

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO CONFORM WITH RECENT CHANGES IN STATE LEGISLATION RELATING TO THE ADOPTION OF CHAPTER 160D

\*\*DRAFT 03-30-2021\*\*

THE CARRBORO TOWN COUNCIL ORDAINS:

**Section 1.** Section 15-2, Authority, is amended to update the references to the North Carolina General Statutes to read as follows:

**Section 15-2 Authority.**

This chapter is adopted pursuant to the authority contained in Article 2 of N.C.G.S. Chapter 160D; Article 21 (Part 6) of G.S. Chapter 143; G.S. 143-215.6A; G.S. 143-214.5; Article 4 of G.S. Chapter 113A; as well as Chapter 527 of the Session Laws of 1953; Chapters 122 and 136 of the Session Laws of 1963; Chapter 260 of the Session Laws of 1977; Chapter 753 of the Session Laws of 1979; Chapters 233 and 476 of the 1987 Session Laws; Chapters 216 and 484 of the 2009 Session Laws; and other state and local laws. (AMENDED 4/27/82; (REWRITTEN 6/26/12).

**Section 2.** Section 15-3, Jurisdiction, is rewritten to read as follows:

**Section 15-3 Jurisdiction.**

(a) This chapter shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area described by Chapters 122 and 636 of the Session Laws of 1963, as modified from time to time in accordance with Section 160D-200; 202; 903 of the North Carolina General Statutes.

(b) If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, the local governments may, by mutual agreement and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to any one of those local governments in accordance with the process described in G.S. 160D-203.

(c) In addition to other locations required by laws, a copy of a map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the planning department. Maps may be maintained either in paper or digital format and shall be available for public inspection in the Planning Department.

**Section 3.** Section 15-6, Relationship to Land Use Plan is rewritten to read as follows:

**Section 15-6 Relationship to Comprehensive Plan, Land Use Plan and other Adopted Plans.**

(a) Pursuant to the intent and requirements of G.S. 160D-501, the Town shall adopt a Comprehensive Plan setting forth the goals, policies, and programs intended to guide the present and future physical, social, and economic development of the Town. The Comprehensive Plan may, among other topics, address any of the following: land use, economic sustainability, affordable housing, recreation, parks and open space, transportation, water and wastewater, energy and utilities, environmental systems and resilience, stormwater management, and public services.

- (1) The adoption and amendment of the comprehensive plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601 and Article XX of this chapter.
- (2) The comprehensive plan shall periodically be reviewed and maintained to ensure the relevance of the policies to current and projected conditions.

(b) It is the intention of the Town Council that this chapter implement the planning policies adopted by the Council for the town and its extraterritorial planning area, as reflected in the Comprehensive Plan, Land Use Plan and other planning documents. While the Council reaffirms its commitment that this chapter and any amendment to it be in conformity with adopted planning policies, the Council hereby expresses its intent that neither this chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

- (1) If an amendment to the Official Zoning Map is adopted and the action is deemed inconsistent with the adopted Comprehensive Plan, the Official Zoning Map amendment shall have the effect of also amending the Future Land Use Map of the Comprehensive Plan.
- (2) In such case, no additional application or fee for an amendment to the Comprehensive Plan shall be required of the applicant.

**Section 4.** Subsection 15-8(a), Fees, is amended to delete the reference to conditional use permits.

**Section 5.** Section 15-15 (Basic Definitions and Interpretations) of the Carrboro Land Use Ordinance is amended by adding twenty-one new definitions and modifying eight existing definitions, “conditional use permit,” “developer,” “development,” “planning and development regulation,” “special use permit,” “subdivision,” and “wireless facility”, as shown below, and by renumbering the entire section in alphabetical order.

**ADMINISTRATIVE DECISION.** Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this chapter, also referred to as administrative determinations.

**ADMINISTRATIVE HEARING.** A proceeding to gather facts needed to make an administrative decision.

**BONA FIDE FARM.** Agricultural activities as set forth in G.S. 160D-903.

**CHARTER.** As defined in G.S. 160A-1(2).

**COMPREHENSIVE PLAN.** A comprehensive plan that has been officially adopted by the Town Council pursuant to G.S. 1660D-501.

**CONDITIONAL USE PERMIT.** A permit that was issued by the Town Council, prior to January 1, 2021, authorizing the recipient to make use of property in accordance with the requirements of this chapter as well as any additional requirements imposed by the Town Council. Pursuant to N.C.G.S. Chapter 160D, all valid conditional use permits were automatically converted to a class A special use permits on January 1, 2021. See also special use permit.

**CONDITIONAL ZONING.** A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

**DETERMINATION.** A written, final, and binding order, requirement, or determination regarding an administrative decision.

