40:55D-40.1 *et seq*.--RSIS

What signifies a problem?

- Excessively long review periods for routine applications
- Excessive numbers of variances for similar provisions
- Successful lawsuits against municipality
- Angry citizens
- The Post-It Note phenomenon

Common code problems

- Conflict with state or federal law
- Clarity of language/vague language subject to different interpretations
- Uses allowed in certain districts but not others but with no logical reason
- Overly restrictive provisions; regulatory barriers
- Too big

Common Code Problems

- Regulatory definitions
- Inadequate and incomplete definitions
- Awkward and confusing format
- Verbose and redundant language
- Outmoded and inappropriate uses
- Too many use districts

Common Code Problems

- Lack of tables, charts, and graphs
- Excessive reliance on outside references
- Misplaced provisions; inaccurate links
- Vague and irrelevant review criteria
- Discretion can be exercised with no written standards or findings
- Lack of consistency with master plan
- No apparent vision—what is code trying to do?

Examples of bad code language

- “The plan for the proposed building or structure is in conformity with good taste and design and in general contributes to the image of the town as a place of beauty, spaciousness, balance, taste, fitness, charm and high quality.”

Examples of bad code language

- “The proposed building or structure is in harmony with the proposed developments on land in the general area, with the comprehensive plan for the town, and with any precise plans adopted pursuant to the comprehensive plan”

Examples of bad code language

- “Home Occupation. Any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly subordinate to the use of the dwelling for dwelling purposes. A home occupation will not display or advertise any commodity or service for sale on the premises, nor will it involve the employment of more than one person, other that a member of the immediate household.”

Examples of bad code language

- “In addition to any and all other requirements set forth in this subchapter for the provision of front, side or rear yards, off-street parking and/or loading, there shall be provided in all multifamily residence districts such additional open space as is set forth herein which shall be used for landscaping and which may not be used for off-street parking or loading purposes.”

Examples of bad code language

- “Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shoreline shall be construed as moving with the actual shore line.”

- Contact information
  - Stuart Meck, FAICP/PP, Associate Research Professor, Edward J. Bloustein School of Planning and Public Policy, Rutgers, New Brunswick, NJ, tel. 732-932-3822, ext. 640, email: stumeck@rci.rutgers.edu

