



TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL

PLANNING DEPARTMENT

DELIVERED VIA: ☐ HAND ☐ MAIL ☐ FAX ☒ EMAIL

To: Patrice Toney, Town Manager
Mayor and Town Council

From: Duncan Dodson, Planner

Date: May 21, 2024

Subject: Proposed Land Use Ordinance Text Amendment Relating to Water Quality Buffers, Road Buffers, Fences, and Setback Exceptions.

Overview

The changes incorporated into this text amendment serve two main purposes: to ensure clear alignment of language in the Land Use Ordinance with state enabling legislation, and to clarify sections of the ordinance to improve its use by residents, boards, and staff. The recently adopted comprehensive plan, *Carrboro Connects*, directs the Town across several strategies to examine and update the LUO. In parallel to a larger rewrite of the LUO, this amendment advances goals laid out in the plan to improve the permit review process, and ensure the LUO continues to align with existing state statutes including the Jordan Lake Rules and Chapter 160D. The changes are summarized in the table below:

Topic	Proposed Changes	Impacts
Road Buffers	15-198(b)(1)(b) 15-198(b)(4)(g) 15-312	Clarifies permissible uses and practices in NCDOT rights-of-way that enhance safety and provide opportunities for bike and pedestrian connections
Fences	15-146 15-147 15-184(3)(b)	Clarifies the 50% opaque requirements for fences along the front- and side-yards of properties. Adds the requirement for a zoning permit to construct a fence.
Setback Exceptions	15-92.1	Clarifies the function of this permit by replacing the term “special exception” with “setback exception.”
Water Quality Buffers	15-92(k) 15-269.5(d)	Adds three (3) new uses to the Table of Exempt and Allowable Activities in Water Quality Buffers to align with current Jordan Lake Rules. Clarifies associated findings required for quasi-judicial approval of

		variances within water quality buffers.
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Summary of Draft Ordinance by Topic

Road Buffers

The following NCDOT maintained roads designated for required protective road buffers are as follows:

- Old NC 86
- Dairyland Road
- Union Grove Church Road
- Homestead Road
- Eubanks Road
- Smith Level Road, south of Ray Road

Section 15-198 concerns the provision of open space when land is developed for residential purposes to serve the health, safety, and welfare of the public. Open space includes further designation of primary and secondary conservation areas. Protective road buffers along specific NCDOT-maintained roads are included the definition of primary conservation areas, except for “portions that must be included in road or utility crossings.”

The Town has used this exception to enhance safety via sight triangles at entry and exit points of homes and neighborhoods along these roads. Sight triangles are small patches clear of obstructions that allow for residents leaving a neighborhood to see signage, and passing walkers, cyclists, and vehicles. The Town has also used this exception to create publicly accessible sidewalks, sidepaths, crosswalks, and other pedestrian and bike facilities along and across these roads.

To clarify the long-standing administration of this section and ensure clear alignment with NCDOT practices, this change adds “sight triangles and bicycle pedestrian improvements,” to the list of portions of the buffers that are not considered primary conservation areas. Sight triangles and bike and pedestrian facilities that meet the requirements of Section 15-198 in a dedicated easement will count towards a development’s open space calculation, just not as primary conservation areas. The changes in 15-312 reinforce this language.

Fences

The changes to Section 15-146 and 15-147 add a new use class—35.00 Fence—which is allowed in all zoning districts. Section 15-147 further specifies that a zoning permit is required when a fence is located in a right-of-way setback.

Currently fences constructed or located in a right-of-way setback require a zoning permit; this change makes that requirement clear. As the Town increases density, property owners will have more opportunities to use as much of their lot as possible

(i.e. by adding accessory structures and dwelling units); adding clarity to the existing review process will ensure the Town can preemptively address noncompliance rather than relying on enforcement which requires more staff time. The Town has mitigated several violations and issued variances. Staff know that the current process depends often on property owners approaching the Town, and this is the staff's strategy to address some of these issues.

The Ordinance currently specifies that fences, walls, and berms taller than 3 feet must be substantially opaque if they are:

- located along front lot boundaries adjacent to street rights of way,
- or perpendicular to and located within a certain distance (often 25 feet) of a street right-of-way.

To provide consistent application of the standard, the Zoning Division issued an interpretive memo on September 15, 2021, defining substantially opaque as at least 50 percent open/revealed to 50 percent closed/opaque. The change to section 15-184(3)(b) serves to add an existing interpretive memo's definition of "substantially opaque" into the body of the LUO for clarity to applicants, boards, and staff.

Setback Exceptions

To more clearly indicate the extent of this permit, and to ensure clear alignment with Chapter 160D of the state General Statutes, this change will replace all instances of the term "special exception" with "setback exception." It will not change the application for or receipt of the permit through quasi-judicial review by the Board of Adjustment nor modify property owner's right to seek a variance if they are ineligible for the setback exception.

