

****DRAFT 05-20-04****

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO CLARIFY
THE CIRCUMSTANCES UNDER WHICH PERMITS MAY BE ISSUED OR
MODIFICATIONS OF PERMITS APPROVED WITHOUT REQUIRING THE
ELIMINATION OF NONCONFORMING SITUATIONS

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Subsection 15-126(c) of the Carrboro Land Use Ordinance (which deals with changes in use of property where a nonconforming situation exists) is amended to read as follows (the new language is shown in bold):

(c) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this chapter applicable to that use cannot reasonably be complied with, then the change is permissible, if the entity authorized by this chapter to issue a permit for that particular use (the administrator, board of adjustment, or Board of Aldermen) issues a permit authorizing the change. This permit may be issued if the permit-issuing authority finds, in addition to any other findings that may be required by this chapter, that:

(1) The intended change will not result in a violation of Section 15-124; and

(2) All of the applicable requirements of this chapter that can reasonably be complied with will be complied with. Compliance with a requirement of this chapter is not reasonably possible if, **among other reasons**, compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. **However, the permit-issuing authority may conclude that compliance is not reasonably possible if the cost (financial and otherwise) of compliance is substantially disproportional to the benefits of eliminating a nonconformity.** In no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

Section 2. Section 15-64 of the Carrboro land Use Ordinance (which deals with amendments to and modifications of permits) is amended by adding thereto a new subsection (g) to read as follows:

(g) When (i) a request for a change in a permit is made under this section (whether for an insignificant deviation, minor modification, or major modification), and (ii) the use of the property is not changed, and (iii) some type of nonconforming situation other than a nonconforming use exists on the property, then the permit change may be approved without requiring the elimination of the nonconforming situations. However, (i) any new development authorized by the permit change shall comply with current standards to the extent reasonably

practicable, and (ii) the permit issuing authority may require the elimination of nonconforming situations when the cost (financial and otherwise) of doing so is clearly proportional to the benefits of elimination of such nonconformity.

Section 3. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 4. This ordinance shall become effective upon adoption.

ARTICLE VI - EXCERPT

HEARING PROCEDURES FOR APPEALS AND APPLICATIONS

Section 15-64 Amendments to and Modifications of Permits.

(a) Subject to subsection (e), insignificant deviations from the permit (including approved plans) issued by the Board of Aldermen, the board of adjustment, or the administrator are permissible and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. **(AMENDED 5/26/81; 6/22/82)**

(b) Subject to subsection (e), minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit-issuing authority. Unless it is requested by the permit-issuing authority, no public hearing shall be required for such minor modification. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. **(AMENDED 6/22/82; 06/06/89)**

(c) Subject to subsection (e), all other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Board of Aldermen or board of adjustment, new conditions may be imposed in accordance with Section 15-59, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit. **(AMENDED 6/22/82)**

(d) The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (a), (b), and (c). **(AMENDED 5/26/81)**

(e) Notwithstanding the foregoing provisions of this section, whenever the board issues a conditional use permit for a planned industrial development (use classification 30.000), the administrator may authorize changes in the approved plans for such development that do not substantially alter the character or pattern of development approved by the board, so long as the revised plans continue to comply with the provisions of this chapter and any conditions imposed by the board in issuing the permit. In granting a permit for a planned industrial development, the board may identify more specifically those elements of the plans concerning which changes may be approved by the administrator under this subsection. **(AMENDED 6/22/82)**

(f) An applicant requesting a change in approved plans shall point out to the administrator, specifically and in writing, what deviation or changes are requested. The

administrator shall respond in writing. No changes shall be authorized except in conformity with this section. (AMENDED 1/22/85)

ARTICLE VIII - EXCERPT

NONCONFORMING SITUATIONS

Section 15-121 Definitions.

Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

- (1) **DIMENSIONAL NONCONFORMITY.** A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.
- (2) **EFFECTIVE DATE OF THIS CHAPTER.** Whenever this article refers to the effective date of this chapter, the reference shall be deemed to include the effective date of any amendments to this chapter if the amendment, rather than this chapter as originally adopted, creates a nonconforming situation.
- (3) **EXPENDITURE.** A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in position.
- (4) **NONCONFORMING LOT.** A lot existing at the effective date of this chapter (and not created for the purposes of evading the restrictions of this chapter) that does not meet the minimum area requirement of the district in which the lot is located.
- (5) **NONCONFORMING PROJECT.** Any structure, development, or undertaking that is incomplete at the effective date of this chapter and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.
- (6) **NONCONFORMING SIGN.** A sign (see Section 15-270 for definition) that, on the effective date of this chapter does not conform to one or more of the regulations set forth in this chapter, particularly Article XVII, Signs.