Tips and Tricks

- Practical ideas for the process and substance of updating your ordinance

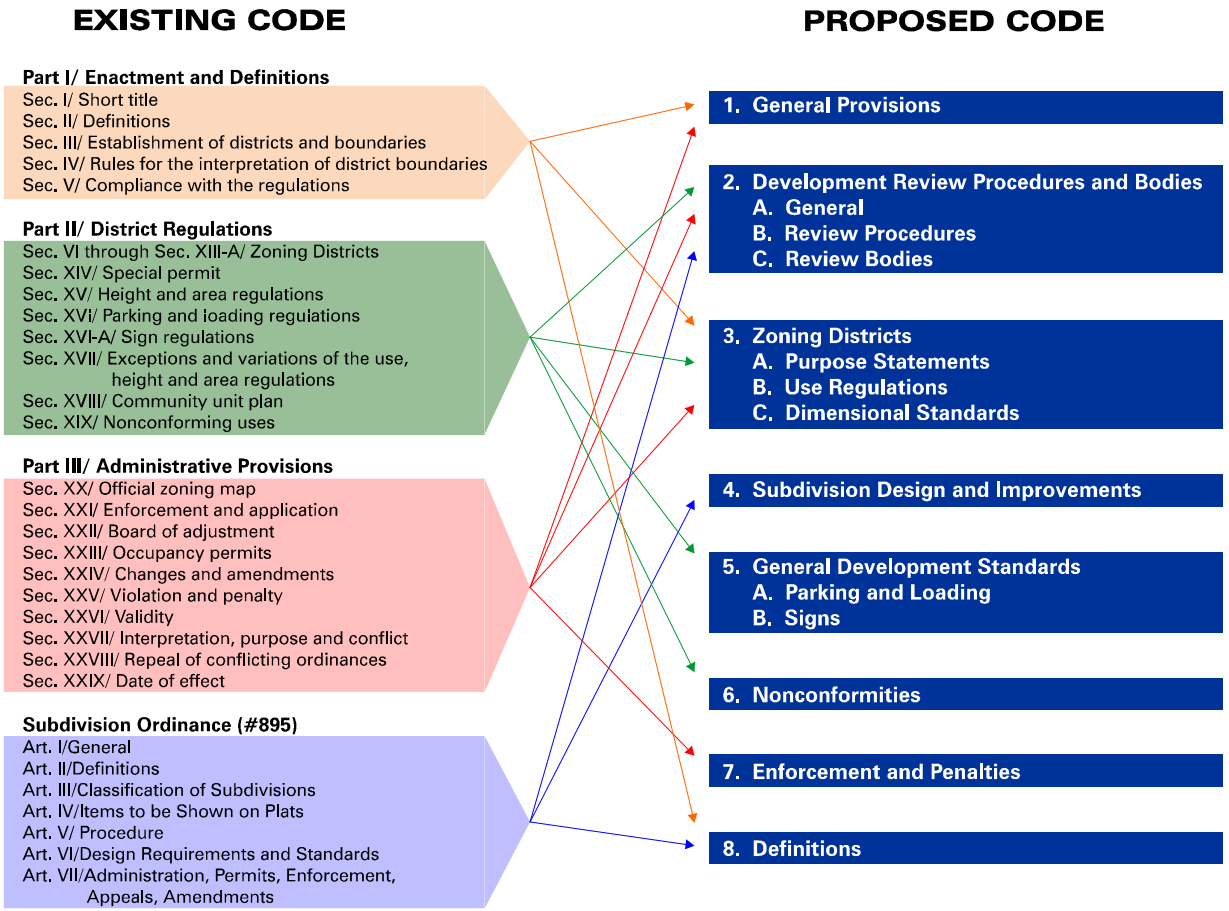
Start with a Diagnosis

- Purpose:
  - To identify strengths and weaknesses of current code
  - To guide updating process
- Inputs:
  - Office review of consistency
  - Counter- or enforcement-staff marked up copies
  - User/stakeholder interviews

