

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO BRING
THE ORDINANCE INTO CONFORMITY WITH RECENT STATUTORY CHANGES
REGARDING THE BOARD OF ADJUSTMENT

DRAFT 9-9-2104

THE BOARD OF ALDERMENT OF THE TOWN OF CARRBORO ORDAINS:

Section 1. All article and section references set forth in the ordinance are to the Carrboro Land Use Ordinance.

Section 2. Subsection 15-102(1) (Notice of Hearing) is amended to read as follows:

- (1) Not later than ten days before the hearing, a written notice of such hearing shall be sent by first class mail to (i) the appellant or applicant, (ii) the owner of the property that is the subject of the hearing if the owner did not initiate the hearing, and (iii) any other person who makes a written request for such notice.

Section 3. Section 15-91 (Appeals) is rewritten to read as follows:

(a) The board of adjustment shall hear and decide appeals of decisions of the administrator in accordance with the provisions of G.S. 160A-388. Those provisions are summarized in the remaining subsections of this section. For purposes of this section, the term “decision” includes any final and binding order, requirement, or determination made by the administrator.

(b) The administrator shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(c) Any person who has standing under G.S. 160A-393(d), as well as the town, may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

(d) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(e) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high is prominently posted on the property that is the subject of the decision, provided that (i) the sign remains on the property for at least 10 days, and (ii) and the sign states that additional information about the decision can be obtained by calling the planning department at a specified telephone number. Posting of such signs shall

not be required, and is not the only form of constructive notice, but such posting offers the applicant or landowner a means of ensuring that constructive notice of the decision has been provided. Verification of the posting shall be provided to the administrator.

(f) The administrator shall transmit to the board of adjustment all documents and exhibits constituting the record of the action that is the subject of the appeal. The administrator shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(g) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the administrator certifies to the board of adjustment after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the administrator a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(h) Subject to the provisions of subdivision (g) of this section, the board of adjustment shall hear and decide the appeal within a reasonable time.

(i) The administrator shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the administrator.

(j) The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

Section 4. Section 15-92 (Variances) is amended to read as follows:

(a) An application for a variance shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the planning department. Applications shall be handled in the same manner as applications for special use permits in conformity with the provisions of Sections 15-48, 15-49, and 15-56.

(b) Subject to the remaining provisions of this section, when unnecessary hardships would result from carrying out the strict letter of this ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of this ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

(c) No change in permitted uses may be authorized by variance.

(d) Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance.

(e) A variance may be issued for an indefinite duration or for a specified duration only.

(f) In determining whether a variance should be granted from any of the provisions of Article XVI, Part I, the board of adjustment shall consider the following factors, each of which shall be addressed in a written report that accompanies the application.

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(6) The compatibility of the proposed use with existing and anticipated development;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(8) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(9) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site; and

(10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(g) Any applicant to whom a variance is granted from the provisions of Article XVI, Part I, shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) With respect to the provisions of Article XVI, Part I, the administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(i) With respect to the provisions of Article XVI, Part I:

(1) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) The Town shall notify the Secretary of the North Carolina Department of Crime Control and Public Safety that a variance has been requested at least 30 days prior to consideration of the application by the board of adjustment.

(i) If the board votes to grant a major variance from any of the provisions of Section 15-266, dealing with requirements peculiar to areas within the University Lake Watershed or Jordan Lake Watershed Protection District, the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that authorizes a relaxation of greater than 10% of any requirement set forth in Section 15-266.

(j) If the board votes to grant a major variance from any of the provisions of Part III (Water Quality Buffers) of Article XVI, the administrator shall forthwith prepare and send to the Environmental Management Commission a record of the proceedings before the board. The variance shall not be issued until it is approved by the EMC. For purposes of this subsection, a major variance is one that pertains to prohibited activities that will impact that portion of Zone One of the riparian buffers that lies within 30 feet of the surface waters subject to buffer requirements of the Jordan Reservoir.

(k) The administrator shall keep a record of all variances granted during any calendar year from the provisions of Sections 15-266 or Part III of Article XVI and shall submit the record of such variances on or before January 1 of the following year to the Division of Water Quality. The record shall contain a description of each project receiving a variance and the reason for granting the variance.

(l) If the board votes to grant a major variance from the provisions of Section 15-263, the board shall then prepare a preliminary record of the hearing and submit it to the Environmental Management Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes the board to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a Commission decision to be sent to the board. The board shall prepare a final decision denying the major variance. For all proposed major and minor variances from the other local governments having jurisdiction within the Jordan Lake Watershed Area and any local governments using Jordan Lake as a water supply for consumption. Appeals from a board decision on a major or minor variance request are made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court. For purposes of this subsection, a major variance is one that authorizes a relaxation by more than five percent of any requirement set forth in Section 15-263.

Section 5. Subsection 15-32(a) is amended to read as follows:

(a) The concurring vote of a four-fifths majority of members of the board present at a meeting and not excused from voting (a quorum being present) shall be necessary to grant a variance. All other actions of the board, including decisions relating to appeals and special use permits, shall be taken by majority vote, a quorum being present. If a motion to grant a variance is not made or fails to receive the four-fifths vote necessary for adoption, then a motion to deny

the variance shall be in order. This motion is adopted as the board's decision if support by at least two members.

Section 6. Section 15-93 (Interpretations) is amended by rewriting subsection (a) as follows, deleting subsection (b), and redesignating subsection (c) as subsection (b):

- (a) The administrator is authorized to interpret the official zoning map and to pass upon disputed questions of district boundary lines and similar questions.

Section 7. Subsection 15-95(c) is repealed.

Section 8. Section 15-96 (Board Action) is amended as follows:

(a) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings that support that motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption (see Section 15-32), then a motion to uphold the decision appealed from shall be in order. Insofar as practicable, this motion shall include a statement of the findings, or reasons that support it. This motion is adopted as the board's decision if supported by at least two members.

(b) Before granting a variance, the board must take a separate vote and vote affirmatively (by a 4/5 majority--see Section 15-32) on each of the four required findings stated in Subsection 15-92(b). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Subsection 15-92(b) shall include a statement of the specific reasons for findings of fact supporting such motion.

(c) A motion to deny a variance may be made on the basis that any one or more of the four criteria set forth in Subsection 15-92(b) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by at least two members.

(d) Before granting a special exception permit, the board shall vote affirmatively on each of the findings required under section 15-92.1. A motion to deny a special exception may be made on the basis that any one or more of the findings required by section 15-92.1 are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

Section 9. Section 15-106 (Written Decision) is amended as follows:

(a) As provided in G.S. 160A-388(e2), every quasi-judicial decision made by the board of aldermen or the board of adjustment shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable

standards. The written decision shall be signed by the chair or other duly authorized member of the board.

(b) A quasi-judicial decision is effective upon filing the written decision in the planning department. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

Section 10. Section 15-116 (Judicial Review) is amended to read as follows:

Every quasi-judicial decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is filed in the planning department or after a written copy thereof is delivered as provided in Subsection 15-106(b). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Section 11. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 12. This ordinance shall become effective upon adoption.