**DEVELOPER.** A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

**DEVELOPMENT.** Unless the context clearly indicates otherwise, the term means any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation or substantial change in the use of land or the intensity of use of land.

**DEVELOPMENT APPROVAL.** An administrative or quasi-judicial approval made pursuant to this chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

**DEVELOPMENT REGULATION.** A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to N.C.G.S. Chapter 160D, this chapter or the Town Code or Town charter.

**DWELLING.** Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. This term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

**EVIDENTIARY HEARING.** A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this chapter. [See Article VI.]

**INTERESTED PERSON.** For purposes of quasi-judicial evidentiary hearings an interested person or party is one who has standing as defined in G.S. 160D-1402(c). [See Article VI].

**LANDOWNER OR OWNER.** The holder of the title in fee simple. Absent evidence to the contrary, the Town may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as the agent or representative for the purpose of making applications for development approvals.

**LEGISLATIVE DECISION.** The adoption, amendment, or repeal of a regulation under N.C.G.S. Chapter 160D, and Article XX of this chapter. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of N.C.G.S. Chapter 160D.

**LEGISLATIVE HEARING.** A hearing to solicit public comment on a proposed legislative decision. [See Article XX.]

**MULTI-PHASE DEVELOPMENT.** A development containing 25 acres or more that is submitted for development permit approval to occur in more than one phase and subject to a master development plan with committed elements showing the type and intensity of use of each phase.

**MANUFACTURED HOME.** A structure as defined in G.S. 143-145(7). [See also Mobile Home.]

**PLANNING AND DEVELOPMENT REGULATION JURISDICTION.** The area within the town limits as well as the area beyond the town limits within which the town is authorized to plan for and regulate development pursuant to the authority granted in Article 2 of Chapter 160D of the N.C. General Statutes and Chapter 122 of the Session Laws of 1963. (AMENDED 6/22/82)

**QUASI-JUDICIAL DECISION.** A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board, Town Council or board of adjustment, to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

**SITE PLAN.** A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

**SITE SPECIFIC VESTING PLAN.** A plan approved by the Town Council that describes, with reasonable certainty, using a combination of graphic illustrations and written notes, the type and intensity of use for a specific parcel or parcels of property located within the Town's planning jurisdiction. Conditional districts, special use permits and zoning permits can be approved as site specific vesting plans by the Town Council following a legislative decision process in accordance with G.S. 160D-108. [See Article VIII.]

**SPECIAL USE PERMIT.** A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits.

**SUBDIVISION.** The division of a tract of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this chapter applicable strictly to subdivisions: (i) the combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal

to or exceed the minimum standards set forth in this chapter, (ii) the division of land into parcels greater than ten acres where no street right-of-way dedication is involved; or (iii) the public acquisition by purchase of strips of land for widening or opening of streets or for public transportation system corridors; or (iv) the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the minimum standards set forth in this chapter; or (v) the division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the N.C.G.S.

**WIRELESS FACILITY.** Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. Also refers to Wireless Telecommunications Facility. The term shall not include any of the following: **(AMENDED 6/23/20)**

- (1) The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
- (2) Wireline backhaul facilities.
- (3) Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.
- (4) Amateur radio antennas. See also, Section 15-150(5) Towers and antennas constructed on residential property and G.S. § 160D-931

**ZONING MAP AMENDMENT OR REZONING.** An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of the town that has previously adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by the town, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

**Section 6.** Article XIII, Recreation Facilities and Open Space, is amended to replace all references to the ‘Board of Aldermen,’ or ‘Board’ with the ‘Town Council,’ or ‘Council,’ respectively.

**Section 7.** Subsection 15-202(b), is rewritten to read as follows:

(b) Whenever the permit issuing authority authorizes some deviation from the standards set forth in this article pursuant to subsection (a), the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

**Section 8.** Article XIV, Streets and Sidewalks, is amended to replace all references to the ‘Board of Aldermen,’ or ‘Board’ with the ‘Town Council,’ or ‘Council,’ respectively.

**Section 9.** Subsection 15-216(d1) is amended to replace the reference to a conditional use permit to a class A special use permit.

**Section 10.** Subsection 15-216(e) is rewritten to read as follows:

(e) The Council may allow a deviation from the right-of-way minimums set forth in subsections (b) and (c) if it finds that (i) the deviation is needed because in order for a development to be served by a public street the street must be constructed within an area that is not of sufficient width to comply with the right-of-way criteria set forth above, (ii) a street that meets the pavement width criteria and substantially complies with the other criteria set forth above can be constructed within the right-of-way that can be made available; and (iii) that the applicant has shown that he has made a reasonable effort and attempted to purchase the necessary right-of-way.

**Section 11.** Section 15-236, Utility Ownership and Easement Rights, is amended to include 'fiber optic cable or conduit' in the list of utilities installed by a developer and intended to be owned, operated or maintained by a public utility or entity other than the developer.

