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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-362

Filed 31 December 2024

Cabarrus County, No. 22CVS2560

CONNIE ARSTARK and JAMES ARSTARK, Petitioners,

v.

CABARRUS COUNTY, Respondent.

Appeal by petitioners from order entered 7 February 2024 by Judge Matthew B. Smith in Cabarrus County Superior Court. Heard in the Court of Appeals 22 October 2024.

Scarbrough & Scarbrough, PLLC, by John F. Scarbrough, for petitioners-appellants.

Evan A. Lee, for respondent-appellee.

FLOOD, Judge.

Petitioners Connie Arstark and James Arstark appeal from the trial court's order affirming the Cabarrus County Board of Adjustment's ("BOA") order denying Petitioners' appeal of a notice of zoning violation. On appeal, Petitioners argue the trial court improperly denied their appeal of the notice of zoning violation, because: (A) Petitioners' property (the "Property") is a bona fide farm, and so the Property

should be exempt from the Waterbody Buffer Zone of the Cabarrus County Development Ordinance (the “Ordinance”); (B) Respondent Cabarrus County (the “County”) never appealed or revoked the zoning compliance permit for a barn before issuing a notice of zoning violation; (C) relevant sections of the Ordinance were not in the record before the trial court and before the BOA; and (D) the Ordinance does not include or incorporate by reference a specific, officially adopted map that would support the existence of the Waterbody Buffer Zone. Upon careful review, we affirm the trial court’s order, because the Ordinance is not unconstitutionally vague, and does not exempt bona fide farms from the Waterbody Buffer Zone requirement; the notice of violation was properly issued without requiring a zoning permit revocation or appeal; the relevant sections of the Ordinance were properly contained in the record before the trial court and before the BOA; and the Ordinance properly incorporated by reference an officially adopted or promulgated map that supports the existence of the Waterbody Buffer Zone.

I. Factual and Procedural Background

On 22 February 2022, Petitioners entered into a contract to purchase the Property, consisting of 11.545 acres of land located at 3233 Hahn Scott Road, Mount Pleasant, in Cabarrus County, North Carolina, and which was previously part of an approximately 84-acre farm site. The Property includes a home site, large metal barn, several ancillary storage buildings, and a horse pen. On the eastern boundary of the Property is the Lick Branch Stream, a perennial stream, as shown on the

United States Geological Survey (“USGS”) Quadrangle map of the Property, indicated by a solid blue line on the map.¹

In April 2020, Petitioners initially contacted the Cabarrus County Planning Department (referred to interchangeably with staff for the Cabarrus County Planning Department as the “Planning Department”) for “information about permitting [and] zoning[.]” On 12 June 2020, Petitioners applied for a zoning compliance permit for a house they planned to build on the Property. At some time prior to 7 July 2020, Petitioners constructed a 43-foot by 30-foot metal barn on the Property, without any permits. On 23 June 2020, Petitioners contacted the Planning Department, asking whether the metal barn they had constructed required a zoning compliance permit, and were informed it required a permit. On 30 June 2020, Petitioners closed on the Property.

Prior to these events, in 1990, the County applied for the construction of a dam, and as a result received a federal Clean Water Act § 404 permit (the “Permit”). The Permit included certain “special conditions,” including a requirement that the County implement an ordinance that limits development within a waterbody buffer zone, which sets the buffer zone as “that area which extends 50 feet from the stream bank perpendicular to the centerline of the stream.” The County adopted its Waterbody

¹ The full legal description of the Lick Branch Stream is indicated on the deed recorded in Book 14293, Page 0108, of the Cabarrus County Registry.

Buffer Zone as part of the Ordinance, so as to implement the special conditions required under the Permit.

The Waterbody Buffer Zone, as part of the Ordinance, establishes, *inter alia*:

1. A minimum 50-foot buffer . . . from the stream bank on all sides of perennial streams[.] Perennial streams include all rivers, streams, lakes, ponds or waterbodies shown on the USGS Quadrangle Maps as a solid blue line or identified in the Cabarrus County Geographic Information System.

