

**AN ORDINANCE AMENDING THE TOWN OF CARRBORO LAND USE
ORDINANCE TO CLARIFY AND UPDATE WATER QUALITY BUFFER,
ROAD BUFFER, SETBACK VARIANCES, AND FENCE REQUIREMENTS**

****DRAFT 4-15-2024* ***

THE TOWN COUNCIL OF THE TOWN OF CARRBORO HEREBY ORDAINS:

Section 1. Section 15-92 (Variances), subsection (k) is amended to read as follows:

(k) With respect to a variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the following procedure shall apply in addition to the standards set forth in Section 15-92(b):

(1) The Board may grant minor variances, which are activities that pertain to Zone Two as defined in 15a NCAC O2b.0267, as amended, and shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met: (a) If the applicant complies with the provisions of this part, they can secure no reasonable return from, nor make reasonable use of, their property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this part that shall make reasonable use of the property possible; (b) The hardship results from application of this part to the property rather than from other factors such as deed restrictions or other hardship; (c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this part would not allow reasonable use of the property; (d) The applicant did not cause the hardship by knowingly or unknowingly violating this part; (e) The applicant did not purchase the property after August 11, 2009, the effective date of this part, and then request a variance; and (f) The hardship is rare or unique to the applicant's property.

(2) For any variance request, the local government shall make a finding of fact as to whether the variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(3) For any variance request, the Board shall make a finding of fact as to whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(4) **MINOR VARIANCES.** A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in subsection (k)(1) through (k)(3) of this part by the Board pursuant to G.S. 160D-102(38). The Board may attach conditions to the variance approval that support the purpose, spirit and intent of the

riparian buffer protection program.

(5) Request for appeals to decisions made by the Board shall be made on certiorari to the local Superior Court.

(6) MAJOR VARIANCES. A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in subsection (k)(1) through (k)(3) of this part, then it shall prepare a preliminary finding and submit it to the Board for approval. Within 90 days after receipt by the local government, the Board shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Board decision on a major variance request are made on judicial review to Superior Court.

Section 2: Section 15-269.5 (d) (Table of Exempt and Allowable Activities in Water Quality Buffers) is amended to read as follows:

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Airport facilities: <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		<p style="text-align: center;">X</p> <p style="text-align: center;">X</p>	<p style="text-align: center;">X</p>
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.	X		
Dam maintenance activities: <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3 	X	X	

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Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies. • Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations. • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed. 	<p>X</p>	<p>X</p> <p>X</p>	<p>X</p>

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Use	Exempt *	Allowable *	Allowable with Mitigation*
Driveway crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X X	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Ordinance			X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Ordinance • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Ordinance 	X	X	
Fertilizer application: one-time application to establish vegetation	X		
Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.	X		

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Use	Exempt *	Allowable *	Allowable with Mitigation*
Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Preservation or maintenance of historic or cultural sites	X		
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of this section are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of this section are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	

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Use	Exempt *	Allowable *	Allowable with Mitigation*
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of this section is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of this section of this Ordinance is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance.			X
Railroad crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X

** To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement)..

Use	Exempt *	Allowable *	Allowable with Mitigation*
Recreational and accessory structures in Zone Two: <ul style="list-style-type: none"> • Sheds and gazebos in Zone Two, provided they are not prohibited under local water supply ordinance: <ul style="list-style-type: none"> ○ Total footprint less than or equal to 150 square feet per lot. ○ Total footprint greater than 150 square feet per lot. • Wooden slatted decks and associated steps, provided the use meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance: <ul style="list-style-type: none"> ○ Deck at least eight feet in height and no vegetation removed from Zone One. ○ Deck less than eight feet in height or vegetation removed from Zone One. 		X	X
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Ordinance			X
Road crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X

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Use	Exempt *	Allowable *	Allowable with Mitigation*
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One • Wet detention, bioretention, and constructed wetlands in Zone One 		X	X
Scientific studies and stream gauging	X		
Streambank or shoreline stabilization		X	
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. . A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Section 15-269.7 (g). <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	X	X X	

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Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in 15-269.7 (g).</p> <ul style="list-style-type: none"> • In Zone Two provided ground cover is established within timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone One is not compromised, and runoff is released as diffuse flow in accordance with Section 7.(E) of this Ordinance. • In Zones one and two to control impacts associated with uses approved by the Town or that have received a variance, provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer. • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. • In-stream temporary erosion and sediment control measures for work within a stream channel. 	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>	
<p>Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Ordinance^{2,3,5}:</p> <ul style="list-style-type: none"> • Disturb equal to or less than 150 linear feet of riparian buffer • Disturb greater than 150 linear feet of riparian buffer 	<p>X</p>	<p>X</p>	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 15-269.4 (Diffuse Flow Requirement).

Use	Exempt *	Allowable *	Allowable with Mitigation*
Utility, electric, aerial, other than perpendicular crossings ⁵ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One^{2,3} 		X	X
Utility, electric, underground, perpendicular crossings ^{3,4,5} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of riparian buffer • Disturb greater than 40 linear feet of riparian buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ⁴ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 	X X		
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Ordinance ^{3,5} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of riparian buffer 	X	X X	 X X

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Use	Exempt *	Allowable *	Allowable with Mitigation*
Utility, non-electric, other than perpendicular crossings ^{4,5} : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 		X	X
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone Two • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank. • Removal of individual trees which are dead, diseased or damaged. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in: <i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i> 	X X X X X X X		
<ul style="list-style-type: none"> • Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet. 		X	
<ul style="list-style-type: none"> • Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers. 		X	

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Use	Exempt *	Allowable *	Allowable with Mitigation*
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Section 15-269.3 is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires NC Division of Water Quality approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require Division of Water Quality approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

¹Provided that:

- No heavy equipment is used in Zone One.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Section 15-269.3.

²Provided that, in Zone One, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Town as defined in Section 15-269.6

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.

- **Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.**
- **Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.**
- **In wetlands, mats shall be utilized to minimize soil disturbance.**

³Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless Town completes a no practical alternative evaluation as defined in Section 15-269.6.

⁴Provided that, in Zone One, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by Town as defined in Section 15-269.6.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

⁵Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

Section 3. Subdivision (4)(g) of Section 15-198 (Open Space) is amended to read as follows:

(g). Road buffers as required by Section 15-312 of the Chapter, except for those portions of the buffers that must be included in road or utility crossings, site triangles and planned pedestrian and bicycle improvements.

Section 4. Section 15-92.1 (Special Exception Permits) is amended by replacing the term “special exception permit” in all instances with the term “setback variance.”

Section 5. Section 15-184(3)(b) is amended with the addition of a definition of “substantially opaque” so that the subdivision now reads as follows:

(b). Fences, walls or berms running along right-of-way or lot boundaries adjacent to public street rights of way if such fences, walls or berms exceed three feet in height and are substantially opaque except that fences, walls or berms shall not be regarded as “buildings” within the meaning of this subdivision if they are located along the rear lot line of lots that have street frontage along both the front and rear of such lots. For the purpose of this section, any portion of a fence higher than three feet located horizontally along or perpendicular to a right-of-way that does not meet the applicable setback requirement must be at least 50 percent open/revealed to 50 percent

closed/opaque.

Section 6. Section 15-146 (Table of Permissible Uses) is amended by the addition of a new use classification, 35.00 (Fence), with a “Z” entered in each column indicating that a zoning permit is required for the installation of a fence in each zoning district.

Section 7. All provisions of any Town Ordinance in conflict with this Ordinance are repealed.

Section 8. This Ordinance shall become effective upon adoption.

DRAFT