

A RESOLUTION CALLING A PUBLIC HEARING ON A LAND USE ORDINANCE
TEXT AMENDMENT RELATED TO APPLICATION INFORMATION FOR
STORM WATER CONTROL, LOMR REQUIREMENTS, AND MODIFICATIONS TO
BMP DESIGN STANDARDS

Resolution No. 23/2010-11

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to consider modifications to existing policies and regulations; and

NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen calls a public hearing on November 23, 2010 to consider adopting "AN ORDINANCE AMENDING THE LAND USE ORDINANCE PROVISIONS DEALING WITH THE INFORMATION THAT MUST BE SUBMITTED TO DEMONSTRATE COMPLIANCE WITH STORMWATER MANAGEMENT, LOMR REQUIREMENTS AND CONSTRUCTION WITHIN FLOODWAYS."

BE IT FURTHER RESOLVED that the draft ordinance is referred to Orange County for review per the Joint Planning Agreement and to the Town of Carrboro Planning Board for its recommendations.

BE IT FURTHER RESOLVED that the draft ordinance is also referred to the following advisory boards and commissions for consideration and recommendation prior to the specified public hearing date:

☐ Appearance Commission

☐ Recreation and Parks Commission

☐ Transportation Advisory Board

☐ Northern Transition Area Advisory Committee

☐ Environmental Advisory Board

☐ _____

☐ Economic Sustainability Commission

☐ _____

AN ORDINANCE AMENDING THE LAND USE ORDINANCE PROVISIONS DEALING
WITH THE INFORMATION THAT MUST BE SUBMITTED TO DEMONSTRATE
COMPLIANCE WITH STORMWATER MANAGEMENT, LOMR REQUIREMENTS AND
CONSTRUCTION WITHIN FLOODWAYS

****DRAFT 9-23-10****

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Section 15-49 of the Carrboro Land Use Ordinance is amended by revising subsections (b) and (c) and adding a new subsection (c1) as follows:

(b) Subject to subsections (c) and (c1), an application is complete when it contains all of the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this chapter.

(c) In this chapter, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices of this chapter. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as (subject to subsection (c1)) the plans provide sufficient information to allow the permit-issuing authority to evaluate the application in the light of the substantive requirements set forth in this text of this chapter. However, whenever this chapter requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, or whenever it reasonably appears to the administrator that such construction drawings are necessary to demonstrate that construction details will comply with plans submitted and approved as part of the permit-issuing process, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the administrator. A detailed description of the construction plan submittal and review requirements is provided in Article IV, Part III. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article VII.

(c1) Permit applications for commercial projects (meaning those where at least twenty percent of the proposed floor area is devoted to non-residential uses) in the commercial zoning districts need not contain all of the detailed information necessary for the permit issuing authority to determine that the development, if constructed in accordance with the application and plans, will comply with the drainage and stormwater management requirements set forth in Sections 15-262 and 15-263 of this chapter, so long as:

- (1) The application contains sufficient information to explain how the development will address drainage and stormwater management issues, and it appears reasonably likely to the permit issuing authority that the proposed drainage and stormwater management systems will function in such a manner that the development will comply with Sections 15-262 and 15-263; and
- (2) Before construction plans are approved, such plans must demonstrate that all the requirements of Sections 15-262 and 15-263 and related appendices will be satisfied.

Section 2. Section 15-251.10 of the Carrboro Land Use Ordinance is amended by revising subsection (b) and adding a new subsection (b1) to read as follows:

(b) No encroachments, including fill, new construction, substantial improvements or other development shall be permitted within a floodway or non-encroachment area unless:

- (1) The proposed encroachment would not result in any impact to the flood levels during the occurrence of the base flood, as demonstrated by hydrologic and hydraulic analysis performed in accordance with standard engineering practice and presented to the administrator prior to approval of construction plans authorizing such encroachment; or
- (2) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. Prior to the issuance of a zoning, special, or conditional use permit, the developer must demonstrate to the permit issuing authority, by the submission to the town of the CLOMR study, that it is reasonably likely that a CLOMR will be issued. The CLOMR must be received by the town prior to approval of construction plans authorizing such encroachment.

