



State Zoning Code Reform

SB349

Why did it happen?

Why was it killed?

Where does this go?

What can NTBA do?

Housing Affordability Index

Average House Price

Average Median Income





Hayti

1969, 11 months after Fair Housing Act we radically re-did our zoning.

147 and Urban Renewal had displaced up to 40% of the black population.

New, technocratic, Zoning was implemented, making incremental housing more difficult on *every* level.

Minimum lot size introduced

Parking minimums introduced

Duplex min width listed as 60' (instead of the commonly found 50')

Zoning categories expanded from 3 to 25+

Density standards reduced, in primary urban neighborhoods 9 fold.

Zoning Timeline - after Fair Housing

May 1968: POLITICS and FEAR: Consider Ann Atwater, (star of the Best of Enemies Movie), and the conflicts she had with Durham City Council over housing, prior to passage of our Zoning code.

In the wake of the 1968 Fair Housing Act, the City of Durham had pursued a Model Cities Grant, 5-year efforts as part of LBJs Great Society, which shifted governance culture towards reliance on “experts” who aimed to “centrally plan housing.”

On May 6 – City Council (Then the Board of Alderman) called for a “coordinated planning of private housing”. Notably, the same resolution calls for HR group to “resolve differences between different groups in the community.” Race is in irrefutably the air.



Locally, these housing “experts” decided that Hayti (Durham’s vibrant black district) should be earmarked for housing.

When black business objected, Durham’s City Council minutes note that “professional consultants from Washington DC have been hired to study the matter”,

and “they say the best use is housing.”



On May 16, 1968 (5 weeks after passage of the Fair Housing Act) Ann Atwater and a group of 40 Housing Authority tenants came to state their grievances to Council.

They accused the Housing Authority of “DELAYING tactics” and “not playing fair concerning several problems and demand placed before the city officials”.

Ann Atwater’s followers had been subjected to notorious DHA Director Carvie Oldham’s “heavy handed management style”, which featured “no standard lease” and “no tenants’ rights.”

Oldham “evicted people without cause”, and had close ties to CP Ellis (the antagonist of Best of Enemies) and Ku Klux Klan. Tenants repeatedly pled for Oldham’s removal. But Fireman would not let them in to speak, and the residents stormed out.

They are met with machine guns.



The week after the incident, City Councilman Biggs acknowledged the tension, and spoke his heart: “It is now time to make decisions for the City of Durham based on what is good for the most people... I think actions should not be given at the sacrifice of the desires and needs of other citizens in other parts of our community...

Continuing: “...**We should take a vote on the matter and rid ourselves of this troublesome factor in our community.**” “Since public housing has created such turmoil, I think that we should consider seriously the discontinuance of building any more public housing...

Concluding: “...**Personally, I think SINGLE FAMILY HOMES would be much better than multi-family homes.**”

Within 10 months his wishes would be codified.



Hayti Myth

Consensus is that the Durham Freeway destroyed Hayti. Some argue Urban Renewal did.

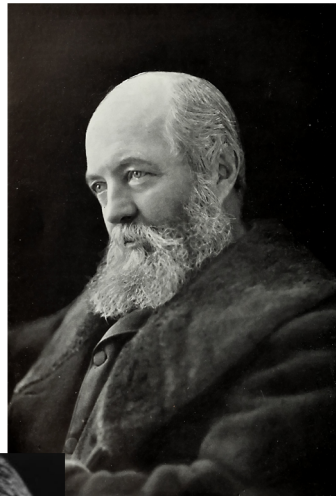
But neither alone prevented a community from rebuilding. That's what 1969 zoning did. It destroyed the community's ability to re-produce.

The ability to rebuild was denied. That's the power of exclusionary zoning.

Zoning reform cannot change history, but it can stop us from digging the hole.



Not just the 1960s. Zoning was *always* about race.



