Module 8.
Aesthetic Regulations

This training module has 5 parts:

- Why Are Aesthetics an Important Local Government Issue?
- History of Appearance-Related Regulation
- Who Can Influence Community Appearance?
- Tools for Managing the Physical Character of a Community
- The Role of the Boards and Commissions

Why Are Aesthetics an Important Local Government Issue?

- Community Values

  Appearance as it relates to planning has been defined as the quality of the environment perceived from or affecting the senses. Many believe that the government has no place regulating the aesthetic character of the community, and should limit its involvement to health, safety, transportation, and other areas that are specifically related to providing services. But communities throughout the country and in North Carolina have found that their citizens not only support the involvement of their elected representatives in maintaining the physical character of their city, town or county, but insist on it. They are often irate when government fails to prevent an individual from charting his or her own course in a way that is perceived to have a negative effect on the aesthetics of the community.

- What’s Ugly, and What’s Art?

  Most people agree that an individual who stores junked cars in the front yard in a residential area is violating at least an unwritten code of conduct regarding care of one’s own property and respect for one’s neighbors. But where should the line be drawn? If junked cars are not acceptable, what about a scale model of the Washington Monument? What if it’s painted orange? What about controversial art? What about the “Golden Arches” set among an historic downtown area? This fine line between individual rights
and free expression is one public officials must tread upon carefully. Setting an acceptable minimum level of quality and cooperation with neighboring properties is the primary challenge of applying community aesthetic values to individual development decisions.

• Some Aesthetic Considerations

  • Sustainable economic development
  • Preservation of natural and cultural heritage
  • Environmental health
  • Community interaction and involvement
  • Respect for the investments of others in their property

“I don’t think there is anything that could occupy our attention with more distinction than trying to preserve for those who come after us this beautiful country which we have inherited.”

John F. Kennedy
The History of Appearance-Related Regulation

• Aesthetics and the Court

In the 1954 United States Supreme Court Case, Berman vs. Parker, Justice Douglas wrote:

“The concept of public welfare is broad and inclusive… the values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”

• Economic and political context

Aesthetic considerations can not be separated entirely from the economic and political realities of the era. One must look within the context of planning history in America to understand the development of a body of law based on appearance. Effects on appearance were inextricably dependent, especially in the latter 19th century, on regulations regarding health and safety.

Early American colonial town planning was patterned largely on the medieval European concept of the “charter city” where the municipality played a major role in guiding the physical development of the community and setting its economic and social policies. The appearance of these early settlements (such as Williamsburg, Virginia, illustrated below, and Savannah, GA), was a function of a preplanned grid or geometric variation that predetermined the locations for residences, streets and open spaces, as well as churches, government buildings and warehouses.

As a result of the American Revolution and the adoption of the Constitution, local city authority diminished, transferring more control to state government. Cities no longer had clear authority to control or direct the development of private property and states were often not inclined to exercise their power in such matters. The Ordinance of 1785, established a system of rectangular survey coordinates, opening the frontiers to settlement but also to land speculation for private gain. By the early 19th century, large-scale city plans based on traditional design themes were rejected in favor of grid plans
requiring minimum government expenditure and allowing maximum opportunity for subdivision of larger tracts and land sales by speculators.

• The Industrial Revolution spawns greater powers for local government

Around the same time, great industrial cities were emerging around rail access, with large concentrations of tenements surrounding center-city factory sites. **The deteriorating housing and living conditions and the decline of open space in these urban industrial centers eventually brought to public attention the deficiencies in the state-centered political system and the need for more municipal authority.** Sweeping changes in the power of local government to control private development were implemented to clean up these areas, provide a decent place to live for people, and not incidentally to make changes in the quality of the physical environment of the city.

• Zoning was, and is, the primary tool to control the aesthetic character of development

The original zoning law for Fifth Avenue in New York in 1916 was intended to stem the gradual movement of commercial uses to traditionally residential blocks, protecting the values of the affected property. **Now, at the turn of a new century, we continue to use essentially the same tools (zoning ordinances) that were devised to address the problems of the nineteenth century.** These rules have evolved to a broader and more complex set of tools. They are based on the original power to zone that was the result of the actions of individual property owners whose decisions often flew in the face of accepted community values regarding the right to a quality living environment and respect for the property rights of others.

• Have we created a monster?

The shortcomings of conventional zoning, if used in its traditional form, are becoming increasingly apparent. **Zoning based on quantitative standards that can be rigidly enforced has unwittingly eliminated much of the character of special places.** Districts have been created allowing only single uses with buildings isolated from one another, commercial strip centers have in large measure replaced mixed-use neighborhoods, and the corner grocery has been zoned out of existence in many communities.