(b1) When an encroachment within a floodway or non-encroachment area is authorized pursuant to a CLOMR as provided in subsection (b)(2) of this section, then upon completion of the encroachment, the developer must obtain from FEMA a Letter of Map Revision (LOMR) pertaining to such encroachment. If such a LOMR is required for an encroachment, then (i) if the encroachment occurs within a subdivided development, a final plat for the phase of the subdivision where the encroachment occurs shall not be approved until the LOMR has been received by the town, and (ii) if the encroachment occurs within an unsubdivided development, such property may not be used or occupied until the LOMR has been received by the town, except that such occupancy, use, or sale of lots shall be allowed if sufficient security is provided pursuant to Sections 15-53 or 15-60 to ensure that the developer does what is necessary to obtain the LOMR.

Section 3. Appendix A, Section A-7, is amended by repealing subsection (4), indicating that subsection (4) is "Reserved", and rewriting subsection (3) to read as follows:

- (3) Certifications required under Part I of Article XVI.

Section 4. Section 15-263 (b)(1) is revised to read as follows:

- (1) Draw down the treatment volume in accordance with the requirements of the North Carolina Division of Water Quality Best Management Practices (NC DWQ BMP) Manual.

Section 5. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 6. This ordinance shall become effective upon adoption.

Section 15-49 Applications To Be Complete.

(a) All applications for zoning, special use, conditional use, or sign permits must be complete before the permit-issuing authority is required to consider the application.

(b) Subject to subsection (c), an application is complete when it contains all of the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this chapter.

(c) In this chapter, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices of this chapter. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the permit-issuing authority to evaluate the application in the light of the substantive requirements set forth in this text of this chapter. However, whenever this chapter requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, or whenever it reasonably appears to the administrator that such construction drawings are necessary to demonstrate that construction details will comply with plans submitted and approved as part of the permit-issuing process; then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the administrator. A detailed description of the construction plan submittal and review requirements is provided in Article IV Part III. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article VII. **(AMENDED 06/06/89)**

(d) The presumption established by this chapter is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit-issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Board of Aldermen or board of adjustment, the applicant may rely in the first instance on the recommendations of the administrator as to whether more or less information than that set forth in Appendix A should be submitted.

(e) The administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the administrator to determine compliance with this chapter, such as applications for zoning permits to construct single-family houses or duplexes, or applications for sign permits, the administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 15-251.10 Floodways and Non-Encroachment Areas

(a) Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Subsection 15-251.2(b) (1). The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The requirements set forth in the remaining provisions of this section, in addition to the standards set forth in Sections 15-251.8 and 15-251.9 shall apply to all development within such areas.

(b) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:

- (1) The proposed encroachment would not result in any impact to the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the administrator prior to issuance of any development permit, or
- (2) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(c) Any development within a floodway or non-encroachment area that is authorized by this section shall comply with all applicable flood hazard reduction provisions of this part.

(d) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

- (1) The anchoring and the elevation standards of Subsection 15-251.9(d); and
- (2) The no encroachment standard of Subsection 15-251.10(b) (1).

A-7. Documents and Written Information in Addition to Plans.

In addition to the written application and the plans, whenever the nature of the proposed development makes information or documents such as the following relevant, such documents or information shall be provided. The following is a representation list of the types of information or documents that may be requested:

- (1) Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent of such a person.

- (2) Certifications from the appropriate agencies that proposed utility systems are or will be adequate to handle the proposed development, as set forth in Article XV, and that all necessary easements have been provided.
- (3) For proposed non-residential floodproofed structures, or for enclosed areas below the lowest floor that are subject to flooding, certification from a registered professional engineer or architect that the proposed structure meets the criteria in Article XVI, Section 15-254(f). **(AMENDED 4/21/87; REPEALED 1/16/07)**
- (4) Certification and supporting technical data from a registered professional engineer demonstrating that any proposed use within a floodway if permitted under Article XVI, Section 15-253, shall not result in any increase in flood levels during occurrence of the base flood discharge. **(AMENDED 4/21/87; REPEALED 1/16/07)**
- (5) Detailed description of play apparatus to be provided in miniparks.
- (6) Legal documentation establishing homeowners' associations or other legal entities responsible for control over required common areas and facilities.
- (7) Bonds, letters of credit, or other surety devices.
- (8) Stamped envelopes containing the names and addresses of all those to whom notice of a public hearing must be sent to comply with Section 15-102 or Section 15-52.
- (9) Complete documentation justifying any requested deviation from specific requirements established by this chapter as presumptively satisfying design standards.
- (10) Written evidence of permission to use satellite parking spaces under the control of a person other than the developer when such spaces are allowed pursuant to Section 15-298.
- (11) Written evidence of good faith efforts to acquire satellite parking under the circumstances set forth in Section 15-299.
- (12) Verification that 4.000 classification uses will meet the performance standards set forth in Article XI. Such verification shall be made by a licensed engineer or other qualified expert unless it is utterly apparent from the nature of the proposed development that such expert verification is unnecessary.