LOCAL OFFICIALS elsewhere, like those in St. Louis, did not experiment with zoning in isolation. In the wake of the 1917 *Buchanan* decision, the enthusiasm of federal officials for economic zoning that could also accomplish racial segregation grew rapidly. In 1921 President Warren G. Harding's secretary of commerce, Herbert Hoover, organized an Advisory Committee on Zoning to develop a manual explaining why every municipality should develop a zoning ordinance. The advisory committee distributed thousands of copies to officials nationwide. A few months later the committee published a model zoning law. The manual did not give the creation of racially homogenous neighborhoods as the reason why zoning should become such an important priority for cities, but the advisory committee was composed of outspoken segregationists whose speeches and writings demonstrated that race was one basis of their zoning advocacy.

One influential member was Frederick Law Olmsted, Jr., a former president of the American City Planning Institute and of the American Society of Landscape Architects. During World War I, Olmsted Jr. directed the Town Planning Division of the federal government's housing agency that managed or built more than 100,000 units of segregated housing for workers in defense plants. In 1918, he told the National Conference on City Planning that good zoning policy had to be distinguished from "the legal and constitutional question" (meaning the *Buchanan* rule), with which he wasn't concerned. So far as policy went, Olmsted stated that "in any housing developments which are to succeed, . . . racial divisions . . . have to be taken into account. . . . [If] you try to force the mingling of people who are not yet ready to mingle, and don't want to mingle," a development cannot succeed economically.

Another member of the advisory committee was Alfred Bettman, the director of the National Conference on City Planning. In 1933 President Franklin D. Roosevelt appointed him to a National Land Use Planning Committee that helped to establish planning commissions in cities and states throughout the country. Planning (i.e., zoning) was necessary, Bettman and his colleagues explained, to "maintain the nation and the race."

Expanding Housing Choices

Passed in September 2019, after a 2 year advocacy project.

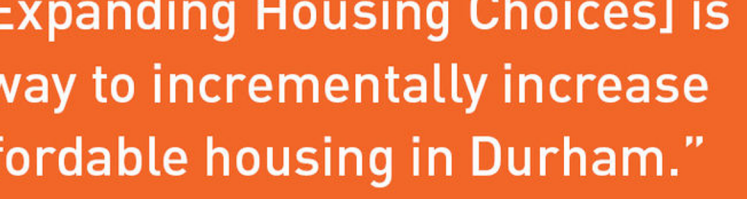
Practitioner panel comprised of for profit and non profit builders convened with planning to discuss things preventing the production of housing, particullary affordable housing.

Passed by 6-1 vote, despite ruthless opposition, mostly from highly educated homeowners.

Involved academic mayor standing up to his tribe.

1. Elimination of Single Family Zoning
2. Expansion of ADU
3. Introduction of Small Homes
4. Introducton of Reduced Pole Flag Lots





“[Expanding Housing Choices] is a way to incrementally increase affordable housing in Durham.”

Steve Schewel, Mayor
City of Durham, NC

Steve Schewel, Mayor
City of Durham, NC



1 Durham Single Family Zoning

Duplexing is now allowed on all single family lots in the city.

Dimensional standards match SFR. (5000sf, 6' sides, 25' rear)

ADUs are allowed on duplexes now. (3 units total)

Covenants can still restrict.

Parking is still a problem.



First Floor Plan (500 sq ft)



Second Floor Plan (452 sq ft)



2 Durham ADU

800sf (changed from 1/3 of primary)

25' height

3' off side and rear (5' without firewall)

No owner occupancy requirement

No parking requirement

Accessory STRUCTURE has no “cooking facilities”; can be any size smaller than primary dwelling.



SEASE GARAGE

3 Durham Small Lot

2000sf minimum lot (reduced from 5000sf)

