

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE
BOARD OF ALDERMEN'S REASONS FOR ADOPTING AN AMENDMENT TO
THE TEXT OF THE CARRBORO LAND USE ORDINANCE
Resolution No. 55/2009-10

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING ARTICLE XX OF THE CARRBORO LAND USE ORDINANCE – NOTICE FOR ZONING MAP AMENDMENTS

NOW THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is consistent with enabling authority as specified in S.L. 2009-178

Section 2. The Board concludes that its adoption of the above described amendment is reasonable and in the public interest because the Town seeks to remain consistent with enabling legislation.

Section 3. This resolution becomes effective upon adoption.

A RESOLUTION ADOPTING A
STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S REASONS FOR
REJECTING AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND USE
ORDINANCE

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has
been proposed, which amendment is described or identified as follows: AN
ORDINANCE AMENDING ARTICLE XX OF THE CARRBORO LAND USE
ORDINANCE – NOTICE FOR ZONING MAP AMENDMENTS

NOW THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is not
consistent with Town policies and regulations.

Section 2. The Board concludes that its rejection of the above described
amendment is reasonable and in the public interest because existing regulations are
appropriate.

Section 3. This resolution becomes effective upon adoption.

**AN ORDINANCE AMENDING ARTICLE XX OF THE CARRBORO LAND USE
ORDINANCE – NOTICE FOR ZONING MAP AMENDMENTS**

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. The section references contained in this ordinance are to the Carrboro Land Use Ordinance.

Section 2. Subsection 15-323(g) is amended to read as follows:

(g) The notice required or authorized by this section (other than the posted notice required by subsection (e)) shall:

Section 3. Subsection 15-323(h) is amended to read as follows:

(h) The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Board's intention that the notice requirements set forth in this section that are not required by state law shall not be regarded as mandatory, and therefore a failure to comply with such requirements shall not render any amendment invalid.

Section 4. A new subsection 15-323(i) is established to read as follows:

(i) Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply (regardless of how the staff treats the proposed amendment under subsection 15-321(c)), the applicant shall certify to the Board of Aldermen that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons required to provide notice shall certify to the Board of Aldermen that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

Section 5. A new subsection 15-323(j) is established to read as follows:

(j) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection 15-323(i) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.

Section 6. All provisions of any town ordinance in conflict with this ordinance are hereby repealed.

Section 6. This ordinance shall become effective upon adoption.

Art. XX AMENDMENTS

of Aldermen is not bound by the recommendations of the planning board. (AMENDED 10/24/06)

(d) A member of the planning board and any other advisory committee that provides direct advice to the Board of Aldermen (i.e. it does not report to the planning board) shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. (AMENDED 10/24/06)

Section 15-323 Hearing Required: Notice

(a) No ordinance that amends any of the provisions of this chapter may be adopted until a public hearing has been held on such ordinance.

(b) The planning staff shall publish a notice of the public hearing on any ordinance that amends the provisions of this chapter once a week for two successive weeks in a newspaper having general circulation in the Carrboro area. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the hearing. This period is to be computed in accordance with G.S. 160A-364, which provides that the date of publication is not counted but the date of the hearing is.

(c) With respect to all map amendments, the planning staff shall mail, by first class mail, written notice of the public hearing to the record owners of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties any portion of which is within 1000 feet of the property rezoned by the amendment. For purposes of this section the term "owners" shall mean the persons shown as owners on Orange County's computerized land records system. The planning staff shall also make reasonable efforts to mail a similar written notice to the non-owner occupants of residential rental property located within 1,000 feet of the lot that is the subject of the rezoning. The notices required by this subsection shall be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The staff member mailing such notices shall certify to the board that the notices have been mailed, and such certificate shall be deemed conclusive in the absence of fraud. (AMENDED 10/12/82; 1/22/85; 10/1/85; 04/15/97;3/26/02)

(d) The first class mail notice required under subsection (c) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to either make the mailed notice provided for in subsection (c) of this section or may, as an alternative, elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half (1/2) of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Orange County property tax listing for the affected property, shall be notified according to the provisions of subsection (c) of this section. (AMENDED 10/24/06)

Art. XX AMENDMENTS

(e) For proposed zoning map amendments, the planning staff shall prominently post a notice of the public hearing on the site proposed for a rezoning or an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the planning staff shall post sufficient notices to provide reasonable notice to interested persons.

(f) The planning staff shall take any other action deemed by the Planning Department to be useful or appropriate to give notice of the public hearing on any proposed amendment.

(g) The notice required or authorized by this section shall:

- (1) State the date, time, and place of the public hearing.
- (2) Summarize the nature and character of the proposed change.
- (3) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment.
- (4) State that the full text of the amendment can be obtained from the town clerk.
- (5) State that substantial changes in the proposed amendment may be made following the public hearing.

(h) The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Board's intention that no failure to comply with any of the notice provisions [except those set forth in subsection (b)] shall render any amendment invalid.

Section 15-324 Board Action on Amendments (AMENDED 10/24/06)

(a) At the conclusion of the public hearing on a proposed amendment, the Board may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

(b) The Board is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

(c) Voting on amendments to this chapter shall proceed in the same manner as on other ordinances, subject to Section 15-326 of the Land Use Ordinance and Section 2-15 of the Town Code.