- (13) Time schedules for the completion of phases in staged development, as required by Section 15-61.
- (14) The environment impact of a development, including its effect on historically significant or ecologically fragile or important areas and its impact on pedestrian or traffic safety or congestion.

Section 15-263 Management of Stormwater (REWRITTEN 6/26/07; AMENDED 6/24/08; AMENDED 10/28/08; 6/22/10)

(a) The requirements of this section shall apply to developments to the extent provided in this subsection.

- (1) For purposes of this subsection, "impervious surface" means that portion of the development of a lot or tract that is covered by a surface or material that substantially or completely prevents rainwater from reaching and being absorbed into the underlying soil. Impervious surfaces include but are not limited to streets, driveways, sidewalks, parking lots, buildings, and other roofed, paved, or graveled areas. Wooden slatted decks and the water area of swimming pools are considered pervious, as are detention ponds and other ponds.
- (2) For purposes of this subsection, "net addition of impervious surface" shall be determined by subtracting the total square footage of impervious surface prior to commencement of construction authorized by a development permit from the total square footage of impervious that is proposed to be located on the development site when all construction authorized by the development permit (including all phases thereof) is completed. If the permit issuing authority reasonably concludes that a permit applicant is seeking or has sought separate permits (simultaneously or sequentially) for different components of what is demonstrably intended to be a single development in an attempt to stay below the impervious surface threshold that triggers the requirements set forth in this section, then the permit issuing authority shall treat such multiple applications as a single application for purposes of determining whether the requirements of this section are applicable.
- (3) All unsubdivided developments that involve a net addition of more than 5,000 square feet of impervious surface shall be subject to the requirements of this section, except that these requirements shall not apply if the total of the net addition of impervious surface area plus the previously existing impervious surface area on the lot does not exceed (i) six percent (6%) of the lot area within a B-5 or WM-3 zoning district, or (ii) for lots in all other zoning districts, the amount of impervious surface area permissible on lots within the C or WR zoning districts under subsection 15-266(b) of this part.

- (4) When land is subdivided, and the permit authorizing the subdivision does not itself authorize the net addition of more than 5,000 square feet of impervious surface to the tract to be subdivided, then the requirements of this section shall not be applicable to the subdivision. The applicability of the requirements of this section to each of the individual lots so created shall then be determined as development permits are issued for each such lot.
- (5) When land is subdivided, and the permit authorizing the subdivision itself authorizes the net addition of more than 5,000 square feet of impervious surface to the tract to be subdivided (regardless of whether such impervious surface consists of a road or other facilities external to the lots so created, or buildings, parking lots, and other facilities constructed within the lots so created, or a combination of the two), then the subdivision shall comply with the requirements of this section. Furthermore, the stormwater management system that is installed to comply with the provisions of this section shall be required to take into account all the stormwater reasonably expected to be generated by the development (according to generally accepted engineering standards) when all subdivided lots five acres or less in size are fully developed. When such lots are subsequently developed, they shall be exempt from further review under the provisions of this section. However, any lot within such subdivision that is greater than five acres in size and that was not included in the stormwater calculations for purposes of designing a stormwater management system that satisfies the requirements of this section shall be required to comply with the requirements of this section at the time such lot is developed, if and to the extent required to do so under subsection (a)(3) of this section.
- (6) Notwithstanding the other provisions of this subsection, if (i) a lot is within a commercial district described in Section 15-136 or a manufacturing district described in 15-137, (ii) on the date that a development permit application is submitted and the fees paid the lot is already developed to the extent that the lot contains at least 10,000 square feet of impervious surface area, and (iii) the reasonably estimated cost of the redevelopment of the lot as proposed in the development permit application exceeds the greater of \$100,000, or fifty percent (50%) of the appraised value of the existing improvements on the lot, then the requirements of this section shall be applicable to such redevelopment. For purposes of this subdivision (a)(6), the terms "cost" and "appraised value" shall have the same meaning as provided in Subsection 15-125(c) of this chapter.
- (7) Notwithstanding the other provisions of this subsection, the requirements of this section shall apply to any development involving the reconstruction of a previously paved area comprising at least 10,000 square feet (repaving or resurfacing shall not be considered reconstruction).