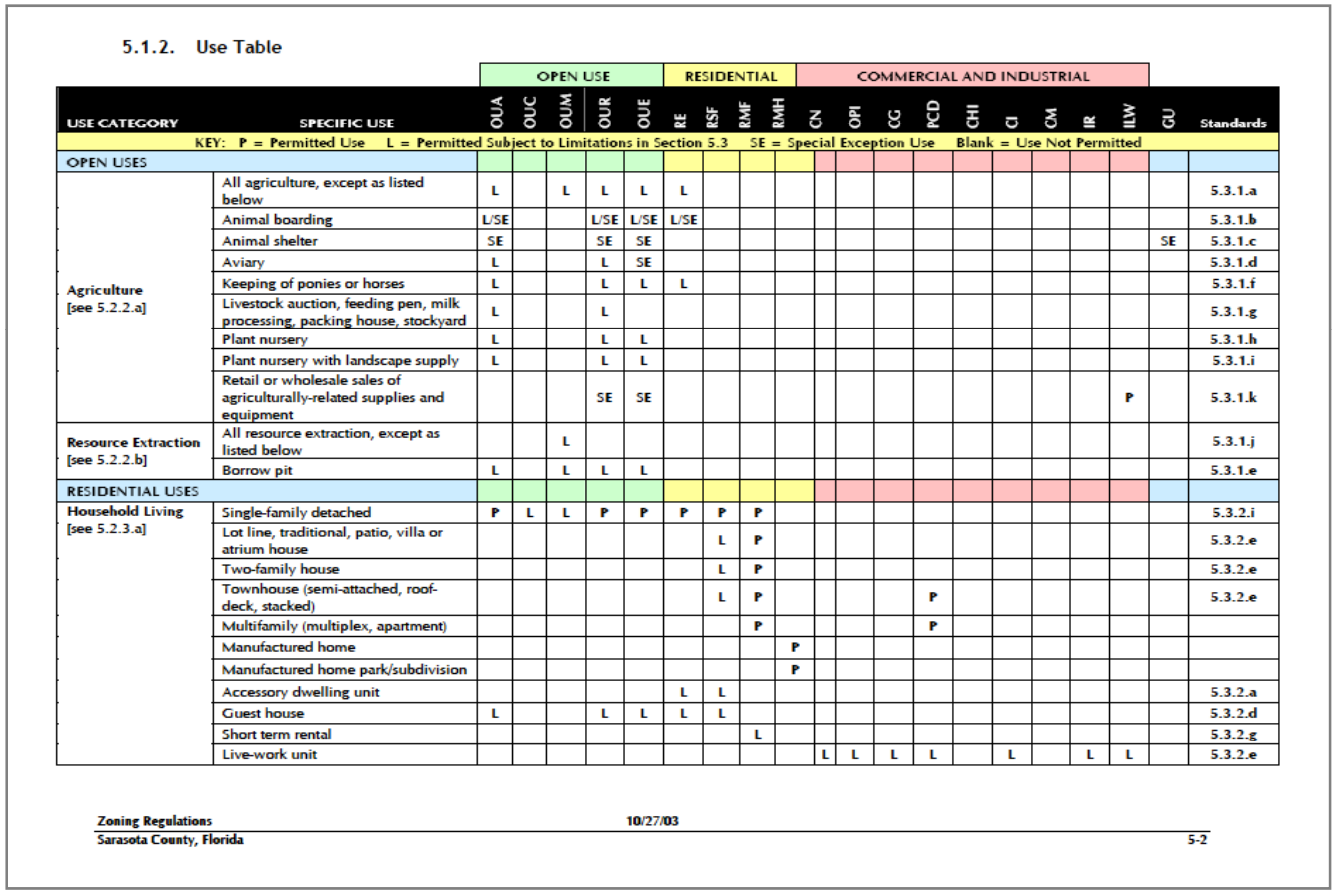
Diagnosis Contents

- Consistency with Comprehensive Plan
- Consistency with New Jersey Law
  - Community care homes
  - Family day-care homes
  - Other uses with special statutory treatment
- First Amendment Review
  - Signs
  - Sex Businesses
  - Religious Institutions
- Internal Consistency
- Clarity
- Best Practices

Organize


EXISTING CODE
PROPOSED CODE
Part I/ Enactment and Definitions
Sec. I/ Short title
Sec. II/ Definitions
Sec. III/ Establishment of districts and boundaries
Sec. IV/ Rules for the interpretation of district boundaries
Sec. V/ Compliance with the regulations
Part II/ District Regulations
Sec. VI through Sec. XIII-A/ Zoning Districts
Sec. XIV/ Special permit
Sec. XV/ Height and area regulations
Sec. XVI/ Parking and loading regulations
Sec. XVI-A/ Sign regulations
Sec. XVII/ Exceptions and variations of the use, height and area regulations
Sec. XVIII/ Community unit plan
Sec. XIX/ Nonconforming uses
Part III/ Administrative Provisions
Sec. XX/ Official zoning map
Sec. XXI/ Enforcement and application
Sec. XXII/ Board of adjustment
Sec. XXIII/ Occupancy permits
Sec. XXIV/ Changes and amendments
Sec. XXV/ Violation and penalty
Sec. XXVI/ Validity
Sec. XXVII/ Interpretation, purpose and conflict
Sec. XXVIII/ Repeal of conflicting ordinances
Sec. XXIX/ Date of effect
Subdivision Ordinance (#895)
Art. I/General
Art. II/Definitions
Art. III/Classification of Subdivisions
Art. IV/Items to be Shown on Plats
Art. V/ Procedure
Art. VI/Design Requirements and Standards
Art. VII/Administration, Permits, Enforcement, Appeals, Amendments
1. General Provisions
2. Development Review Procedures and Bodies
A. General
B. Review Procedures
C. Review Bodies
3. Zoning Districts
A. Purpose Statements
B. Use Regulations
C. Dimensional Standards
4. Subdivision Design and Improvements
5. General Development Standards
A. Parking and Loading
B. Signs
6. Nonconformities
7. Enforcement and Penalties
8. Definitions