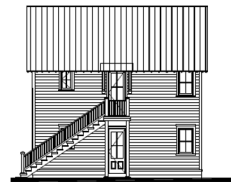
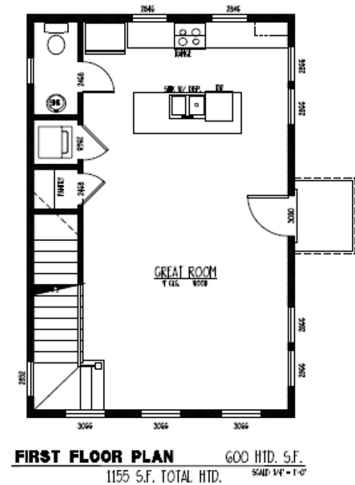
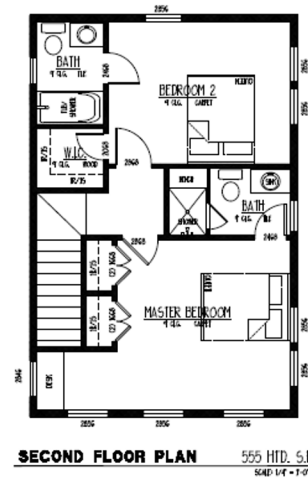
10' setbacks on corner (where most were previously unbuildable)

1200sf maximum house size

800sf maximum footprint

25' maximum height.

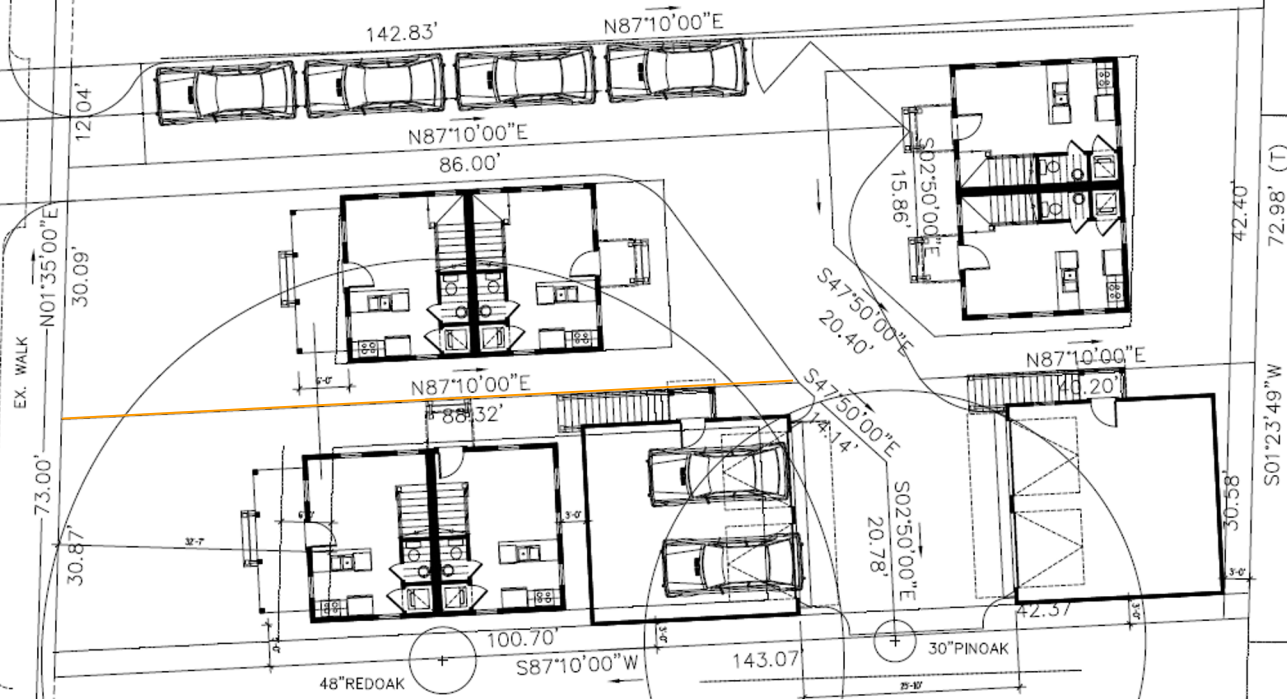
Corner lots are now easily turned into three houses.