• A new look at some old zoning tools

With communities realizing that dull generic buildings with vast parking lots were replacing the very structures that lent their towns character and interest, they started to look at ways to retain and re-create attractive and livable communities. Various forms of aesthetic control were introduced. In the 1970s, the first wave of appearance codes and historic preservation codes was adopted as a reaction to two decades of destruction of older buildings, and their replacement with quickly-erected, often second-rate structures. These codes tended to be superficial and restrictive, focusing mainly on materials and colors of building facades. The 1970s also witnessed a dramatic increase in the number and complexity of sign ordinances. But while restricting number and size, these often-convoluted codes often had the adverse effect of limiting creativity. By the 1980’s billboard restrictions and landscape ordinances became common in many communities, and the 90’s have brought more interest in other, more complicated tools such as
neighborhood or “small-area” planning and special design districts, as well as in codes that protect existing trees on land subject to private development.

Now, after almost twenty years, towns are facing their futures with a keener appreciation of what makes a community truly livable. With the legislative framework firmly established and the advantage of hindsight, policy makers have the opportunity to set a minimum standard for quality in private development that is both flexible and fair.

• The legal underpinning of aesthetic management in North Carolina:

North Carolina State Statute Chapter 160-A, Article 19, Planning and Regulation of Development, enables municipalities to exercise a broad range of planning and enforcement powers, including those directly and indirectly related to appearance issues. However, whether or not the regulation of aesthetics is a legitimate objective of zoning remains a controversial issue.

For many years, the North Carolina courts held that regulations may not be based solely on aesthetics (Small v. Councilmen of Edenton, 146 N.C. 527, 60 S.E. 413 (1908)). For this reason, ordinances that imposed requirements to screen junkyards (State v. Brown, 250 N.C. 54, 108 S.E.2d 74 (1959)) and regulate business signs were invalidated (Little Pep Delmonico Restaurant, Inc. v. City of Charlotte, 252 N.C. 324, 113 S.E.2d 422 (1960)). However, in 1972, the court noted that there was

“a growing body of authority in other jurisdictions to the effect that the police power (might) be broad enough to include reasonable regulation of property use for aesthetic reasons only.” (State v. Vestal, 281 N.C. 517, 524, 189 S.E.2d 152, 157 (1972))

Then in 1979, in the A-S-P case, the court stated that although it was not yet prepared to hold that the police power might justify a regulation based on aesthetics alone, it had “no difficulty” in holding that the police power encompassed the right to control the exterior appearance of private property for the objective of preservation of the state’s legacy of historically significant structures (298 N.C. 207, 216, 258 S.E.2d 444, 450 (1979)).

Finally, in a 1982 case upholding a Buncombe County junkyard-screening requirement, the court formally embraced zoning based on aesthetic concerns alone (State v. Jones, 305 N.C. 520, 290 S.E.2d 675 (1982)). The court noted that this was a legitimate government objective in that it provided benefits to the general community, including:

“protection of property values, promotion of tourism, indirect protection of health and safety, preservation of the character and integrity of the community, and promotion of the comfort, happiness, and emotional stability of area residents.”
Who Can Influence Community Appearance?

We all have a stake in the character of our city, town or county. In this day where business location decisions are made primarily on quality-of-life issues, where economic health is often tied to a community’s sense of appearance and self-worth, many groups must come together to influence the physical character of a community in a positive way:

• Public Boards and Commissions

  **Governing Body**  
  The local town council, board of commissioners or board of aldermen is elected by the citizens to represent the concerns of their constituents. The elected officials make budget decisions and appoint citizens to the local boards and commissions. As the direct representatives of the public, they ultimately set the communities priorities on aesthetic issues, approve legislation that enforces this, and direct the public staff.

  **Planning Board**  
  The planning board helps develop long range plans for the community, makes recommendations on zoning, comprehensive plans and subdivision reviews. They may recommend zoning ordinance amendments on topics such as landscaping, signage, and street standards which directly impact appearance. They may also study and make recommendations on a wide variety of topics which impact appearance such as open space, parks, downtown revitalization, corridor overlays, etc.

  **Appearance Commission**  
  By state law in North Carolina, an appearance commission may be appointed by the local governing board to develop policies and plans and to make recommendations to the board on appearance related issues. They may also review certain site plans, signage proposals, and landscape plans. They may raise funds for and be involved in special community projects, and they may recommend specific ordinances and regulations concerning appearance for adoption by the local government.