Currently, the Ordinance uses the term "special exception" for a permit that allows an applicant to build or encroach into a lot boundary setback up to 50% or to extend along an existing encroachment that may exceed 50%, provided it meets the building code. Most commonly this is sought by applicants to place a shed at the back of their property or build an addition to a home into the setback. Of note, in districts where the setback is 10', and 50% encroachment would allow buildings to be constructed 5' into the setback, NC Building Code safety requirements of at least 6' between structures still apply.

In 2021, the NC General Assembly consolidated existing county and city land use law into Chapter 160D. One change that occurred was the removal of the term "special exception." At the time, the Town reviewed the LUO and decided changing the language of special exception permits was not necessary. Upon further review staff have identified a name change would be clearer since this permit applies primarily to new buildings, and additions to existing buildings, that encroach into a setback.

Water Quality Buffers

The update to the table of exempt and allowable uses in the water quality buffers accomplishes three things:

- Adds 3 uses and related allowances outlined in the state’s Jordan Lake Rules (15A NCAC 02B .0267) to the current table (highlighted in *Attachment C*):
 - Airport Facilities—staff anticipate this use in Carrboro is unlikely but are including it to make cross-referencing the LUO and the Jordan Lake Rules.
 - Recreational and Accessory Structures (sheds, gazebos, and wooden slatted decks),
 - and Water Supply Reservoirs
- Updates the use of stormwater best management practices (BMPs) in Zone 1 (within the 30-foot buffer) from “allowable” to “allowable with mitigation” as set forth in the Jordan Lake Rules
- Reorganizes the LUO table alphabetically to match the Jordan Lake Rules to simplify cross-referencing and to help applicants, boards, and staff understand where Carrboro’s regulations are stricter.

Despite the LUO not currently reflecting these uses, the Town is still required to administer the current listed uses outlined in the Rule. Where Carrboro’s regulations are more stringent, there is no change in allowances and exemptions, as the Town can exceed the minimum requirements of the Rule (15A NCAC 02B .0267). These regulations include having Zone 2 buffers around ephemeral streams, additional width of buffers, stricter exemptions and allowances for uses—notably utilities, additional tree protection for some uses, and quasi-judicial level review for encroachments into the buffer.

Details and associated exemptions and allowances for existing and new uses can be seen in the table in the draft ordinance (*Attachment B*) and in the annotated version of the current Land Use Ordinance (*Attachment C*).

Additionally, this amendment incorporates the additional findings of fact required when applicants seek a variance to encroach into a water quality buffer. These findings of fact are in addition to those required by a typical variance. The language includes definitions for a minor variance (encroachment into Zone 2) and a major variance (encroachment into Zones 1 and 2). These terms and findings of fact are already required per the Jordan Lake Rules; this amendment ensures clear alignment and provides clarity for applicants and the Board of Adjustment.

Consistency with Adopted Plans/Policies

Carrboro Connects 2022-2042 Comprehensive Plan provides goals, strategies, and projects that are expected to guide the Town’s policies and procedures. Staff has identified the following sections of the Carrboro Connects Comprehensive Plan as relevant to the draft ordinance.

Chapter	Staff Comments	Applicable Strategies
Affordable Housing	Not applicable	N/A
Climate Action & Environment	The draft ordinance further clarifies provisions of the LUO, making them easier to use and cross reference with enabling legislation while continuing to protect streams and riparian areas.	Consistent With: Project 1.2a Inconsistent With: - Inconclusive: -
Transportation & Mobility	Specifying bike, pedestrian, and safety improvements allowed in protective road buffers, as well as clarifying that such improvements still count for open space calculations required for new residential subdivisions, continue to support safety and accessibility of the street, bike, and pedestrian network.	Consistent With: 2.2 Inconsistent With: - Inconclusive: -
Green Stormwater Infrastructure, Water, & Energy	Ensuring clear alignment with the Jordan Lake Rules while maintaining both the exemptions and allowances where Carrboro is stricter, and the additional buffer width, continues to implement watershed protection in line and beyond state watershed protections.	Consistent With: Water 2.1 Inconsistent With: - Inconclusive: -
Economic Sustainability	Not applicable	N/A
Recreation, Parks, & Cultural Resources	Not applicable	N/A
Land Use	These timely and appropriate changes clarify provisions that preserve and maintain natural areas and also improve the related development approval processes to be more predictable and efficient.	Consistent With: 3.1 & 5.2 Inconsistent With: - Inconclusive: -

Public Input

The public hearing schedule allows a handful of opportunities for staff to seek public input. In line with recommendations from the Text Amendment Racial Equity Assessment Lens (REAL), staff included information relating to the proposed changes and to seek public input about the amendment at the following outreach events:

DATE	EVENT
May 11	Bike Month Event at the Farmers' Market
May 28	Planning Open House
May 29	Planning Open House

At the joint review for Advisory Boards and Commissions, and at these open houses, there was limited information requested from community members about this text amendment.

Action Requested

Staff requests that the Town Council receive public comment and approve the state of consistency (*Attachment A*) and the draft ordinance (*Attachment B*).