(EX. 60' PUBLIC R/W)

3
2
1

KINGS COURT HOUSES
SITE PLAN - PRELIMINARY PLANS
04/09/2021



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PROJECT #

Reform is hugely empowering for the citizen-developer

Reducing knockdowns:

The little old lady with too big a house, and limited income, now has choices. She can:

1. Duplex the home
2. Add an ADU
3. Duplex the home and add an ADU
4. Subdivide the lot as an attached home
5. Subdivide the lot for an additional small home
6. Subdivide the lot for a flag lot
7. Sell the additional lot created for personal income.
8. Any combination thereof



Sb349

Up to 4 units by right, on any utilitied lot in the state (covenanted and historic districts exempted)

Clear effort to codify Missing Middle Housing - refers to 1-4 units + townhomes as “Middle Housing”.

Instructs Code Officials to treat 3 and 4 unit structures under Residential Code.

ADUs legal statewide, no parking or conditional use permits, or excessive fees, or owner occupancy requirements.

No downzoning without proving substantial affects to safety & welfare.

No blanket bans on uses except industrial or nuisance.

Bi-partisan support.



SB 349 pre-empts NIMBY and City obstructors, *in advance*

Pre-emptive bills are pre-empting the objections in advance. Vexatious Litigation - bury you in paper until you call uncle. Out west they kill use by taxing it; here in NC we put inquiry through endless process. We now have permits taking up to 2 years. As there is a constant call for more process, which is commonly confused for equity, it's the tip of the iceberg. Expect it will get worse.

"We'd love for you to build your duplex, Jose, and you can build it on any 3 acre minimum lot you can find."

"Happy to have an ADU in our town, just on houses larger than 4000sf, or corner lots, ¼ mile from transit."

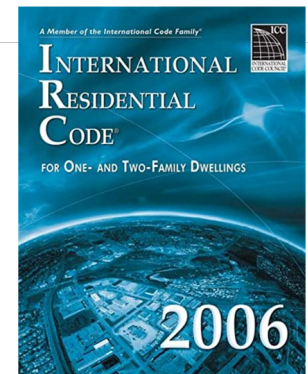
"You can definitely have multifamily, so long as you provide one dedicated parking spot per bedroom."

"Sure you can rehabilitate your quadraplex, but it's been boarded up for 24 months, so you need to repermit it, its now non-conforming, so you have to rezone, it's also in the commercial code, so that's about 10x the soft costs. Oh, and you are now subject to stormwater and will need to build a pond and pay a fee."

Sb349, Section 1.2 is a BIG DEAL

SECTION 1.2. The North Carolina Building Code Council (Council) shall adopt amendments to the North Carolina Residential Code for One- and Two-Family Dwellings (Code) to define and include regulation of triplex dwelling units and quadplex dwelling units in order to facilitate regulation of those units in areas zoned for residential use, including those that allow for the development of detached single-family dwellings. Upon adoption of the amendments, the Council and local governments enforcing the Code shall regulate triplex dwelling units and quadplex dwelling units being sited pursuant to G.S. 160D-707, as enacted in this act, under the new amendments to the Code.

“The 1-4 Family Code”





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Gaston St

Brevard, North Carolina

Google

Street View



SB 349 codifies IncDev / NTBA / CNU Values

KRONBERG:

90% of the problem with modernist planning can be boiled down to 5 items:

1. Parking Mandates
2. Density Maximums
3. Lot Area (and Width) Minimums
4. Special Permissions Processes /
Discretionary Review
5. Single Family Zoning



Who killed it?

NCLM - local government leaders

NC-APA - local planners

They equate “choice” with “one size fits all”



April 1, 2021 | [NCLM.org](https://www.nclm.org)

ACTION ALERT

Urge legislators to oppose bill that would eliminate local zoning control and destroy local property rights

Legislation that would eliminate single-family zoning statewide and wipe out other aspects of local zoning has been filed in the state Senate and House.

SB 349/HB 401 *Increase Housing Opportunities* represents a radical, one-size-fits-all approach to zoning and land use, in the guise of increasing affordable housing. The bill's overall effect would be to usurp local control, further eroding the rights of local homeowners and property owners to work through their locally elected officials to determine how development should occur in their communities and neighborhoods.

Please contact your legislators now to tell them to oppose these radical changes in zoning laws and the rights and protections of existing property owners.

