

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO
PROVIDE THAT LOANS MADE TO FAMILIES WHO PURCHASE AFFORDABLE
HOMES MAY BE SECURED BY DEEDS OF TRUST THAT ALLOW THE TRUSTEE TO
CONVEY FEE SIMPLE TITLE TO THE PROPERTY AT A FORECLOSURE SALE FREE
AND CLEAR OF THE LIMITATIONS THAT QUALIFY SUCH HOMES AS AFFORDABLE
UNDER THE LAND USE ORDINANCE

DRAFT 11-12-2014

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Section 15-182.4 of the Carrboro Land Use Ordinance is revised as follows:

Section 15-182.4 Residential Density Bonuses for Affordable Housing

(a) The Board of Aldermen has established as a policy goal that at least fifteen percent of the housing units within all new residential developments should consist of affordable housing units as described in this section. The remaining provisions of this section are designed to provide incentives to encourage developers to comply with this policy goal either by providing affordable housing units or lots or, under the circumstances set forth in subsection (j), by making payments in lieu of providing such affordable housing units.

(b) For purposes of this section, an affordable housing unit means a dwelling unit that satisfies the requirements of subsections (c) through (f).

(c) The appropriately-sized affordable housing unit must be offered for sale or rent at a price that does not exceed an amount that can be afforded by a family whose annual gross income equals 80 percent of the median gross annual family income, as most recently established by the United States Department of Housing and Urban Development, for a family of a specific size within the Metropolitan Statistical Area where the Town of Carrboro is located; provided that a for-sale housing unit that is offered for sale at a price that exceeds the foregoing limit but does not exceed an amount that can be afforded by a family whose annual gross income equals 115% of the median gross annual family income shall also be regarded as affordable so long as (i) such unit otherwise qualifies as an affordable housing unit under this section, and (ii) units that qualify as affordable under this exception do not constitute more than 25% of the affordable housing units provided within any development

(d) It is conclusively presumed that a family can afford to spend 30% of its annual gross income on housing costs. In the case of housing units that are for sale, the term "housing costs" shall mean the costs of principal and interest on any mortgage, real property taxes, insurance, fees paid to a property owners association, and any ground lease or maintenance fees. In the case of rental housing units, the term "housing costs" shall mean the cost of rent plus utilities. In making the calculation called for in this subsection, it shall be conclusively presumed that a unit is appropriately sized when an efficiency or one bedroom housing unit serves a family of one, that a two bedroom housing unit serves a family of two; that a three bedroom housing unit serves a family of three, and that a housing unit containing four or more bedrooms serves a family of four.

(e) The developer shall also establish or provide for arrangements to ensure that each such affordable unit is made available for sale or rent only to a family whose annual gross income does not exceed (i) 80% of the median gross annual income of a family of the same size within the Metropolitan Statistical Area where the town of Carrboro is located, or (ii) 115% of the median gross annual income of a family of the same size within the Metropolitan Statistical Area where the town of Carrboro is located if the unit is one that qualifies as affordable under the 115% exception provided for in subsection (c).

(f) The developer of the affordable housing unit must establish or provide for arrangements to ensure that, for a period of not less than 99 years from the date of initial occupancy of the unit, such unit shall remain affordable (as provided in subsection (c)) and shall be offered for sale or rent only to families that satisfy the income criteria set forth in subsection (e). Such arrangements may include but shall not be limited to a ground lease, a deed restriction, or other covenant running with the unit. The documents establishing such arrangements shall be reviewed and approved by the Town of Carrboro prior to final plat approval if the units are located on subdivided lots or prior to the issuance of a certificate of occupancy if the units are not located on unsubdivided lots. The provisions of this subsection shall be considered satisfied if units are transferred to the Orange Community Housing and Land Trust at or below a price that is consistent with the provisions of subsection (c) above.

(g) Notwithstanding the other provisions of this section, if a dwelling unit is transferred to the Orange Community Housing and Land Trust or other non-profit housing provider in order to qualify such unit as “affordable” under the provisions of this section, and the financial institution that provides a loan to the buyer requires that such loan be secured by a deed of trust or other instrument that allows the unit to be sold upon default free and clear of the affordability restrictions set forth in this section, then the Land Trust or other non-profit housing provider may agree to such financing terms. Should foreclosure under such a deed of trust occur, this shall not render nonconforming or otherwise have an adverse effect upon either the affordable unit or the development that created the affordable unit.

(h) For purposes of this section, an affordable housing lot shall mean a lot that (i) is designed and approved for the construction of a single family dwelling, and (ii) upon creation of such lot by the recording of a final plat, is donated (without additional consideration) to a non-profit agency that is in the business of constructing on such lots affordable housing units that meet the affordability criteria set forth in subsections (c) through (f) above.