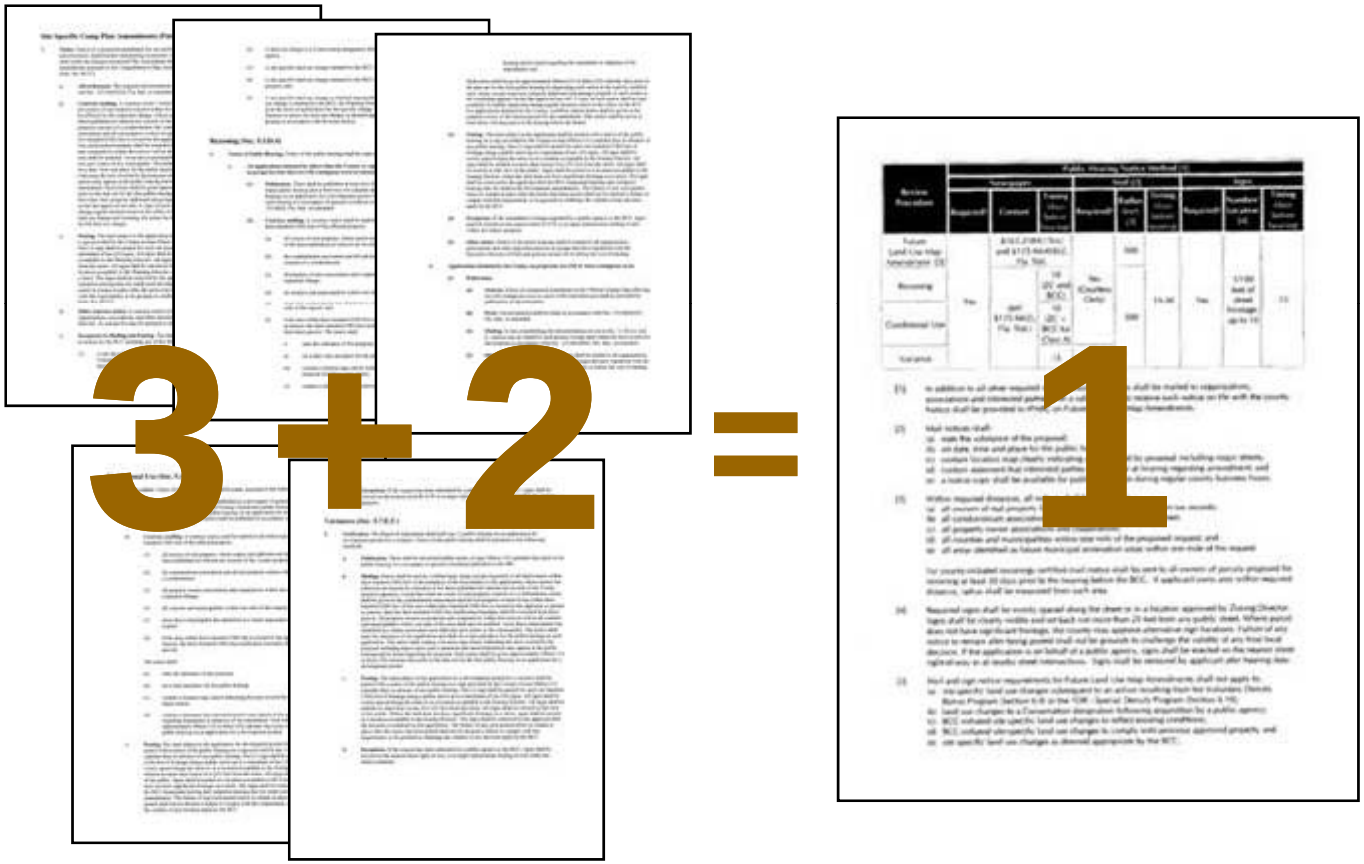
Clarify



5.1.2. Use Table

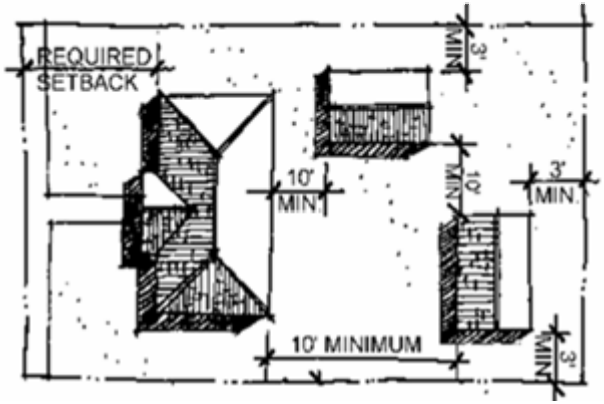
		OPEN USE					RESIDENTIAL				COMMERCIAL AND INDUSTRIAL										
USE CATEGORY	SPECIFIC USE	OUA	OUC	OUM	OUR	OUE	RE	RSF	RMF	RMH	CN	OPI	CG	RCD	CHI	CI	CM	IR	ILW	GU	Standards
KEY: P = Permitted Use L = Permitted Subject to Limitations in Section 5.3 SE = Special Exception Use Blank = Use Not Permitted																					
OPEN USES																					
Agriculture [see 5.2.2.a]	All agriculture, except as listed below	L		L	L	L	L														5.3.1.a
	Animal boarding	L/SE			L/SE	L/SE	L/SE														5.3.1.b
	Animal shelter	SE			SE	SE														SE	5.3.1.c
	Aviary	L			L	SE															5.3.1.d
	Keeping of ponies or horses	L			L	L	L														5.3.1.f
	Livestock auction, feeding pen, milk processing, packing house, stockyard	L			L																5.3.1.g
	Plant nursery	L			L	L															5.3.1.h
	Plant nursery with landscape supply	L			L	L															5.3.1.i
	Retail or wholesale sales of agriculturally-related supplies and equipment				SE	SE													P		5.3.1.k
Resource Extraction [see 5.2.2.b]	All resource extraction, except as listed below			L																	5.3.1.j
	Borrow pit	L		L	L	L															5.3.1.e
RESIDENTIAL USES																					
Household Living [see 5.2.3.a]	Single-family detached	P	L	L	P	P	P	P	P												5.3.2.i
	Lot line, traditional, patio, villa or atrium house							L	P												5.3.2.e
	Two-family house							L	P												5.3.2.e
	Townhouse (semi-attached, roof-deck, stacked)							L	P					P							5.3.2.e
	Multifamily (multiplex, apartment)								P					P							
	Manufactured home									P											
	Manufactured home park/subdivision									P											
	Accessory dwelling unit						L	L													5.3.2.a
	Guest house	L			L	L	L	L													5.3.2.d
	Short term rental								L												5.3.2.g
	Live-work unit										L	L	L	L		L		L	L		5.3.2.e