(d) Prior to adopting or rejecting any zoning amendment, the Board shall adopt a statement describing whether its action is consistent with the Land Use Plan, Thoroughfare Plan,

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-178
SENATE BILL 1027

AN ACT RELATING TO THE NOTIFICATION OF PROPERTY OWNERS UPON THE
FILING OF AN APPLICATION FOR A ZONING MAP AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-343 reads as rewritten:

"§ 153A-343. Method of procedure.

(a) The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons ~~mailing such notices required to provide notice~~ shall certify to the ~~Board of Commissioners~~ board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a county-initiated zoning map amendment.

(c) Repealed by Session Laws 2005-418, s. 4, effective January 1, 2006.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons."



SECTION 2. G.S. 160A-384 reads as rewritten:

"§ 160A-384. Method of procedure.

(a) The city council shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, in accordance with the provisions of this Article. The procedures adopted pursuant to this section shall provide that whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons ~~mailing such notices~~ required to provide notice shall certify to the ~~City Council~~ city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

(b) The first class mail notice required under subsection (a) of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the city elects to use the expanded published notice provided for in this subsection. In this instance, a city may elect to either make the mailed notice provided for in subsection (a) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (a) of this section.

(b1) Actual notice of the proposed amendment and a copy of the notice of public hearing required under subsection (a) of this section shall be by any manner permitted under G.S. 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This subsection applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply. This subsection does not apply to a city-initiated zoning map amendment.

(c) When a zoning map amendment is proposed, the city shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons."

SECTION 3. This act is effective when it becomes law and applies to any application for a zoning map amendment made on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:32 a.m. this 26th day of June, 2009

ORANGE COUNTY PLANNING & INSPECTIONS DEPARTMENT

Craig N. Benedict, AICP, Director

Administration
(919) 245-2575
(919) 644-3002 (FAX)
www.co.orange.nc.us



306F Revere Road
P. O. Box 8181
Hillsborough, NC 27278



TRANSMITTAL DELIVERED VIA EMAIL

November 9, 2009

Patricia J. McGuire, AICP
Planning Administrator
Town of Carrboro
301 W. Main St.
Carrboro, NC 27510

Dear Trish:

Thank you for the opportunity to review the following ordinance amendments received by us on October 23, 2009 and proposed for town public hearing on November 24, 2009:

- Actual notice to the owners of the affected parcels
- Adjustments in income levels and other requirements associated with affordable housing units
- Allow 5.110 uses in B-4 zoning district

We find no inconsistency with the adopted *Joint Planning Area Land Use Plan* on these proposed amendments but we offer the following comments:

1. Regarding the amendments on noticing the owner of affected parcels: We presume Town staff has analyzed this issue and has reasons for suggesting the language as proposed, but we offer the idea that requiring the property owner's signature on a rezoning application could be a more simple way to address this issue. Also, in Section 5.(j), the last sentence refers to a "city-initiated" amendment; should this be "town-initiated"?
2. Regarding the changes to affordable units: We applaud that although the Town is reducing the percentage of affordable homes required by 2.5%, the income limits for which the home will be considered affordable is considerably lower than the existing 80% of median income. This should have a positive effect on affordability issues in

the Town. In the draft Ordinance, the Section numbers appear to be incorrect as there are two sections labeled "Section 3." In the first Section 3, it appears that "12 percent" should actually be "12.5 percent."

If you have any questions, please let me know.

Sincerely,



Perdita Holtz, AICP
Planning Systems Coordinator

cc: Frank Clifton, Orange County Manager
Craig Benedict, AICP, Orange County Planning Director



E-3
TOWN OF CARRBORO

PLANNING BOARD

301 West Main Street, Carrboro, North Carolina 27510

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

NOVEMBER 19, 2009

LUO Text Amendment – Notice of zoning map amendments

Motion was made by Heidi Paulsen and seconded by Damon Seils that the Planning Board recommends that the Board of Aldermen adopt the draft ordinance in order to comply with recent amendments to N.C.G.S. Section 160A-384 requiring non-owner applicants for zoning map amendments to provide actual notice to the owners of the affected parcels.

VOTE: Ayes (10): Barton, Bell, Carnahan, Clinton, Cook, Fritz, Paulsen, Poulton, Seils and Warner; NOES: (0); Abstentions (0); Absent/Excused (1) Shoup; ABSENT/EXCUSED (1); NOES (0); ABSTENTIONS (0).

Associated Findings

By a unanimous show of hands, the Planning Board membership also indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment. Furthermore, the Planning Board of the Town of Carrboro finds that the proposed text amendment is consistent with the following adopted or accepted planning documents:

Noted sections of Carrboro Vision 2020: 1.46, active participation of citizens in community planning

1.46 Carrboro should continue its efforts towards community building by encouraging the use of facilitation and conflict resolution. The town should also seek alternatives or supplements to the traditional public hearing format when controversial issues are before the Board.

Motion in support of these findings was made by James Carnahan that the Planning Board finds the text amendment is consistent with Section 1.46 of Vision 2020.

VOTE: Ayes: (10) Barton, Bell, Carnahan, Clinton, Cook, Fritz, Paulsen, Poulton, Seils and Warner; NOES: (0); Abstentions (0); Absent/Excused (1) Shoup.


Matthew Barton, Chair

11/20/09