  **Tree Board**  
  A tree board may be appointed by the elected officials to be the advocacy group for protecting existing trees and planting new and replacement trees. They often direct the activities of the town arborist and may help develop landscape and tree programs to recommend to the governing board. They may raise funds for tree plantings and may organize and hold public events to promote their programs. They may develop guidelines for pruning trees and for selecting trees.

  **Parks /Recreation Comm.**  
  The parks and recreation commission advises the governing board on the organization and execution of recreation programs and on the acquisition, development, use and maintenance of public property managed by the parks and recreation department. In some communities they advise on the landscaping of municipal rights-of-way and other public properties. They develop and recommend long range plans for recreation and parks, including conservation lands, open space and greenways.
Historic Commission

The historic commission makes recommendations to the governing board regarding the creation of historic districts and the protection of historic properties. The commission may promote the history of the community it serves by publishing inventories, books, or holding special events in historic areas. It may also create memorials to historic figures or events. These commissions are authorized under state law to issue certificates of appropriateness for exterior construction activity within designated local historic districts.

Main Street Program

If a town is a participant in a federal or state Main Street program, a coordinated effort is undertaken to improve both the appearance and the economic vitality of the downtown area. A staff person works in the Main Street area and an advisory group directs the efforts.

Other Public Commissions

The governing board may create other commissions to work on specific issues. Examples include open space commission to develop a plan to protect open space, a downtown development commission to develop a plan to improve the appearance and vitality of the downtown, and a zoning study task force to devise strategies to encourage more appropriate land use or enhance the appearance of an area through zoning changes or amendments.

Housing Board

Housing programs affect the appearance of a community through capital improvements and rehabilitation in specific areas. These programs are targeted at lower income areas that are often the more neglected and less attractive parts of a town. Community development programs can accomplish much to improve the quality of life and appearance of a neighborhood.

• Private Groups:

Historic Societies

These groups may be involved in a variety of activities that promote the preservation and improvement of historic buildings or sites.

Chambers of Commerce

The Chamber, and other business organizations work to enhance the business community of the town by improving the business climate, attracting new businesses and generally promoting the town as a good place to live, visit, and work.

Garden Clubs

These groups often maintain key public properties in communities and help raise funds for beautification projects. They may recognize property owners for outstanding properties, and sponsor educational events such as lectures or nature walks.

Civic Clubs

Private civic organizations contribute to the spirit and appearance of a community in a wide variety of ways. They may provide the catalyst for developing a public park, building entrance signs to the town, installing benches in a retail area, or adopting a highway.
Local Foundations
Endowments are often established for many **special projects that enhance a community’s environmental, social, and cultural vitality**.

Development Associations
Though these groups are often antagonists in a community’s effort to manage its aesthetic character, they don’t have to be. **Involvement from homebuilders associations and developer associations helps to ensure that any aesthetic goals set by a community are broad-based, workable, and have the support of as many groups as possible.**

(Many of above definitions are borrowed from “Community Appearance Handbook” published by the Triangle J Council of Governments)

• Public Staff

City/County Departments
A community’s administrative staff, planning department, engineering staff, public works, physical plant, public safety and all the other departments are charged with implementing the governing body’s directives. In the best of cases, the town’s various departments work cooperatively to achieve the goals set by the council or commissioners. While the planning and engineering staff may guide the developmental process and lay out the procedure for the implementation of plans, it is often the public works or physical plant department that is responsible for the physical improvements and maintenance of public facilities. Public works departments largely maintain a community’s infrastructure (streets, sidewalks, water and sewer service, etc.) as well as parks, conservation areas, greenways, rights-of-ways, and urban forests. Public staff persons also provide staff assistance to public boards and commissions in the implementation of their goals and objectives.

Technical Review
Many communities use a technical review committee comprised of a cross-section of staff representatives from the planning, engineering, utilities, fire and other departments, to evaluate the suitability and zoning compliance of site plans submitted by developers. **This group will determine whether a plan complies with zoning ordinance requirements such as building setback, landscape buffers, signage and parking requirements.** It may also evaluate compliance with standards such as fire protection accessibility, water and sewer availability, driveways and sight triangles. The technical review committee communicates its findings to the developer submitting the plans, who then has the opportunity to make required changes prior to approval by either the staff or a board or commission. Technical review staff are generally professionals who can provide design assistance to applicants, to help them bring projects in line with the intent of the land use controls in a community.
• A Special Note About the Role of Community Appearance Commissions

Appearance Commissions play a large role in this aspect of the public interest. Their purpose is almost solely aesthetic. An appearance commission should represent a cross-section of the community, with social, and cultural diversity, as well as design, business, and environmental expertise.