Where does 349/copycat bills go?

This election was the first time presidential candidates had talked about zoning reform.

Biden is discussing \$5b to municipalities that “eliminate exclusionary zoning”.

There is talk of withholding Transportation of CDBG funds for cities that do not reform zoning; or accelerating / fattening payment to those who do.

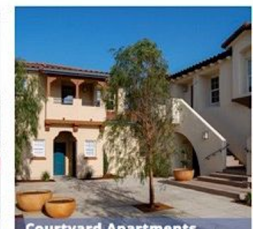
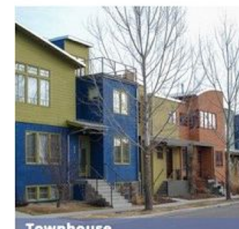
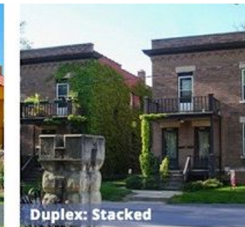




- **Incentivize Ending Exclusionary Zoning and Expanding Housing Choices.** Exclusionary zoning laws – like minimum lot sizes, mandatory parking requirements, and prohibitions on multifamily housing – inflate housing

What Can We Do?

First and foremost, do great work. The planners and electeds who stuck their necks out for zoning reform, feared that crappy builders would ruin this for everyone. If we build great duplexes, cottage courts, this has legs. But WE need to do it.



What Can We Do?

Second, take an organizational policy leadership position. Our voice is outsized, but largely unused. Maybe through briefs. Maybe through published writings.

Assume we might be the only organization that understands and feels what zoning does to cities.

The board should talk about where to throw its weight around.

I have no doubt that with our bona fides, if we wanted to sit with the Biden administration, we absolutely could.



URBIS AMICUS | Free Cities from Punitive Zoning

Black men & women building businesses in their communities can no longer be roadblocked by urban zoning.



A young black woman, perhaps 30 years old, approached the white vandals. [“We didn’t ask y’all to do that. They’re gonna blame black people for this. Y’all are part of the problem.”](#)

Continuing, she narrated the events via her phone. “We’re out here, standing, together, peaceful, without any problems. We got people who are racist, talking about Black Live Matter. They ain’t even us. Don’t let the media fool you. When you see the vandalism [on these](#) places, tell them [that wasn’t us](#).” Turning back to the vandals, “Don’t burn these people’s buildings!”

Alone she stood, with no army or even friends behind her, against these faceless defacers – two white women who professed blessing-of-agency and common disenfranchisement with her cause. She informed the vandals, as peacefully as one could, that they 1) did not represent the black community, and 2) were not being helpful.

Across the country, [this scene repeated](#).

In Raleigh two black women defended a seemingly random storefront from a clear looting threat: “People work too hard. Too hard. [You ain’t going to do it in front of me](#).” Her friend doubled down, “It might just be for a little clothes, but you ain’t gonna ransack this shit. Not tonight.”

A young black man in Minneapolis, wearing a “Bringing Back the Village” shirt and carrying a pizza, confronted a white man destroying an Autozone. The events take place in front of a sea of people filming, across the street from the 3rd Precinct MPD police office. As was the norm during the protests, police were nowhere to be found. The property destructor, sporting standard-issue rioter fatigues – head-to-toe black dress and face covering, while wielding tools of destruction – was six inches taller and perhaps 50% larger than the objector. He tried to walk away but was

followed, responding “if you follow me I am going to fight you right now.” The black man, with as much surety and conviction as one can convey, pauses to request all the help he needs from the crowd: [“Someone hold my blunt.”](#)

Let us all buy this man’s replacement blunt.

The long term damage from the property destruction, exacerbated with Covid, is certain to be substantial. Already Targets and CVS have announced longer term closures in affected neighborhoods. As these self-proclaimed co-pilots go back to their [parents’ basements](#), they will leave behind more arid food [desserts](#) in the communities they ostensibly represent. In this, they prove that they lack the empathy they profess to carry.