. . . .

6. The Waterbody Buffer Zone shall be determined and clearly delineated on site prior to any development or pre-development activity occurring in order to protect the required buffer from encroachment or damage. No development, including soil disturbing activities or grading, shall occur within the established buffer area.

. . . .

8. All buffer areas shall remain in a natural, vegetated state. If the buffer area is wooded, it shall remain undisturbed.

Section 1-4 of the Ordinance states that “[t]he provisions of [the] Ordinance shall not affect bona fide farms[.]” Section 4-9 of the Waterbody Buffer Zone states that “North Carolina law exempts bona fide farms from local zoning regulations[.]”

On 7 July 2020, Senior Zoning Enforcement Officer for the County, Jay Lowe, conducted a site visit to inspect the setbacks for Petitioners’ house. Officer Lowe expressed concern that the barn was built close to a stream, and although he was unsure whether the barn would require setbacks due to the category of stream, he informed Petitioners they should obtain permits for the barn.

On 15 September 2020, the Planning Department “[r]eceived [a] complaint” concerning the construction of the barn on the Property without any permits. On 25 September 2020, Officer Lowe again visited the Property, determined the barn was constructed without any permits, observed grading and tree removal in the Waterbody Buffer Zone, and observed that the barn appeared to encroach on the setbacks required by the Waterbody Buffer Zone. Two days prior to Officer Lowe’s site visit, on 23 September 2020, Petitioners received a zoning compliance permit for the barn. Petitioners received a building permit for the barn on 28 September 2020.

On 10 November 2020, Petitioners provided the Planning Department with a survey of the Property, which “did not show the required [setbacks] on the stream, or the wetlands located on the [P]roperty. Only the standard setbacks were noted[.]” The survey, along with the last site visit, indicated that clearing and grading had occurred in the Waterbody Buffer Zone.

On 14 January 2021, Officer Lowe issued a notice of violation (the “Initial NOV”), citing a violation of Sections 4-10, 6-2, and 12-03 of the Ordinance, and stating that Petitioners “constructed an accessory structure within the required water body buffer prior to acquiring a zoning permit.” On 26 January 2021, Officer Lowe conducted another site visit of the Property, and observed two additional structures that had been erected on the Property without permits, and that they too appeared to encroach on the Waterbody Buffer Zone. On 12 February 2021, Petitioners

appealed the Initial NOV.² In the appeal, counsel made no argument as to bona fide farm status.

On 8 March and 30 March 2022, the Cabarrus County Planning Zoning Commission, acting as the BOA, held hearings to consider Petitioners' appeal of the Initial NOV. On 12 July 2022, the BOA entered an order denying Petitioners' appeal and affirming the Initial NOV. On 12 August 2022, Petitioners filed a petition for writ of certiorari ("PWC") with the Cabarrus County Superior Court; the PWC was granted on 22 August 2022. On 29 September 2022, the County filed a combined motion to dismiss and motion for sanctions, but withdrew its motion on 11 September 2023. On 18 September 2023, the County filed a response to the PWC.

On 5 January 2024, the matter came on for hearing before the trial court, pursuant to N.C. Gen. Stat. § 160D-1402. On 7 February 2024, the trial court entered an order affirming the BOA's order and denying Petitioners' appeal of the Initial NOV. The trial court concluded, *inter alia*, the Waterbody Buffer Zone was ascertainable through maps contained in the record before the BOA, the bona fide

² Following Petitioners' appeal of the Initial NOV, on 1 March 2021, Officer Lowe conducted another site visit, which revealed "continued, and possibly new, violations of the [O]rdinance." On 7 May 2021, Officer Lowe and the County attorney, David Goldberg, conducted a site visit to the Property, where they observed additional land disturbance and clearing. On 10 May 2021, the Planning Department and Goldberg met with Petitioners to "discuss options for compliance[.]" and Petitioners provided the Planning Department with an updated survey, which showed that the barn was within the Waterbody Buffer Zone. On 11 May 2021, Officer Lowe issued a second notice of violation (the "Second NOV") for new clearing activity in the Waterbody Buffer Zone. Along with the Second NOV, a stop work order was issued for the Property, to prevent additional clearing or development in the Waterbody Buffer Zone. Petitioners did not appeal the Second NOV.

farm exception did not apply to the Ordinance, and the zoning compliance permit was enforceable. Petitioners timely appealed.