North Carolina General Statute 160A, Part 7, enacted in 1971, enables municipalities to establish appearance commissions. North Carolina General Statute 160A-452 outlines the powers of appearance commissions. Appearance commissions serve and are appointed by elected officials. They are charged with formulating strategies for general beautification, and presenting their recommendations to the governing board. In some towns the commission may function primarily as an advocacy group. In others, it may assume more technical duties such as site and architectural review. Often a delegate from the appearance commission will serve on special public commissions or task forces, representing the town’s aesthetic interests.

Typical activities of an appearance commission might include:

- Developing ordinances regulating signage, setting landscape standards, and addressing nuisance control.
- Implementing city, neighborhood, and street clean-up programs.
- Awarding homes and businesses for attractive landscaping.
- Promoting public art projects and programs.
- Proposing parks or green spaces within the city.
- Overseeing incentive grant improvement programs for targeted areas.
- Designing and installing an attractive welcome sign for the city’s entrances.
- Educating the public on general appearance issues.
- Performing design review for private developments.
Almost all governmental regulations of private development, including zoning ordinances, subdivision regulations, fire and building codes, have an effect on community appearance. Often regulations are intended for one purpose, but have a spin-off effect that is often unintentional. Street width standards, for example, may be designed to ensure generous width and turning radius for large emergency vehicles. If not properly sized for all uses, these standards may result in a street that is too large, making the street into something resembling a landing strip and negatively affecting the scale and livability of a neighborhood.

Land use regulations are typically directed to the single building or lot, but they are most effective when they require that individual developments respect their surroundings. A community’s goal should not be to so rigidly control the form of the physical environment so as to stifle the flexibility of design. Rather, development should be encouraged to respect patterns that have previously been established, and create a visible harmony with its context.

**• Traditional zoning and subdivision controls (height, bulk, lot size, setback and development intensity).**

Most zoning ordinances are based on the original zoning concept of separate, single-use districts that establish allowed land uses, with supplementary standards that determine how those uses are arranged on their lots. Subdivision standards establish street widths, curb treatments, sidewalk requirements, etc. that bear heavily on the streetscape that results in residential neighborhoods. Some typical aesthetic standards that have been built into most zoning and subdivision codes include:

- Lot coverage standards
- Building height limitations
- Floor area ratio (FAR) limitations (total building square footage divided into tract size)
- Residential density standards
- Maximum and minimum lot sizes
- Building setbacks from property lines
- Minimum street widths, curb treatments and sidewalk treatments

**• Alternative zoning controls**

Alternative zoning has emerged in part as a rebuttal to the limitations of traditional zoning. Traditional zoning presumes that different land uses and even different housing types are incompatible. Current theory supports a more flexible philosophy that a mixture of housing types and land uses can be economically and socially healthy. Some examples of alternative zoning include:

- **New Urbanism** --- Planning practice that promotes a return to “classic” concepts of town building where streets are connected, pedestrian access is a priority, and stores, businesses, churches, and schools are integrated into neighborhoods. In theory, new urbanist planning proposes to minimize the proliferation of sprawl, decrease dependence on the automobile, and cut costs for municipal services such as water and sewer service, police protection and garbage collection. If properly implemented, a variety of housing and more affordable options would be available in neighborhoods, and all neighborhoods would benefit from nearby parks, playgrounds, and village greens.
- **Neo-traditional development** or **traditional neighborhood development** – Under the general umbrella of new urbanism, traditional neighborhood development defines basic guidelines for the physical development of neighborhoods. Some of the more prominent features include a neighborhood center or green, mixed housing types, retail services for basic needs, work places, schools, churches, parks and playgrounds within walking distance, narrow shaded streets with buildings and porches close to the street, alleys and parking behind buildings, detached garages with apartments, and prominent sites for civic buildings. Some communities in NC are adopting neo-traditional zoning standards for portions of the community. These often include "build-to" lines rather than minimum setback lines, and include standards that allow narrower streets and set maximum size standards for off-street parking areas serving commercial tracts.

- **Open Space, or Cluster Development** – Residential developments where half or more of the buildable land area is designated as undivided, permanent open space. Usually, the overall number of dwellings is not less than it would be in a conventional layout. Dwelling not constructed on conservation land are erected in other more appropriate locations on the site.

