

ATTACHMENT A

**A RESOLUTION SETTING A PUBLIC HEARING ON AN ORDINANCE AMENDING THE
CARRBORO LAND USE ORDINANCE RELATING TO PROVISIONS AUTHORIZING A
CHANGE IN USE FROM ONE NONCONFORMING USE TO ANOTHER**

Draft Resolution No. 60/2012-13

WHEREAS, the Board of Aldermen seeks to provide ample opportunities for the public to comment on proposed amendments to the Land Use Ordinance;

NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen sets a public hearing on January 29, 2013, to consider adopting "AN ORDINANCE AMENDING THE LAND USE ORDINANCE PROVISIONS AUTHORIZING A CHANGE IN USE FROM ONE NONCONFORMING USE TO ANOTHER."

BE IT FURTHER RESOLVED that the draft ordinances are referred to Orange County and the Town of Carrboro Planning Board.

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

- | | |
|---|--|
| <input type="checkbox"/> Appearance Commission | <input type="checkbox"/> Recreation and Parks Commission |
| <input type="checkbox"/> Transportation Advisory Board | <input type="checkbox"/> Northern Transition Area Advisory Committee |
| <input type="checkbox"/> Environmental Advisory Board | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Economic Sustainability Commission | <input type="checkbox"/> _____ |

This is the 4th day of December in the year 2012.

**AN ORDINANCE AMENDING THE LAND USE ORDINANCE PROVISIONS
AUTHORIZING A CHANGE IN USE FROM ONE NONCONFORMING USE TO
ANOTHER**

****DRAFT****

THE CARRBORO BOARD OF ALDERMEN ORDAINS:

Section 1. Subsection 15-126(d) of the Carrboro Land Use Ordinance is rewritten to read as follows:

(d) If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the Board of Aldermen issues a conditional use permit authorizing the change. The provisions of Section 15-54 shall not apply to an application for a permit authorized by this subsection. The Board may issue the permit if it finds 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 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 Board 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 create additional dimensional nonconformities; and
- (3) Either (i) the proposed development will have less of an adverse impact on the surrounding neighborhood than the previously existing nonconforming use, or (ii) considering all factors relating to the proposed use, including without limitation measures that will be taken to mitigate any adverse effects of the proposed development, the goods or services to be offered by the new use, and alternative uses that are likely to be made of the property if the permit is denied, the benefits to the surrounding neighborhood or the or the general public outweigh any adverse impacts the proposed use may have.

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

- 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.

ARTICLE VIII

NONCONFORMING SITUATIONS

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 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. **(AMENDED 5/25/04)**

Art. VIII - NONCONFORMING SITUATIONS

(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.