II. Jurisdiction

This Court has jurisdiction to review an appeal from a final judgment of a superior court pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

III. Standard of Review

“This Court’s review of the Superior Court is limited to determining whether the Superior Court exercised the appropriate standard of review, and whether that standard of review was correctly applied.” *Thompson v. Union Cnty.*, 283 N.C. App. 547, 551, 874 S.E.2d 623, 627 (2022).

When reviewing administrative decisions, determining the appropriate standard of review to be applied depends on the substantive nature of each assignment of error. When the assignment of error alleges an error of law, *de novo* review is appropriate. Under a *de novo* standard of review, a reviewing court considers the case anew and may freely substitute its own interpretation of an ordinance for a board of adjustment's conclusions of law.

....

When the assignment of error alleges that a board’s decision was not supported by evidence, or was arbitrary and capricious, the appropriate review is the whole record test. The ‘whole record’ test requires the reviewing court to examine all competent evidence (the ‘whole record’) in order to determine whether the agency decision is supported by ‘substantial evidence.’ ‘Substantial evidence’ is that which a reasonable mind would consider sufficient to support a particular conclusion[.]

Whether competent, material and substantial evidence is present in the record is a conclusion of law.

Id. at 551–52, 874 S.E.2d at 627–28 (citations omitted) (cleaned up).

IV. Analysis

On appeal, Petitioners argue the trial court improperly denied their appeal of the Initial NOV, because: (A) The Property should be exempt from the Waterbody Buffer Zone, as the Property is a bona fide farm, and the Ordinance is unconstitutionally vague; (B) the County never appealed or revoked the zoning compliance permit for the barn before issuing the Initial NOV; (C) certain sections of the Ordinance were not in the record before the trial court and before the BOA; and (D) the Ordinance does not include or incorporate by reference a specific, officially adopted map that would support the existence of the Waterbody Buffer Zone. We address each argument, in turn.

A. Application of the Standards of Review

“This Court’s first task is determining whether the Superior Court applied the correct standards of review.” *Id.* at 552, 874 S.E.2d at 628. “This Court’s second task is determining if the Superior Court correctly applied the appropriate standards of review.” *Id.* at 554, 874 S.E.2d at 629.

Here, the trial court reviewed the BOA’s order pursuant to the trial court’s scope of review, as provided under N.C. Gen. Stat. § 160D-1402(j), and the trial court’s order correctly identified de novo and the whole record test as the appropriate

standards of review. *See id.* at 552–53, 874 S.E.2d at 628; *see also* N.C. Gen. Stat. § 160D-1402(j) (2023). Although the trial court’s order only provided that it reviewed the assignment of error of due process violations under a de novo standard of review, and did not specifically identify that it applied the whole record test, the language of the trial court’s order indicates it applied both standards of review in reaching its ultimate conclusion: “After applying the proper standards in this matter . . . the [trial c]ourt finds no errors of law and finds that the County’s enforcement of the [O]rdinance against Petitioners is proper and not arbitrary or capricious.”³

Accordingly, the trial court’s order is “sufficient to allow this Court to identify the scope and standards of review applied by the court below[.]” *Thompson*, 283 N.C. App. at 554, 874 S.E.2d at 629. Because Petitioners do not assign error to any findings of fact, and assign error only to the trial court’s conclusions of law, our review is limited to determining whether the trial court correctly applied the de novo standard of review. *See id.* at 551, 874 S.E.2d at 627.