- **Planned Unit Development (PUD)** – A development pattern usually characterized by a unified site design for a number of housing units, clustered buildings, common open space, density increases, and a mix of building types and land uses. These often large projects are planned with densities calculated over the entire development, rather than on an individual lot-by-lot basis. PUD's are usually phased over a number of years, allowing some assurance on the part of the developer that the project will be able to continue to completion over time using the original planning concept. Usually applied to housing developments, PUDs may also be applied to other forms of development such as shopping centers, industrial and office parks, and to mixed-use developments which may be any combination, depending on local ordinance.

- **Performance Zoning** – This tool, unlike traditional zoning, does not specify separate zones for land uses, but sets “performance standards” for every building. This may allow an office in a residential area, as long as the scale of the building, its architectural features, the location of any off-street parking, etc. conform to the standards in the ordinance that establish the baseline level of “performance” of that use that allow it to fit into its context.

### Landscape and Buffer Yard Regulations

Landscape ordinances establish minimum standards for the design of landscapes, usually for other than single-family residences. The goals of these regulations are often to address problems that are created by the proximity of different types of land uses, establish an aesthetic character for public streets, and to improve the appearance and environmental health of the community. Each town must determine its particular needs and goals when crafting a landscape ordinance. Ideally, landscape regulations should provide incentives for the preservation of notable existing trees and natural features. Aspects of a typical landscape ordinance include:

- **Buffers area plantings on property lines** - Many towns have adopted landscape ordinances as a response to citizen concerns with the encroachment of commercial development on residential neighborhoods. Planted buffers along side and rear property lines are designed to offer some relief from the construction, noise, security lighting, increased traffic and other activities associated with commercial development. The City of Salisbury uses a point system based on the zoning of the proposed development compared to adjacent property to determine the intensity and width of the planting required. The
point system, along with requirements for complete visual screening in some cases, allows the designer flexibility in diversity and arrangement of species.

A potential pitfall of the buffer or planting yard requirement is a common solution that results in the property being outlined with the required plantings rather than a solution that considers the design potential of the lot. Hence, many new developments display a building with associated parking surrounded by a green rectangle, as illustrated here.

In an ideal setting, adjacent architectural and land use patterns would be compatible enough that a specific “buffer” requirement between zoning districts or uses would not be needed. Fear of the unknown often drives citizen demand for such buffers, and until zoning techniques can ensure that other land uses can be mixed with residences in a way that addresses these concerns, communities will continue to use buffers to compensate for the incompatibility of different land uses and the significant loss of natural vegetation due to new development.

**Trees and shrubs in parking areas** - A typical landscape ordinance may require at least one tree for a set number of parking spaces in a lot, and each parking space must be within a set distance from a parking lot tree. It is wise for a municipality to specify a minimum size and depth of planting islands within parking lots to ensure adequate root growth for trees.

**Street Tree plantings** - Many towns require the developer to plant a tree for every set number of square feet within the setback adjacent to a street. These street trees provide visual interest, continuity and scale to the corridor as well as a buffer for less attractive features such as parking areas. In addition, a shrub hedge or low masonry wall is often required particularly where a parking lot is adjacent to the street.
• **Screening for unsightly land uses** – Dumpsters, loading and service areas, utility facilities and other necessary, but often unsightly, elements of a development are often required to be screened by vegetation from adjacent public streets, parks, sidewalks, etc.

• **Design Guidelines** – It is most helpful to the developer for a city to provide an illustrated set of design guidelines to guide him or her through the requirements of the ordinance and to better ensure the desired results.

• **Preservation of Existing Tree Stands**

  Towns may include incentives for tree preservation within their landscape regulations, but they may also adopt a tree ordinance solely to address the planting, maintenance and removal of trees primarily on public property and rights-of-way. Most NC communities do not regulate removal of trees on private property. Specific enabling legislation must be approved by the State Legislature to allow local communities to undertake this kind of tree protection. The City of Charlotte has enacted rules preventing the removal of trees from the front building setback area. In Raleigh, existing tree stands in “natural resource” zoning districts along major thoroughfare corridors are protected.

  Stiff erosion control standards included in the NC Soil Erosion and Sedimentation Act are a disincentive to remove existing trees in some instances, but logging as a general use is exempt from the law, as long as the stumps remain in the ground. Existing trees within local historic districts, including those on private property, are often protected by regulations for historic districts.