Where lines in the sand were drawn, boundaries to not cross, they were drawn by lay members of the black community. They were not set by famous people. Hollywood was not present here. Nor were containments made by community leaders: no mayors, no city staff, not even clergy. It was just members of the community, defending their community. This is equity.

The tone was echoed, perhaps inspired by, a [reluctant speech by Michael Bender, aka Killer Mike](#): “It is your duty not to burn your own house down, for anger with an enemy.”

This terrible week in the United States started with justifiable anger, fueled by anti-capitalists high-jacking a movement, further fueled by opportunists. [Those who ended up with 70-inch Vizios](#) surely are not procuring the technology in the name of George Floyd. It is the circuit breaker between the genuine anger and the community destruction that should be applauded and called on for repeat.

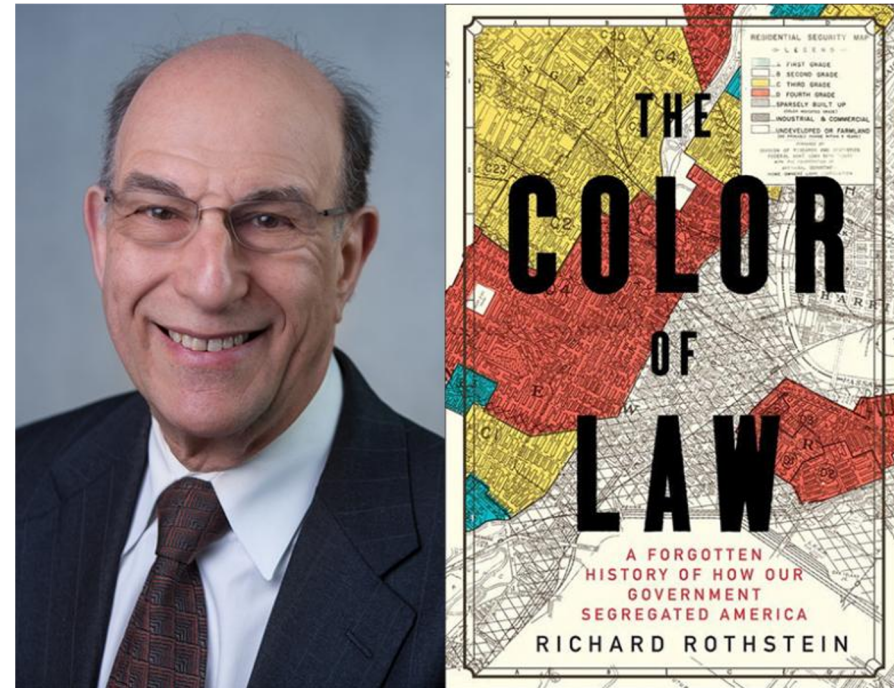
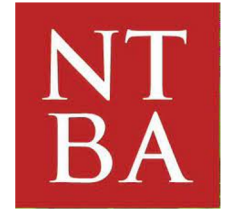
It is of grave concern that civic leaders failed us here, but honorable so many citizens stepped up, in their absence, to lead. In this sense, we may have witnessed a changing of the guard. Cities were exposed during the riots as impotent, capable of far less than presumed. It is citizenry that will carry the torch of society, with contracts or without, into the future.

Within the protest community, there exist large overlapping interests. It takes courage to stand up to one’s own tribe. Yet this week, that’s exactly what many did, and it is these stands that should give us hope. In these troubled times, black members of their community, defending their communities and their businesses, were the best America had to offer. [UA](#)

What Can We Do?

Third, take specific local responsibility for fixing local codes.

IncDev has taken a larger interest in zoning reform than NTBA, and it's no coincidence the most sweeping reforms are in Atlanta, Durham, Portland, Fayetteville, Buffalo, Dallas, Minneapolis.



What Can We Do?



Lastly, The most impactful reforms are going to happen at the state level. Take a look at NC [SB349](#). It's the best i have seen written.

If you have contacts in your state legislatures, do not be afraid to float it to them.



Thank You

Zoning Reform
Durham > NC SB 349 > Federal Reform