B. Application of the Waterbody Buffer Zone Ordinance

Petitioners first argue, (1) the trial court erred because the Property is a bona fide farm, and the Ordinance should be interpreted as exempting the Property from the Waterbody Buffer Zone. Petitioners further argue, (2) the Ordinance should

³ The trial court’s conclusion that the BOA committed no errors of law is, in itself, sufficient to allow this Court to review Petitioners’ appeal. *See Cap. Outdoor, Inc. v. Guilford Cnty. Bd. Of Adjustment*, 355 N.C. 269, 269, 559 S.E.2d 547, 547 (2002).

exempt the Property because the Ordinance is unconstitutionally vague. We disagree.

1. Bona Fide Farm Exemption

Counties generally may regulate land use and development by ordinances, which may include the adoption of unified ordinances. *See* N.C. Gen. Stat. § 153A-121(a) (2023) (“A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens[.]”); N.C. Gen. Stat. § 160D-103 (2023) (“A local government may elect to combine any of the regulations authorized by [Chapter 160D] into a unified ordinance.”). “A zoning regulation or unified development ordinance may also include development standards that apply uniformly jurisdiction-wide rather than being applicable only in particular zoning districts.” N.C. Gen. Stat. § 160D-703(d) (2023). Counties have the power “to adopt and enforce local ordinances . . . to the extent necessary to comply with State and federal law, rules, and regulations or permits consistent with the interpretations and directions of the State or federal agency issuing the permit.” N.C. Gen. Stat. § 160D-920(a) (2023). A county’s power to adopt and enforce local ordinances may be limited by other provisions of the North Carolina General Statutes.

Under N.C. Gen. Stat. § 143-214.23A, a “[r]iparian buffer area” is an “area subject to a riparian buffer requirement[.]” and a “[r]iparian buffer requirement” is a

“landward setback from surface waters.” N.C. Gen. Stat. § 143-214.23A(a)(3)–(4) (2023). The statute provides, in relevant part:

[A] local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a *condition of a permit*, certificate, or other approval issued by a federal or State agency.

N.C. Gen. Stat. § 143-214.23A(b) (emphasis added).

Here, although Section 4-9 of the Ordinance provides that bona fide farms are exempt from local zoning regulations, and Section 1-4 provides that “[t]he provisions of [the Ordinance] shall not affect bona fide farms”; the Ordinance cannot exceed the riparian buffer requirements “necessary to comply with or implement . . . a *condition of a permit*[.]” *See* N.C. Gen. Stat. § 143-214.23A(b) (emphasis added); *see also* N.C. Gen. Stat. § 160D-920(a). The Permit explicitly established a riparian buffer area by limiting development within a 50-foot buffer zone of perennial streams in Cabarrus County. *See* N.C. Gen. Stat. § 143-214.23A(a)(3)–(4). The buffer zone did not provide an exception to bona fide farms, nor did it provide an exception to certain structures, such as barns. The Ordinance properly included the same riparian buffer area required by the Permit in its Waterbody Buffer Zone, an overlay zoning district, both pursuant to the mandate of the Permit and in accordance with relevant statutory authority. *See* N.C. Gen. Stat. § 160D-703(d).

Because the riparian buffer area, a special condition of the Permit, was implemented in the Waterbody Buffer Zone, the Ordinance cannot exempt bona fide farms from the Waterbody Buffer Zone, as doing so would exceed the Permit's riparian buffer requirements, in contravention of N.C. Gen. Stat. § 143-214.23A(b). *See* N.C. Gen. Stat. § 143-214.23A(b). Furthermore, the County lacks the power to enact an ordinance that would modify or dispense with the riparian buffer area required by the Permit, because the County may enforce the Ordinance only “to the extent necessary” to comply with the Permit. *See* N.C. Gen. Stat. § 160D-920(a).

To the extent that Petitioners argue Sections 4-9 and 1-4 should be read in harmony with the Waterbody Buffer Zone so as not create “an irreconcilable conflict in the [Ordinance,]” the requirements of the Permit and the provisions of the Ordinance are not part of “the same regulatory scheme[,]” and therefore the relevant sections of the Ordinance are not in conflict with one another. *See Cary Creek Ltd. P'Ship v. Town of Cary*, 203. N.C. App. 99, 105, 690 S.E.2d 549, 553–54 (2010) (concluding that a certificate that “required [the town of Cary] to adopt ordinances creating riparian buffers[,]” as well as certain statutory provisions, “indicates that watershed protection is not a field for which a state or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.” (citation omitted) (cleaned up)).