(b) Developments must install and maintain stormwater management systems that will control and treat runoff from the first one inch of rain as follows:

- (1) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (2) Achieve an eighty-five percent (85%) average annual removal rate for Total Suspended Solids.
- (3) Notwithstanding the foregoing, all 22.000 uses that are included within the single family residential use areas of a village mixed use development shall install and maintain site development and/or building features to ensure that the environmental impact, including but not limited to storm water volume, nutrient loading, water use or greenhouse gas emissions, contributed by the development activity is managed and/or reduced through a combination of additional storm water management features or Low Impact Development/green building features that result in an overall reduction in environmental impact from that which otherwise could reasonably be expected to occur in association with development of the 22.000 use. Specific performance measures that will be evaluated to determine whether the intent of this subsection has been met are as follows: **(AMENDED 10/28/08)**
 - (a) open space, if practicable, is dedicated to either the homeowners' association or the town, and
 - (b) storm water best management practices (BMPs) and associated grading and stabilization occur outside any primary conservation areas and that all runoff from the BMPs be discharged in a diffuse manner that insures that erosional rills will not be created as runoff enters and flows through conservation areas, and
 - (c) roof drainage is captured in sufficient quantity and in appropriately sized and sited devices to, at a minimum, provide for all on-site plantings to include but not be limited to screenings, vehicle accommodation areas, foundation plantings, garden beds, trees, shrubs, flowers, groundcover, and turf, and
 - (d) nutrient loads contributed by the daycare development are limited to 2.2 pounds per acre per year of nitrogen loading, and .82 pounds per acre per year of phosphorous loading. Such loads may be met either 1) by storm water management structures or devices on the development site itself and/or 2) the retrofitting of existing or construction of new BMPs elsewhere in the VMU development, and
 - (e) educational materials including, but not limited to on-site signage, brochures, and web postings on stormwater management practices are prepared and/or installed, and
 - (f) that Low Impact Development techniques are used to the extent practicable

(c) To the extent reasonably practicable, the stormwater management systems designed and constructed to satisfy the requirements of this section shall utilize best management practices that reduce nutrient loadings. **(AMENDED 6/24/08; 6/22/10)**

(d) Developments shall be constructed and maintained so that their stormwater management systems meet the following minimum standards:

- (1) The post-development discharge rates shall be less than or equal to the pre-development discharge rates for the 1-, 2-, 5-, 10-, and 25-year 24-hour design storms.
- (2) For upstream properties, the 1% chance flood elevation may not be increased.

(e) The presumption established by this section is that, to satisfy the standards set forth herein, the applicant shall design and construct all stormwater management systems required by this section in accordance with the guidelines set forth in the Town of Carrboro Storm Drainage Design Manual (Appendix I to this chapter). However, the permit issuing authority may establish different requirements when it concludes, based upon (i) the information it receives in the consideration of the specific development proposal, and (ii) the recommendations of the public works director or the town engineer, that such deviations from the presumptive guidelines are necessary to satisfy the standards set forth in this section, or that the standards can still be met with such deviations and the deviations are otherwise warranted.

(f) Approval by the town of an applicant's stormwater management plans, and construction by the applicant of the stormwater management systems as shown in such plans, shall not relieve the applicant of the responsibility of complying with the standards set forth in this section. If at any time prior to two years following the issuance of a certificate of occupancy, for an unsubdivided development, or the approval of a final plat, for a subdivision, the town determines that the stormwater management systems planned to be installed or actually installed to meet the requirements of this section do not achieve that objective, the town may require the submission of revised plans and the installation of new, altered, or additional facilities to bring the development into compliance. Prior to issuance of a certificate of occupancy or approval of a final plat, the town may require the applicant to post a performance bond or other sufficient surety to guarantee compliance with this section.

(g) Upon completion of construction of the stormwater management facilities, the permit recipient shall submit to the town "as built" plans for all such facilities in the form required by the town. Compliance with this requirement must occur prior to issuance of a certificate of occupancy, or prior to final plat approval (if applicable), unless adequate security is otherwise provided in accordance with the provisions of Sections 15-53 or 15-60.