Simplify



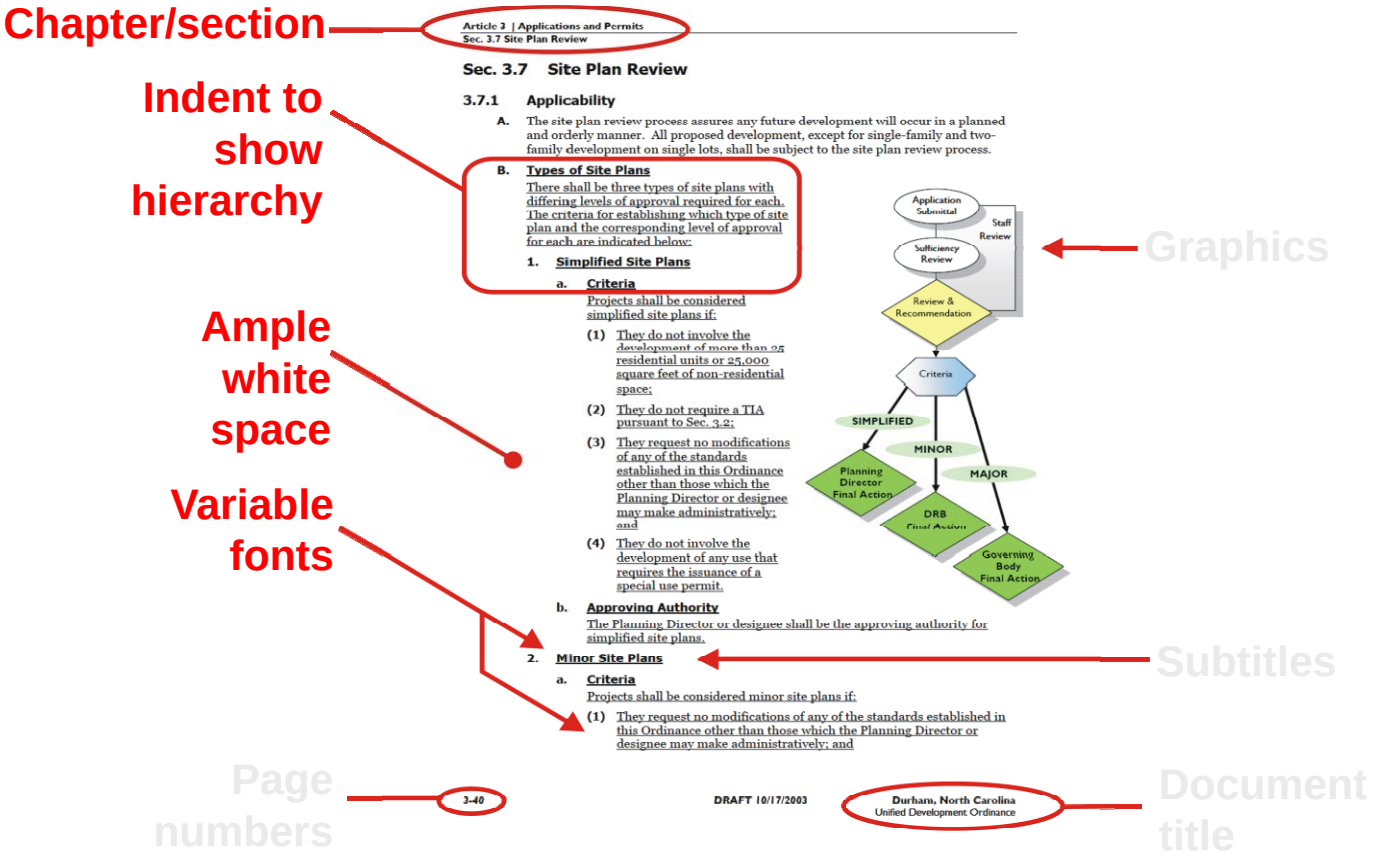
Illustrate

A. View from Oak Street


REQUIRED SETBACK
3' MIN.
10' MIN.
10' MIN.
3' MIN.
10' MINIMUM
3' MIN.