Because the Ordinance does not exempt bona fide farms, the Waterbody Buffer Zone applies to the Property. We therefore need not address Defendant's argument

that the Property was a bona fide farm. We next address Petitioners' argument that the Ordinance exempts the Property because the Ordinance is unconstitutionally vague.

2. Unconstitutional Vagueness

From their brief, it is unclear to this Court whether Petitioners argue that the Ordinance is unconstitutionally vague on its face or as-applied; if we determine, however, that an ordinance is constitutional as-applied to a petitioner, we have determined it to be facially constitutional, as well. *See Letendre v. Currituck Cnty.*, 259 N.C. App. 512, 534–35, 817 S.E.2d 73, 89 (2018) (concluding that where it “is not entirely clear if [the p]laintiff’s claims are facial or as-applied challenges[,]” if an ordinance is determined to be constitutional as-applied to the plaintiff, “we have necessarily also determined it is facially constitutional as [the plaintiff’s] case is the ‘context’ where it is capable ‘of constitutional application’ ” (citations omitted) (cleaned up)). “A statute is unconstitutionally vague if it . . . fails to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Id.* at 543, 817 S.E.2d at 94 (citation omitted) (cleaned up).

Here, Petitioners had notice of the activities that were prohibited under the Ordinance. *See id.* at 543, 817 S.E.2d at 94. Section 4-7.4 of the Ordinance clearly provides that the word “shall[,]” is to be interpreted as “always mandatory[.]” Section 4-9 provides: “The following text shall apply to all development or changing of conditions (e.g., timbering, land clearing, etc.) adjacent to waterbodies as defined

below.” The Ordinance sections following Sections 4-7.4 and 4-9 then proceed to define the Waterbody Buffer Zone setback requirements. As such, the language of the Ordinance sufficiently gave Petitioners notice, because it gave a “person of ordinary intelligence a reasonable opportunity to know what is prohibited[.]” *See id.* at 547, 817 S.E.2d at 96 (citation omitted).

Petitioners were on notice that, at least as of June 2020, and potentially as early as April 2020, a zoning compliance permit was required to construct the barn, and Petitioners were at all relevant times subject to permitting requirements under N.C. Gen. Stat. § 160D-1110. *See* N.C. Gen. Stat. § 160D-1110(a)(1) (2023) (requiring permits for the “construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure”). Petitioners, however, decided to build the barn without first obtaining a zoning compliance permit. As of July 2020, Petitioners were made aware that the barn’s close proximity to the stream could be in violation of required setbacks. After the Initial NOV was issued, which placed Petitioners on notice that the barn’s location violated the Waterbody Buffer Zone, Petitioners engaged in further land clearing and grading. Even when Petitioners appealed the Initial NOV through counsel, where counsel made no argument as to bona fide farm status, Petitioners engaged in further grading and land clearing.

Petitioners’ actions indicate they were on notice the barn required a zoning compliance permit, were on notice of a potential violation of the Waterbody Buffer

Zone, and yet continued to violate the setback requirements. Because Petitioners had “a reasonable opportunity to know what is prohibited[,]” their argument that the Ordinance was unconstitutionally vague as-applied is without merit. *See Letendre*, 259 N.C. App. at 543, 817 S.E.2d at 94.

Accordingly, as the Ordinance is not unconstitutionally vague as-applied because Petitioners had a reasonable opportunity to know what the Ordinance prohibited, and the Ordinance cannot be interpreted as exempting bona fide farms from the Waterbody Buffer Zone, the trial court did not err in concluding the Property is not exempt from the Waterbody Buffer Zone. *See Thompson*, 283 N.C. App. at 551–52, 874 S.E.2d at 627–28; *see also Letendre*, 259 N.C. App. at 543, 817 S.E.2d at 94.