• **Overlay Zoning Districts**

  Mapped districts may be created with a special set of zoning requirements that are “overlaid” in addition to those of the underlying zoning district. Developments within the overlay zone must conform to the requirements of both zones or the more restrictive of the two. Overlay zones have become very popular as a means of preserving or enhancing areas with special features. Some common overlay zones include:

  • **Water supply watershed protection areas**

  • **Major traffic corridor overlay districts** - to establish special aesthetic controls over commercial “strip” development

  • **Historic districts** – (More later in this module on this subject).

  • **Downtown business districts** - Often supported by a special business improvement tax district that helps fund services unique to the area such as a director’s position, special events and festivals, professional design and marketing services, parking facilities, etc. North Carolina Main Street program has been instrumental in promoting the revitalization of downtown business districts across the state.

  • **Airport overlay districts**

  • **College or University area districts**
• On-Premise Sign Controls

The distinctive character of our towns and countryside can be destroyed by uncontrolled commercial signs on business premises. Some signage is necessary and appropriate to direct customers to services. Creative sign designers can make a property more attractive, but uncontrolled size and numbers of private signs on active commercial corridors can be chaotic and unsightly. By controlling the size and number of signs erected by businesses, a sign ordinance can protect the town’s appearance and historic heritage, enhance tourism potential, and protect neighboring property values.

Sign controls typically include restrictions on:

- **Height of signs**
- **Size of individual signs**
- **Location of signs on a site**
- **Overall maximum of signage on a premise**
- **Temporary signs, banners, flags**
- **Signs with moving or flashing parts**
- **Changeable copy on signs**

Sign standards often differ from one zoning district to another. Certain signs may be permitted or prohibited by district, they may be permitted by right in all districts, or they may be prohibited in all districts. Any sign that contains non-commercial copy, for instance, may be permitted by right in a community, while portable signs may be prohibited altogether.

The US Constitution guarantees a right to free speech, and signage is covered under that protection. However, that protection is limited to non-commercial speech, such as the right to put a sign in your yard calling the mayor a bum, and the community still has the right to ask that that sign be limited in size and location. Constitutional protection of free speech does not exempt private property owners from conforming to consistently applied community standards regarding acceptable levels and locations of signage.

A common way to ensure the removal or replacement of existing signs that are not in compliance with a municipality’s current ordinance is through amortization. Amortization simply sets a certain time limit (5 or 10 years, for instance) during which a sign must come into compliance with current standards. This period of time is designed to allow owners to recoup their investment in the cost of the sign. All non-conforming signs still in place after this time period is up may be removed by the community. Amortization as a tool to bring existing signs into compliance has been challenged in the courts and was upheld as constitutional by the US Supreme Court.

*(See Module 6, Landmark Legal Cases for a more complete discussion of amortization law).*

• Off-Premise Sign Controls

*Off-premise* signs are often in the form of billboards. Billboards (also called pylon signs) can be quite large and distracting for the motorist, and are a problem in many communities where the view of the landscape is of primary importance. But they represent business profits for the property owners and realtors who lease the sites and the sign companies that construct and maintain them, and they allow the business that
advertises on them to reach a large audience. Billboards may be regulated by local government in several ways:

- Total prohibition of new signs
- Limitation on number and spacing of new signs
- Limitation on size and height
- Limitation along certain corridors or in certain zoning districts
- Any combination of the above

However, existing billboards along federal-aid highway systems (US and Interstate Routes) may not be subject to amortization provisions and may only be removed if fair market value is paid for the sign. This restriction on local control was, ironically, included in federal highway beautification legislation.

Another issue to arise in the billboard controversy involves the cutting of trees along state highways to allow a broader viewing area for the sign. Except along select stretches of highway where billboards are restricted, NCDOT generally allows cutting of trees in a 125-foot area in front of the sign face. For a 2-sided sign, cutting is allowed for 125 feet on each side, for a total of 250 feet. NCDOT policy does not allow the cutting of trees that were in existence prior to the erection of a billboard or the cutting of trees that were planted with public funds.

**• Incentive (Bonus) Zoning**

Developers may be offered incentives, in the form of additional residential density or building intensity, in exchange for providing amenities the community feels desirable, such more open space, more landscaped area, or the provision of public art.