Variance
Required Prior Action
None Required
Preapplication Meeting
Application Submittal
Resubmittal
Staff Review Process
Completeness Review
Plan Compliance
Schedule Hearings
Professional Evaluation
Prepare Staff Report
Provide Public Notice
Public Hearing
BOA Final Action
Preapplication Process
Staff Review Process (± 30 days)
Public Review Process (± 45 days)

Present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Document title
Article 3 | Applications and Permits
Sec. 3.7 Site Plan Review
Sec. 3.7 Site Plan Review
3.7.1 Applicability
A. The site plan review process assures any future development will occur in a planned and orderly manner. All proposed development, except for single-family and two-family development on single lots, shall be subject to the site plan review process.
B. Types of Site Plans
There shall be three types of site plans with differing levels of approval required for each. The criteria for establishing which type of site plan and the corresponding level of approval for each are indicated below:
1. Simplified Site Plans
a. Criteria
Projects shall be considered simplified site plans if:
(1) They do not involve the development of more than 25 residential units or 25,000 square feet of non-residential space;
(2) They do not require a TIA pursuant to Sec. 3.2;
(3) They request no modifications of any of the standards established in this Ordinance other than those which the Planning Director or designee may make administratively; and
(4) They do not involve the development of any use that requires the issuance of a special use permit.
b. Approving Authority
The Planning Director or designee shall be the approving authority for simplified site plans.
2. Minor Site Plans
a. Criteria
Projects shall be considered minor site plans if:
(1) They request no modifications of any of the standards established in this Ordinance other than those which the Planning Director or designee may make administratively; and
Application Submittal
Staff Review
Sufficiency Review
Review & Recommendation
Criteria
SIMPLIFIED
MINOR
MAJOR
Planning Director Final Action
DRB
Governing Body Final Action
3-40
DRAFT 10/17/2003
Durham, North Carolina
Unified Development Ordinance

Updating Sign Ordinance

- For a major update of a sign ordinance, conduct a separate process

- Constituencies for signs and zoning are different
- Opponents of provisions in one update may oppose entire project
- Technical updates to sign ordinance can be incorporated in general update

Some Substantive Tips

- Following slides contain substantive tips learned from 35 years of experience in 36 states

Avoid Unintentional Nonconformities

Zoning in this area requires 25-foot front yards; right-of-way extends past sidewalk. Most dwellings in this stable neighborhood are nonconforming.

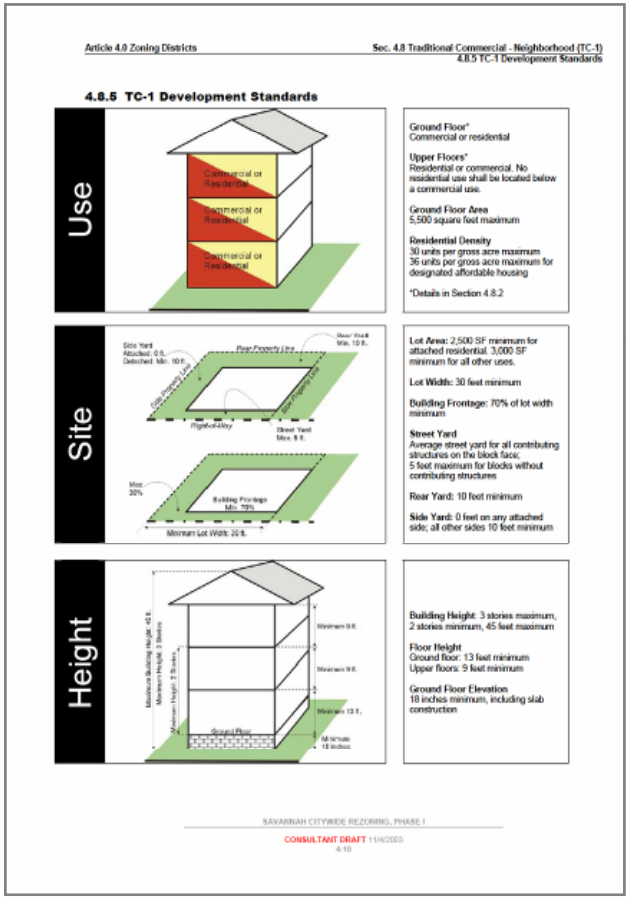
Consider Enforcement

- Adopt only what you can enforce
- Failure to enforce part of ordinance hurts credibility of entire ordinance AND of local government