C. Appeal or Failure to Revoke Zoning Permit

Petitioners next argue the trial court erred in concluding the Initial NOV was proper where the County never appealed or revoked the zoning compliance permit for the barn before issuing the Initial NOV. We disagree.

A county may issue notices of violations, stop work orders, and seek remedies for violations “of a development regulation adopted pursuant to [Chapter 160D] or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State[.]” N.C. Gen. Stat. § 160D-404(a) (2023). Under N.C. Gen. Stat. § 160D-404(c), a county may seek remedies such as “impos[ing] fines and penalties for violation of its ordinances,” or “secur[ing] injunctions and

abatement orders to further insure compliance with its ordinances[.]” N.C. Gen. Stat. § 160A-175(a) (2023).

Here, the County was not required to appeal, or revoke, the zoning compliance permit before issuing the Initial NOV. The County was well within its power to “impose fines and penalties for violation of its ordinances,” and to “secure injunctions and abatement orders[.]” even if the zoning compliance permit was improperly issued to Petitioners. *See* N.C. Gen. Stat. § 160A-175(a). The zoning compliance certificate itself clearly provided that “[a] structure built or placed on a property which encroaches a setback boundary shall be considered a violation of the Zoning Ordinance. Such violations are subject to all civil penalties and remedies set forth in the Zoning Ordinance.”

Petitioners rely in part on *S.T. Wooten Corp. v. Bd. of Adjustment of Zebulon* in arguing the County, by issuing the zoning compliance permit, made an official determination the barn was in compliance, and so the County should have “appealed” the permit. 210 N.C. App. 633, 711 S.E.2d 158 (2011). Petitioners’ reliance, however, is misplaced. In *S.T. Wooten Corp.*, a town planning director made a zoning determination that the developer’s intended use of the subject property was proper; eight years later, however, the town indicated the use was not proper, and the developer would need to obtain a special use permit. *Id.* at 634–37, 711 S.E.2d at 159–60. On appeal, this Court held that the earlier determination was binding on

the town, because the town had failed to timely appeal the zoning determination. *See id.* at 644, 711 S.E.2d at 165.

Here, unlike in *S.T. Wooten Corp.*, the material issue does not concern whether a zoning determination is binding, but rather whether a zoning violation may be enforced. As explained above, the County was within its power to enforce violations of the Ordinance by a notice of violation and a stop work order, and in fact, the County provided notice in the zoning compliance permit that the County could enforce any zoning violations. *See* N.C. Gen. Stat. § 160A-175(a).

Accordingly, because the County was not required to appeal or revoke the zoning compliance permit, the trial court did not err in concluding the Initial NOV was proper. *See* N.C. Gen. Stat. § 160D-404; *see also* N.C. Gen. Stat. § 160A-175(a).

D. Record before the Trial Court

Petitioners next argue the trial court erred in concluding the County's enforcement of the Ordinance was proper, where violations of the Ordinance alleged in the Initial NOV—Sections 6-2 and 12-3—were not included the record before the trial court and before the BOA. We disagree.

In a hearing held before the trial court pursuant to N.C. Gen. Stat. § 160D-1402, “[t]he record shall consist of the decision and all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered.” N.C. Gen. Stat. § 160D-1402(h).

Here, Petitioners rely on N.C. Gen. Stat. §§ 153A-50 and 160A-79 to assert that the applicable portions of the Ordinance could not have been admitted through the “Staff Report.” *See* N.C. Gen. Stat. § 153A-50 (2023) (“County ordinances shall be pleaded and proved under the rules and procedures of [N.C. Gen. Stat. § 160A-79 (2023)].); N.C. Gen. Stat. § 160A-79 (providing, in part, that a copy of an ordinance must be admitted into evidence “as set out in the minute, code, or ordinance book of the council, certified under seal by the city clerk as a true copy”). The hearing in question, however, was a hearing pursuant to N.C. Gen. Stat. § 160D-1402, not Chapter 153A. The record before the BOA properly included the Staff Report, which included a portion of Section 12-3, and included a copy of Chapter 4 of the Ordinance, which is at issue here on appeal.⁴

Accordingly, as the relevant sections of the Ordinance were properly contained in the record before the trial court and before the BOA, the trial court did not err in concluding the County’s enforcement of the Ordinance was proper. *See* N.C. Gen. Stat. § 160D-1402(h).