**• Architectural or Design Review**

Some communities require architectural review of proposed developments, in which case a developer must comply with certain pre-established standards for a building’s appearance and its physical relationship to the public realm. Architectural review is usually performed by the Appearance Commission or other appointed committee, or may be done by the elected board. Architectural review may evaluate such features as exterior building and roofing materials, proportions and placement of doors and window openings, building orientation, shape and form, roof articulation, and orientation of the building to its site and adjacent buildings. **Design or architectural review is not synonymous with aesthetic control.** The goal of architectural review should be to encourage compatibility with the character of the area without stifling the creativity of the building’s designer. Design review, to be fair, must:

- Follow strict procedural guidelines, to ensure due process
- Be based on a clear set of guidelines, so decisions are not arbitrary
- Involve commissions that include design professionals

Because of the necessity for fairness in this subjective process, design review is often subject to quasi-judicial procedures.

(See Module 3. Zoning, for more discussion on procedures for quasi-judicial actions)
• Historic Preservation

Historic districts are special form controls usable where a unique environment already exists, with the purpose to preserve rather than create.

**National Register Historic Districts** offer a first level of protection in that they recognize historic properties, but there is no local control on changes in exteriors, and there are no delays in demolition permitting. It does, however, affect what government agencies might do to jeopardize the integrity of publicly owned buildings. And being a contributing structure within a National Register Historic District enables a property to apply for state and federal historic rehabilitation tax credits for improvements that comply with the Secretary of the Interior’s standards for rehabilitation.

**Local Historic Districts** may be established through specific State enabling legislation to allow localities to set up and designate districts where exterior alterations, new construction, landscaping and demolition of contributing structures and sites are controlled. A special commission that must issue “certificates of appropriateness” within the Local Historic District for such changes, and the commission must use quasi-judicial processes that protect the fairness and integrity of the procedure. Often there is special zoning within the district and a set of architectural guidelines that assist the commission in reviewing the appropriateness of proposed changes.

**Local Historic Landmarks** may be designated by the elected board for individual properties with historic significance outside of historic districts, and their alteration or removal may be limited in a similar way to a building in an historic district.

Guidelines for historic districts may include a wide range of local specifications as well as those from the Secretary of the Interior’s standards for rehabilitation. The guidelines may include recommendations for changes to buildings, new construction and additions, site features and settings, demolition or relocation of buildings, as well as other procedures.

Example of information in Historic District Guidelines.
• Urban Forestry

Some communities have a pro-active urban forestry program and often have a certified arborist on staff to direct the program’s implementation. This person typically would:

- oversee plans for installation of trees in the downtown area, in public rights-of-way, in urban parks, and at public buildings
- determine appropriate species for locations that may have special limitations, such as along downtown sidewalks and under utility lines
- work with the utility companies to minimize the need for and effects of severe pruning
- supervise a pruning and maintenance program to ensure the health of trees on public property

In a town that does not have an arborist on staff, someone within the public works or parks and recreation department may oversee urban forestry opportunities.

• Open Space Preservation and Development

Mayor Joe Riley of Charleston, South Carolina, once said that no one ever left a city complaining that it had too many parks. Indeed, it is often the quality of the open spaces and their integration into the built environment that most endears a town to residents and visitors. Open or green spaces within a city may be of widely varying sizes and forms, and may function in a variety of ways. Open spaces offer a respite from the rigid edges of the urban environment, provide protection for natural habitats and ecological imperatives, and provide opportunities for passive and active recreation.

Some of the more popular designations of open space include:

- **Greenways** - Multi-purpose trails or linear parks through undeveloped or on the edges of developed land, paved or unpaved, often wide enough for bicycles as well as pedestrians. Many municipalities use otherwise untapped land resources for greenways such as utility easements, old railroad beds, and floodplain areas unsuitable for development. Ideally, greenways can function as alternative transportation systems, and if so, may also qualify for state or federal transportation funding. (See Module 10. Transportation Planning, for more information on these “enhancement” projects)

- **Parks** – planned open spaces that may be for passive or active recreational use. Parks may be large enough to serve a whole region, or small and limited to a neighborhood’s use. They may be highly designed and developed or left virtually undisturbed in their natural state.

- **Pocket Parks** – often delightful and unexpected green niches tucked between buildings within a city’s urban fabric. Pocket parks offer special revitalizing retreats in a city - a place to stop and eat lunch, read the paper, or just relax. They are often characterized by interesting plantings, special paving, fountains, benches and other amenities.

- **Scenic Easements** – property with particularly attractive views of natural or historic significance, often along a travel corridor. These easements may be dedicated by the
A community may purchase suitable land for park and greenway development, require provisions for open-space dedication in development plans, request easements for property along greenway corridors, require the payment of impact fees to be used to purchase open space, or provide incentives to property owners to transfer their development rights to other property. If requiring dedications of open space or exacting fees, care must be taken to ensure that the dedication of open space required is proportional to the anticipated demand for the open space resource that is being generated by the development. The Supreme Court has invalidated some attempts to require dedications where the magnitude of the dedication was not proportional to the impact of the development.