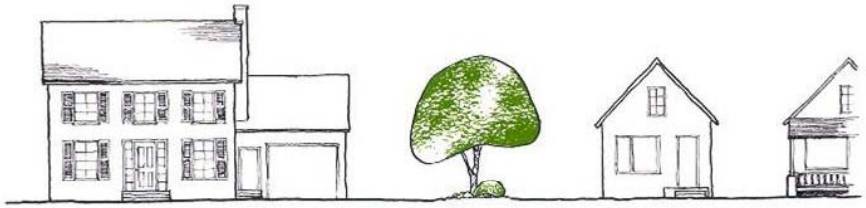
Enforcement Challenges

- “Temporary signs may be displayed for consecutive periods of 15 days two times per year”
- “Deliveries allowed only between 8 a.m. and 5 p.m. weekdays”
- “Establishments within 500 feet of a residential use shall be closed between 10 p.m. and 8 a.m.”

Consider Innovative Code Techniques



MAJOR DIFFERENCE–LARGE BUFFER



SMALL DIFFERENCE–SMALL BUFFER

Form-Based

Performance-Based

Reconsider Parking

- Reduce parking ratios where possible
- Consider MAXIMUM parking ratios
- Include shared parking factors
- Consider allowing peak parking on grass

Consider Alternative Energy

Consider Public Safety

Consider Community Protection through Environmental Design (CPTED) Standards

Be Sure It Works

- Check for substantive consistency
- Prepare some sample plats and site plans to see how regulations fit together

Top 10 Signs that It's Time to Update your code

- Code enforcement officers seem to age prematurely
- Cooperages and candleworks are permitted uses
- An Internet café downtown requires an ordinance amendment
- Living in the old apartments above downtown stores is now illegal
- Most new developments are planned unit developments
- Town clerk receives regular requests for copies of your zoning ordinance from professors who teach planning history
- Ordinance has more amendments than the Internal Revenue Code
- Local real estate litigators love the current ordinance
- It is in the foreign language section of library
- Your ordinance has been used for a Saturday Night Live skit

Contact information

- Eric Damian Kelly, Ph.D., FAICP, Duncan Associates and Ball State University, Muncie, IN, telephone: 765-289-5380; email: ekelly@bsu.edu; eric@duncanassociates.com

Residential Site Improvement Standards

- Appear at NJSA 40:55D-40.1 to 40.5
- Purposes
  - Avoid unnecessary costs
  - Ensure predictability
  - Promote streamlining

Residential Site Improvement Standards

- Scope
  - Streets
  - Parking
  - Water Supply
  - Sanitary Sewer
  - Stormwater Management

Residential Site Improvement Standards

- Legal challenge
- N.J. State League of Municipalities v. Dept. of Community Affairs, 158 N.J. 211 (1999) upheld RSIS

Residential Site Improvement Standards

- Evolving nature
- Last amendments—June 15, 2009
- DCA Advisory Opinions

Residential Site Improvement Standards

- Applicability
  - Applies to subdivision and site plans
  - Applies to variances only when associated with subdivisions and site plans
- Agency must find compliance of plans and plats with RSIS

Residential Site Improvement Standards

- Incorporation of RSIS by reference in local codes desirable
- Parking
- Municipal special treatment areas
- *De minimus* exceptions authorized
- Developer agreements to exceed RSIS
- Petition for waivers

- Contact information
- Michele R. Donato, Esq., 106 Grand Central Avenue, P.O.Box 145, Lavallette, New Jersey 08735, tel. 732-830-0777, email: mdonato@MicheleDonatoEsq.com