- (7) **NONCONFORMING SITUATION.** A situation that occurs when, on the effective date of this chapter, an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this chapter, because signs do not meet the requirements of Article XVII of this chapter, or because land or buildings are used for purposes made unlawful by this chapter.
- (8) **NONCONFORMING USE.** A nonconforming use that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use.) The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.)

Section 15-122 Continuation of Nonconforming Situations and Completion of Nonconforming Projects.

(a) Nonconforming situations that were otherwise lawful on the effective date of this chapter may be continued, subject to the restrictions and qualifications set forth in Section 15-123 through 15-129.

(b) Nonconforming projects may be completed only in accordance with the provisions of Section 15-128.

Section 15-123 Nonconforming Lots.

(a) When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimums set forth in Section 15-181, then the lot may be used as proposed just as if it were conforming. However, no use (e.g., a duplex) that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.

(b) When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements (Section 15-184) cannot reasonably be complied with, then the entity authorized by this chapter to issue a permit for the proposed use (the administrator, board of adjustment, or Board of Aldermen) may allow deviations from the applicable setback requirements if it finds that:

- (1) The property cannot reasonably be developed for the use proposed without such deviations;

- (2) These deviations are necessitated by the size or shape of the nonconforming lot; and
- (3) The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

(c) For purposes of subsection (b), compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

(d) This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 15-126.

(e) Subject to the following sentence, if, on the date this section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed.

Section 15-124 Extension or Enlargement of Nonconforming Situations.

(a) Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- (1) An increase in the total amount of space devoted to a nonconforming use; or
- (2) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.

(b) Subject to subsection (d) a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was manifestly designed or arranged to accommodate such use. However, subject

to Section 15-128 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.

(c) Subject to Section 15-128 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed at the effective date of this chapter.

(d) The volume, intensity, or frequency of use or property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

(e) Notwithstanding subsection (a), any structure used for single-family residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformity's or increase the extent of existing nonconformity's with respect to such matters as setback and parking requirements. This paragraph is subject to the limitations stated in Section 15-127 (abandonment and discontinuance of nonconforming situations).

(f) Notwithstanding subsection (a), whenever: (i) there exists a lot with one or more structures on it; and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (iii) the parking requirements of Article XVIII that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with Section 15-297 if: (i) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (ii) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special or conditional use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

(g) A nonconforming use that operates within an enclosed building may expand one time by enlarging the building within which the use is conducted or by expanding within a building where an extension is not otherwise allowed under subsection (b), so long as: **(AMENDED 6/15/86)**

- (1) The area of the enlargement of the nonconforming use does not exceed the maximums established below:
 - a. If the gross floor area previously occupied by the nonconforming use does not exceed 1,000 square feet, then the maximum expansion shall be equal to 100% of the gross floor area previously occupied by the nonconforming use.
 - b. If the gross floor area previously occupied by the nonconforming use is between 1,001 and 5,000 square feet, then the maximum expansion shall be equal to 1,000 square feet plus 35% of the difference between the gross floor area previously occupied by the nonconforming use and 1,000 square feet.
 - c. If the gross floor area previously occupied by the nonconforming use exceeds 5,000 square feet, then the maximum expansion shall be equal to 2,400 square feet plus 25% of the difference between the gross floor area previously occupied by the nonconforming use and 5,000 square feet. However, in no case may the gross floor area of the expansion exceed 5,000 square feet.
- (2) No additional outside storage is associated with the expansion; and
- (3) The nonconforming use, when expanded, does not generate noise that tends to have an annoying or disruptive effect upon (i) uses located outside the immediate space occupied by the nonconforming use if that is one of several located on a lot; or (ii) uses located on adjacent lots; and
- (4) At least "B" level screening is provided in conjunction with the expansion ("A" level screening shall be provided if required under Article XIX); and
- (5) The expansion does not involve the addition of any new drive-in windows; and
- (6) A permit authorizing the expansion is issued by the board of adjustment, unless the expansion is proposed in connection with a development that otherwise requires a conditional use permit, in which case the permit must be issued by the Board of Aldermen. Such a permit may be issued only if the board finds that the proposed expansion satisfies the foregoing requirements and that:

- a. All of the applicable requirements of this chapter that can reasonably be complied with will be complied with. Compliance with a requirement of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional dimensional nonconformities (including parking nonconformities) would thereby be created; and
- b. On balance, the benefits to the neighborhood that result from the improvements required under this subsection in conjunction with the expansion of a nonconforming use outweigh the disadvantages inherent in the expansion of a nonconforming use.

(h) Notwithstanding subsection (a), an expansion of a building intended to be used for the provision of emergency services (use classification 13.000) which is nonconforming with respect to setback requirements, whereby the expanded building will be no closer than the existing building to the lot line or the street right-of-way line or centerline with respect to which the existing building is nonconforming, shall not constitute an increase in the extent of nonconformity or a nonconforming situation, provided that to take advantage of this provision, the permit required for the expansion shall be a conditional use permit notwithstanding anything to the contrary in the table of permissible uses. (AMENDED 06/07/88)

Section 15-125 Repair, Maintenance and Reconstruction.

(a) Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than twenty-five percent of the appraised valuation of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this section.

(b) If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed twenty-five percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in subsection 15-124(e).

- (c) For purposes of subsections (a) and (b):
- (1) The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
 - (2) The “cost” of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of subsection (a) or (b) by doing such work incrementally.
 - (3) The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.
- (d) The administrator shall issue a permit authorized by this section if he finds that, in completing the renovation, repair or replacement work:
- (1) No violation of Section 15-124 will occur; and
 - (2) The permittee will comply to the extent reasonably possible with all provisions of this chapter applicable to the existing use, (except that the permittee shall not lose his right to continue a nonconforming use or a nonconforming level of residential density). **(AMENDED 11/26/85)**

Compliance with a requirement of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

Section 15-126 Change In Use of Property Where a Nonconforming Situation Exists.

(a) A change in the use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning, special use, or conditional use permit in accordance with Section 15-46 may not be made except in accordance with subsection (b) through (d). However, this requirement shall not apply if only a sign permit is needed. **(AMENDED 4/27/82)**

(b) If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this chapter applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once

conformity with this chapter is achieved, the property may not revert to its nonconforming status.

(c) If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this chapter applicable to that use cannot reasonably be complied with, then the change is permissible, if the entity authorized by this subchapter to issue a permit for that particular use (the administrator, board of adjustment or Board of Aldermen) issues a permit authorizing the change. This permit may be issued if the permit-issuing authority finds, in addition to any other findings that may be required by this chapter, that:

- (1) The intended change will not result in a violation of Section 15-124; and
- (2) All of the applicable requirements of this chapter that can reasonably be complied with will be complied with. Compliance with a requirement of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformity's would thereby be created.

(d) If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the entity authorized by this chapter to issue a permit for that particular use (administrator, board of adjustment, or Board of Aldermen) issues a permit authorizing the change. The permit-issuing authority may issue the permit if it finds, in addition to other findings that may be required by this chapter, that:

- (1) The use requested is one that is permissible in some zoning district with either a zoning, special use, or conditional use permit; and
- (2) All of the conditions applicable to the permit authorized in subsection (c) of this section are satisfied; and
- (3) The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.



PLANNING BOARD

301 West Main Street, Carrboro, North Carolina 27510

R E C O M M E N D A T I O N

MAY 20, 2004

LAND USE ORDINANCE TEXT AMENDMENT TO CLARIFY PERMIT REQUIREMENTS WHERE NONCONFORMING SITUATIONS EXIST

Motion was made by Stan Babiss and seconded by James Carnahan to recommend that the Board of Aldermen adopt the draft ordinance as provided.

VOTE: AYES (7) (Babiss, Carnahan, Haven-O'Donnell, Marshall, Hammill, Paulsen, West); NOES (0); ABSENT/EXCUSED (3) (Hogan, Ludwig, Poulton).

John Marshall, Chair (date)