



Legislation Text

File #: 14-0263, **Version:** 1

TITLE:

Request-to-set a public hearing on Land Use Ordinance Amendments Relating to the Board of Adjustment

PURPOSE: The purpose of this item is for the Board of Aldermen to consider setting a public hearing on text amendments to the Land Use Ordinance to bring the ordinance into conformity with recent statutory changes relating to the Board of Adjustment.

DEPARTMENT: Planning

CONTACT INFORMATION: Christina Moon - 919-918-7325; Mike Brough - 919-929-3905; Marty Roupe - 919-918-7333

INFORMATION: In the spring of 2013, the North Carolina General Assembly considered HB 276, An Act to Clarify and Modernize statutes regarding Zoning Boards of Adjustment (Attachment C and <http://www.ncleg.net/sessions/2013/bills/house/pdf/h276v6.pdf>). The bill updated the statute creating boards of adjustment providing greater clarity, standardizing procedures and providing more predictability about the processes used by the board of adjustment. The bill was signed in to law in October of 2013.

The role of the Board of Adjustment is to handle quasi-judicial matters following clear procedures based on evidence and sworn testimony outside of the political pressure that can affect elected officials. In addition to reviewing special use permits, the Town of Carrboro Board of Adjustment considers requests for major subdivisions of between five and 12 units, appeals, interpretations, variances and special exceptions. Among other things, the variance provisions of General Statute 160A-388(d) have been rewritten so that the following standards for granting a variance will be uniform throughout the state:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are particular to the property
- The hardship is not self-created
- The applicant must demonstrate that the granting of a variance is consistent with the spirit or intent of the ordinance, will maintain public safety, and achieve substantial justice.

In addition, the new language clearly prohibits any use variances.

The Town Attorney has prepared a draft ordinance (Attachment B) which, if adopted, would amend the Land Use Ordinance in accordance with state legislation. The table below identifies the various sections of the LUO impacted by the draft ordinance; the current ordinance provisions may be reviewed at the following link <https://nc-carrboro.civicplus.com/298/Land-Use-Ordinance>.

| Article | Title | Section | Name |
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| III | Administrative Mechanisms | 15-32 | Voting |
| IV | Permits and Final Plat Approval | 15-48 15-49 15-56 | Who May Submit Permit Applications Applications to be Complete Recommendation on Special Use Permit |
| V | Appeals, Variances, Special Exceptions, and Interpretations | 15-91 15-92 15-93 15-95 15-96 | Appeals Variances Interpretations Burden of Proof in Appeals, Variances, and Special Exceptions Board Action on Appeals, Variances, and Special Exceptions |
| VI | Hearing Procedures for Appeals and Applications | 15-102 15-106 | Notice of Hearing Written Decisions |
| VII | Enforcement and Review | 15-116 | Judicial Review |
| XVI | Flood Damage Prevention, Stormwater Management, and Watershed Protection | Part I and Part 3 | Included as references in the draft ordinances for requests for variances to water quality stream buffers and the like |

The Board of Aldermen must receive public comment before adopting amendments to the LUO; Planning Board and Orange County review is also needed. The Board may also wish to provide the materials to the Board of Adjustment as an informational item; the resolution included makes this referral.

FISCAL & STAFF IMPACT: Public hearings involve staff and public notice costs associated with advisory board and Board of Aldermen review.

RECOMMENDATION: Staff recommends that the Board of Aldermen consider the attached resolution setting a public hearing for October 21, 2014 and referring the proposed amendment to Orange County and the Planning Board for consideration and recommendation and the Board of Adjustment for information/review (Attachment A).