E. Incorporation of an Officially Adopted Map

Petitioners finally argue the trial court erred in concluding the Waterbody Buffer Zone was ascertainable, because the Ordinance does not reference or

⁴ Section 12-3 concerns when a zoning compliance must be obtained. The Record indicates that the trial court’s conclusions of law only concerned violations of Chapter 4 of the Ordinance; therefore, to the extent Section 6-2 of the Ordinance is not in the Record, it is irrelevant for purposes of this appeal.

incorporate by reference a specific, officially adopted map that would support the existence of the Waterbody Buffer Zone. We disagree.

N.C. Gen. Stat. § 160D-105(b), provides, *inter alia*:

Development regulations adopted pursuant to this Chapter may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies. For these maps a regulation text or zoning map may reference a specific officially adopted map or may incorporate by reference the most recent officially adopted version of such maps.

N.C. Gen. Stat. § 160D-105(b) (2023). Further, under the statute, “[z]oning district boundaries adopted pursuant to this Chapter shall be drawn on a map that is adopted or incorporated. . . . The maps may be in paper or a digital format approved by the local government.” N.C. Gen. Stat. § 160D-105(a).

Here, the Ordinance specifically states: “Perennial streams include all rivers, streams, lakes, ponds or waterbodies as shown on the USGS Quadrangle Maps as a solid blue line or identified in the Cabarrus County Geographic Information System.” This is consistent with the relevant language of the Permit: “Perennial streams are defined as those which are illustrated as solid blue lines on the USGS Quadrangle topographic maps for [the County].” The USGS Quadrangle map, a map officially adopted or promulgated by a federal agency, may be accessed online; thus, it conforms to the “digital format” of a map that the statutes contemplate, and is a map properly “reference[d] or incorporate[d]” by the Ordinance. *See* N.C. Gen. Stat. § 160D-105(a)–

(b). The USGS Quadrangle map for the Property is specifically included in the Record and shows a perennial stream running through the Property, thus supporting the existence of the Waterbody Buffer Zone.

Petitioners’ contention that the Ordinance “should, but does not, ‘provide that the zoning boundaries are automatically amended to remain consistent with changes in the officially promulgated . . . federal maps[,]’ ” and that the County does not maintain a “current effective version” of the USGS map, is without merit. N.C. Gen. Stat. § 160D-105(b) specifically states that for those maps that are incorporated by reference, “the regulation *may* provide that the zoning district boundaries are automatically amended[.]” N.C. Gen. Stat. § 160D-105(b) (emphasis added). The Ordinance’s incorporation of the USGS Quadrangle map by reference is, in itself, sufficient to meet the requirements under the statute. *See* N.C. Gen. Stat. § 160D-105.

Accordingly, the trial court did not err in concluding the Waterbody Buffer Zone was ascertainable, because the Ordinance incorporates by reference an officially adopted or promulgated map that supports the existence of the Waterbody Buffer Zone. *See* N.C. Gen. Stat. § 160D-105(a)–(b).

V. Conclusion

Upon review, we conclude the Ordinance is not unconstitutionally vague, and does not exempt bona fide farms from the Waterbody Buffer Zone requirement; the Initial NOV was properly issued without requiring a zoning permit revocation or

appeal; the relevant portions of the Ordinance were properly contained in the record before the trial court and before the BOA; and the Ordinance properly incorporated by reference an officially adopted or promulgated map that supports the existence of the Waterbody Buffer Zone. We therefore affirm the trial court's order denying Petitioners' appeal of the Initial NOV.

AFFIRMED.

Judge STROUD concurs.

Judge MURPHY concurs in result only.

Report per Rule 30(e).