(i) The maximum residential density permissible within a development whose maximum density would otherwise be determined in accordance with the applicable provisions of this Article XII shall be increased by two dwelling units for every one affordable housing unit constructed within the development, up to a maximum of 150% of the density otherwise allowable. Similarly, the maximum number of single family detached residential building lots that could otherwise be created within a development tract under the applicable provisions of this Article XII may be increased by two such lots for every one affordable housing lots created within such development, up to a maximum of 150% of the maximum density otherwise allowable. To illustrate, if the maximum density of a tract would be 100 dwelling units (or single family lots), a developer who chooses to construct 10 affordable housing units (or create 10 affordable housing lots) as part of the development of that tract would be allowed to construct 10 additional dwelling units (or create 10

additional lots) that did not satisfy the “affordability” criteria set forth in subsections (c) or (f), for a total density of 120 dwelling units (or lots). In this illustration, the maximum possible density that could be achieved would be 150 dwelling units if the developer constructed at least 25 affordable housing units (or created 25 affordable housing lots).

(j) For purposes of determining the maximum density permissible within a development under subsection (i) of this section, the Board of Aldermen may allow the payment of an affordable housing payment in lieu fee (determined in accordance with the provisions of subsection 15-54.1(b)(4)) to be regarded as the equivalent of providing an affordable housing unit. The developer may request such authorization at any time following the submission of a development application. In exercising its discretion as to whether such a request should be granted, the Board shall consider the need for the particular type of units the payments in lieu would replace, the comparative need for cash resources to assist in the provision or maintenance of affordable housing, and such other factors as the Board deems relevant in determining whether and to what extent payments in lieu would better serve the Board’s goal of providing and maintaining affordable housing.

(k) Within any development that provides affordable housing units or affordable housing lots, the minimum area that must be set aside as open space to satisfy the requirements of Section 15-198 may be reduced by an amount equal to twice the land area consumed by all such affordable housing units or lots, except in no case may the required percentage of open space be less than 20 % (10 % in the ORMU and R-2 districts).

(l) Affordable housing units or lots constructed or created in accordance with this section shall not be unduly isolated or segregated from other dwellings or lots that do not satisfy the “affordability” criteria set forth in this section.

(m) In approving a special or conditional use permit for a development that proposes to utilize the density bonus provisions of this section, the permit issuing authority shall ensure, by approval of a condition, phasing schedule, or otherwise, that affordable housing units or lots, or payments in lieu thereof, are actually provided in accordance with the provisions of this section. Without limiting the generality of the foregoing, the permit issuing authority may impose a condition specifying that certificates of occupancy may not be issued for the market priced units until the corresponding affordable housing units are constructed and offered for sale or rent for an amount that is consistent with the definition set forth in this section, or payments in lieu thereof have been made to the town.

(n) If, by using the affordable housing density bonus provided for in this section, the number of dwelling units or lots within a development increases to the point where the type of permit required for the project based on the number of units or lots would otherwise change from a zoning to a special use permit or from a special use to a conditional use permit in accordance with the provisions of Section 15-147, the developer may nevertheless seek approval for the project under the permit process that would be applicable if no density bonus was sought under this section.

(o) As provided in subsection 15-92.1(d), developments that use the affordable housing density bonus provisions of this section may be entitled to relief from the setback requirements under some circumstances.

(p) Notwithstanding the other provisions of this section, with respect to a development that (i) was approved prior to the amendments to this section adopted on June 26, 2007, and (ii)

constructed dwelling units that satisfied the affordability criteria by recording covenants and including restrictions in the deeds that conveyed title to the affordable units limiting the sale or resale price of such units in accordance with a formula set forth in this section, and (iii) took advantage of the density bonus provisions of this section and constructed additional market rate units as authorized by this section:

- (1) The Board of Aldermen may amend the conditional use permit that authorized such development to provide that those provisions that restrict the price at which the affordable units may be sold shall no longer be binding, (thereby allowing the units to be sold at market value) subject to and in accordance with the following provisions:
 - a. At the closing on the sale of such units, all fees and charges typically paid by the seller of other market rate units (such as loans secured by property, re-al estate commissions, prorated property taxes, excise taxes, etc.) shall be paid by the seller of a unit previously designated as affordable. The balance of the proceeds of the sale to which the seller is entitled shall be referred to in this section as the “net proceeds of the sale.”
 - b. To the extent that the price paid by the buyer of the unit exceeds the price paid by the seller when the seller purchased the unit, the difference between the two figures shall be referred to in this section as the “equity appreciation amount.” To the extent that the net proceeds of the sale are sufficient, the seller shall be allowed to keep the first five thousand dollars (\$5,000.00) of equity appreciation, plus an amount of the equity appreciation equal to the amount paid by the seller for additions to the home or significant upgrades to the home (routine maintenance, repairs, or replacements excluded).
 - c. If the net proceeds of the sale exceed the amount the seller is permitted to retain under the foregoing paragraph, the remainder of the net proceeds shall be split evenly between the Town and the seller.
- (2) The Board of Aldermen may also amend the conditional use permit that authorized such development to provide that those provisions that restrict the price at which the affordable units may be sold shall expire automatically on the twentieth anniversary of the recording date of the deed conveying the affordable unit to the party owning that unit on the effective date of this subsection. Thereafter, no restrictions on the sales price of such unit or the disposition of sales proceeds shall apply to such unit.
- (3) A development wherein affordable units are converted to market rate units under this subsection shall not be regarded as nonconforming with respect to density.

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.