• **Maintenance of Public and Private Property**

  Local governments, public boards, private organizations, and individuals often initiate maintenance activities. In some instances, incentives are used to encourage the upkeep of property. With the help of an Appearance Commission, local governments may set benchmarks for public maintenance of roadways, parks and buildings.

  *Nuisance regulations* allow governments ways of mitigating unsightly situations on private property such as litter, junk, unmowed yards and overgrown ditches. These regulations are generally incorporated in most local ordinances.

• **Incentives**

  Local governments may offer incentives to developers to improve the appearance of their properties. This may be within the zoning ordinance as a bonus, or it may be in the form of matching grants within targeted areas. For instance, a town may encourage renovations of older facades to add historic integrity to the street front in a central business district by offering to match the owner’s investment. Often a special tax district will support these incentive grants, or they may be funded through the community’s general fund.

*Other related subjects:*

Ask your professional staff to provide you with more training on these issues:

• **Legal Aspects of Aesthetic Regulation**

• **Use of Performance Zoning**

• **Visioning, and Other Techniques to Understand Community Character**

• **Design Review and Quasi-judicial Procedures**
• Neighborhood Planning
Some Exercises:

Situation 1.

A citizen of East Lake has erected a replica of the Cape Hatteras Lighthouse in their front yard in a Local Historic District in East Lake. East Lake is in the Piedmont, not on the coast. The neighborhood is generally made up of turn-of-the-century Victorian houses. The zoning inspector issues a letter informing the property owner that they are in violation of the zoning ordinance, and that they must get a certificate of appropriateness before erecting such a structure. The local newspaper jumps all over the issue and issues an editorial condemning the town staff for being mindless bureaucrats, and chides them for torturing this property owner, who only wanted to celebrate a great NC landmark through this piece of public art.

Was this a reasonable action for the zoning inspector to take? If you were on the Historic Districts Commission how would you respond to the request for a certificate of appropriateness? How would you respond to the reporter who questioned you about your decision afterward?

Situation 2.

The Town of Sandling is moving ahead with the development of a landscape ordinance to set a minimum standard for landscaping when a new development is constructed. The Planning Board has been asked to establish a committee to write the ordinance. On the ad hoc committee are representatives of the design and construction industry. When considering how to structure the ordinance, a debate ensues regarding whether to create an ordinance that is simple and has straightforward rigid standards for landscaping that are easy to understand and implement. Some members of the committee support this idea, as they do not want the ordinance to get so complex that they have to hire attorneys to interpret it. The other type of ordinance incorporates substantial flexibility by allowing alternatives to be offered by the applicant to the standards laid out for landscaping. This ordinance requires that these alternatives be approved by professional staff.

What are some of the pros and cons of each type of ordinance? Which way should the committee go?

Situation 3.

Mayor Wilson is a strong supporter of private property rights. He has been under fire by a group of his constituents about a series of convenience stores that have sprouted up around US Route 2 through the middle of town. These facilities are typified by large bright signs, extraordinary levels of lighting under the canopies, and 24-hour a day operation, adjacent to an established residential area just off Route 2. Mayor Wilson says he can’t do anything about it, because the zoning allows these uses.

What might the Planning Board suggest in the way of incentive-based aesthetic regulations that might help the mayor offer a solution without alienating him?
Bibliography and sources for this module:

Examples of Landscape Ordinances and other background materials are available from the Author:

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NC RESOURCE AGENCIES REGARDING AESTHETIC REGULATIONS

Department of Commerce
Division of Community Assistance
4313 Mail Service Center
Raleigh, NC  27699-4313
(919) 733-2850

Institute of Government (IOG)
CB #3330 Knapp Building 059A
Chapel Hill, NC  27599-3330
(919) 966-5381

NC Chapter American Institute of Architects (NCAIA)
AIA Tower
115 West Morgan St.
Raleigh, NC  27601
(919) 833-6656

NC Chapter American Planning Association (NCAPA)
C/o Dr. Garry Cooper
ASU Dept. of Geography and Planning
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Regional Councils of Government (COG)
by region

Scenic North Carolina, Inc.
P. O. Box 628, Raleigh, NC  27602-0628
(919) 832-3687

State Historic Preservation Office (SHPO)
NC Division of Archives & History
109 East Jones St.
Raleigh, NC  27601-2807
(919) 733-6545