

Good Afternoon,

As I read the caselaw, and the NC SOG's article, and the state legislation and Stumph's zoning application (he did a good job), I believe that the zoning ordinance, as it currently reads, is beyond the power of the zoning authority as its taking into consideration the land ownership, verses solely concentrating on the land use impacts.

If we are allowing the accessory apartments, whether occupied by an owner or renter, will not change the impact which is what the zoning authority is designed to regulate.

See more recent comments below from Adam Lovelady with the School of Government regarding regulation based on ownership:

From: Lovelady, Adam Sent: Monday, May 16, 2022 4:10 PM Subject: RE: Regulations Based on Ownership of Adjacent Lots Regulation based on ownership or structure of ownership are dicey. In North Carolina, local governments may use development regulations to regulate the use and division of land, but not to regulate the ownership of land. In *Graham Court Assocs. v. Town Council of Chapel Hill*, 53 N.C. App. 543, 281 S.E.2d 418 (1981), the North Carolina Court of Appeals ruled that zoning may regulate land use, but not the form of ownership. In that case, the town's ordinance regulated multifamily rental apartments distinctly from multifamily owner-occupied condominiums. After a property owner was denied a permit to convert an apartment to a condominium, they challenged the ordinance. The court ruled that the multifamily development would have the same impacts whether it is occupied by renters or owners. As such, zoning cannot legally distinguish between the two, nor require extra permits to change from renter-occupied to owner-occupied. The North Carolina Court of Appeals reaffirmed that rule in *City of Wilmington v. Hill*, 189 N.C. App. 173, 657 S.E.2d 670 (2008). A Wilmington ordinance required that, in order for a residential property to have an accessory apartment (e.g., a garage apartment or in-law suite), the owner of the property must reside on site, either in the principal residence or the accessory residence. The court ruled the requirement for owner-occupancy was an unconstitutional regulation of ownership and beyond the scope of delegated zoning authority.

Let me know, if you have other questions or concerns.

Janelle

Janelle Lyons
Attorney at Law



P +1 7049403444 | F +1 7048315538
mlyons@cshlaw.com

2907 Providence Road Suite 200, Charlotte, NC 28211
Post Office Box 30787, Charlotte, NC 28230