**Section 12.** The table in Subsection 15-239(b), Determining Compliance With Section 15-238 is amended to change the reference to the Division of Environmental Management of the NC Department of Natural Resources and Community Development to the NC Department of Environmental Quality (DEQ).

**Section 13.** The table in Subsection 15-240(b), Determining Compliance With Section 15-240 is amended to change the reference to the Division of Health Services of the NC Department of Human Resources to the Division of Public Health of the NC Department of Health and Human Services.

**Section 14.** Section 15-242, Purpose and Intent, is amended to change the reference to the Board to the Town Council.

**Section 15.** Subsection 15-242.5(b), General Standards, is amended to change the name for a conditional use permit to a class A special use permit.

**Section 16.** Subsection 15-242.5(g), General Standards, is amended to replace the word Board with Council.

**Section 17.** Section 15-246, Underground Utilities is rewritten to read as follows:

**Section 15-246 Underground Utilities.**

(a) All electric power lines, (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters or capacitors which may be pad mounted), telephone, gas distribution, fiber optic cable or conduit, and cable television lines in subdivisions developed after the effective date of this chapter shall be placed underground in accordance with the specifications and policies of the respective utility companies and located in accordance with Appendix C, Standard Drawing No. 6 or No. 7.

(b) Whenever an unsubdivided development is hereafter constructed on a lot that is undeveloped on the effective date of this chapter, then all electric power, telephone, gas distribution, and cable television lines installed to serve the development site outside of a previously existing public street right-of-way shall be placed underground in accordance with the specifications and policies of the respective utility companies. **(AMENDED 1/22/85)**

(c) Notwithstanding the foregoing, a developer or builder is not required to bury power lines meeting all of the following criteria:

- (1) The power lines existed above ground at the time of first approval of a plat or development plan, whether or not the power lines are subsequently relocated during construction of the subdivision or development plan.
- (2) The power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan.

**Section 18.** Article XVI, Flood Damage Prevention, Stormwater Management, and Watershed Protection, is amended by changing the names of ‘conditional use permits’ and ‘special use permits’ to ‘class A special use permits’ and class B special use permits.’

**Section 19.** Section 15-251.1, Definitions, is amended by correcting an error in definition (63), Substantial Damage, to read as follows:

63. Substantial Damage. Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “Substantial Improvement.”

**Section 20.** The first paragraph under Section 15-251.6, Duties and Responsibilities of the Administrator is amended to be gender neutral, as follows:

As set forth in Part I of Article IV of this chapter, development permits (including permits for development within Special Flood Hazard Areas), shall not be issued unless the requirements of this chapter have been satisfied. In addition to permit responsibilities, the administrator’s responsibilities relating to the administration and enforcement of the provisions of this part shall include but shall not be limited to the following duties:

**Section 21.** Article XVIII, Parking, is amended to replace all references to the ‘Board of Aldermen,’ or ‘Board’ with the ‘Town Council,’ or ‘Council,’ respectively.

**Section 22.** Article XVIII, Parking, is amended by changing the names of ‘conditional use permits’ and ‘special use permits’ to ‘class A special use permits’ and class B special use permits.’

**Section 23.** Subsection 15-291(g), Number of Parking Spaces Required is amended by deleting the reference for 1 space per room plus additional space for restaurant or other facilities in the table under use 23.000, temporary structure or parking lots used in connection with the construction of a permanent building or for nonrecurring purpose.

**Section 24.** Article XIX, Screening and Trees, is amended to replace all references to the ‘Board of Aldermen,’ or ‘Board’ with the ‘Town Council,’ or ‘Council,’ respectively.

**Section 25.** Article XIX, Screening and Trees, is amended by changing the names of ‘conditional use permits’ and ‘special use permits’ to ‘class A special use permits’ and class B special use permits.’

**Section 26.** The first paragraph of Subsection 15-319(a), Minimum Canopy Coverage Standards is rewritten to read as follows:

**(a) Minimum Canopy Coverage Standards**

Subject to the remaining provisions of this section, the following minimum tree canopy coverage percentages are required within the boundaries of every lot or tract for which a zoning, special use, or conditional use permit was issued after June 24<sup>th</sup>, 2014 or a class A or class B special use permit is issued after July 1, 2021, exclusive of required cleared active recreation areas, water bodies, access easements, public and private right-of-way, stormwater and utility easements.

**Section 27.** The N.C.G.S. citation in subsection (a) under 15-321.1, Regulations of Forestry Activities is changed from G.S.160A-458.5 to G.S. 160D-921.

**Section 28.** All provisions of any town ordinance in conflict with this ordinance are repealed.

**Section 29.** This ordinance shall become effective upon adoption.

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