

A RESOLUTION SETTING A PUBLIC HEARING ON AN ORDINANCE AMENDING THE
SCHOOLS ADEQUATE PUBLIC FACILITIES ORDINANCE (SAPFO)
Draft Resolution No. 105/2012-13

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 March 21, 2013, to consider adopting, "AN ORDINANCE AMENDING ARTICLE IV, PART 1V (ADEQUATE PUBLIC SCHOOL FACILITIES) OF THE CARRBORO LAND USE ORDINANCE."

BE IT FURTHER RESOLVED that the draft ordinance is referred to Orange County, the Town of Carrboro Planning Board.

This is the 19th day of February in the year 2013.

AN ORDINANCE AMENDING ARTICLE IV, PART 1V (ADEQUATE PUBLIC SCHOOL FACILITIES) OF THE CARRBORO LAND USE ORDINANCE

THE CARRBORO BOARD OF ALDERMEN ORDAINS:

Section 1. Sections 15-88 and 15-88.1 of the Carrboro Land Use Ordinance are amended to read as follows:

Section 15-88 Purpose.

The purpose of this Part IV is to ensure that, to the maximum extent practical, approval of new residential development is coordinated with the construction of new school facilities ~~will become effective only when it can reasonably be expected~~ so that adequate public school facilities will be available to accommodate such new development.

Section 15-88.1 Certificate of Adequacy of Public School Facilities.

(a) Subject to the remaining provisions of this part, no approval under this ordinance of a conditional or special use permit for a residential development shall become effective unless and until a Certificate of Adequacy of Public School Facilities (CAPS) for the project has been issued by the School District. Notwithstanding the foregoing, this subsection shall not apply to conditional use permits for residential developments less than five lots or dwelling units in the WR, B-5 and WM-3 zoning districts.

(b) A CAPS shall not be required for a general use or conditional use rezoning or for a master land use plan. However, even if a rezoning or master plan is approved, a CAPS will nevertheless be required before any of the permits or approvals identified in subsection (a) of this section shall become effective, and the rezoning of the property or approval of a master plan provides no indication as to whether the CAPS will be issued. The application for rezoning or master plan approval shall contain a statement to this effect.

(c) A CAPS must be obtained from the School District. The School District will issue ~~or deny~~ a CAPS in accordance with the provisions of the Memorandum of Understanding between Carrboro, Chapel Hill, Orange County, and the Chapel Hill Carrboro School District dated July 17, 2003, as amended.

(d) A CAPS attaches to the land in the same way that development permission attaches to the land. A CAPS may be transferred along with other interests in the property with respect to which such CAPS is issued, but may not be severed or transferred separately.

Section 2. Section 15-88.6 of the Carrboro Land Use Ordinance (Appeal of School District Denial of a CAPS) is repealed.

Section 3. Section 15-88.7 is amended to read:

Section 15-88.7 Information Required From Applicants.

The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District in order for a CAPS to be issued ~~to determine whether a CAPS should be issued~~ under the provisions of the Memorandum of Understanding. An applicant for a CAPS special exception ~~or an applicant appealing a CAPS denial by the School District~~ shall submit to the Board of Aldermen all information reasonably deemed necessary by the Board of Aldermen to determine whether a special exception should be granted as provided in Section 15-88.5. ~~or for the hearing of an appeal of a School District denial of a CAPS as provided in Section 15-88.6.~~ A copy of a request for a CAPS special exception ~~or of an appeal of a School District denial of a CAPS~~ shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.

Section 4. All provisions of any Town ordinance in conflict with this provision are repealed.

Section 5. This ordinance shall become effective upon adoption.

ARTICLE IV

PERMITS AND FINAL PLAT APPROVAL

PART IV. ADEQUATE PUBLIC SCHOOL FACILITIES (JULY 17, 2003)

Section 15-88 Purpose.

The purpose of this Part IV is to ensure that, to the maximum extent practical, approval of new residential development will become effective only when it can reasonably be expected that adequate public school facilities will be available to accommodate such new development.

Section 15-88.1 Certificate of Adequacy of Public School Facilities.

(a) Subject to the remaining provisions of this part, no approval under this ordinance of a conditional or special use permit for a residential development shall become effective unless and until Certificate of Adequacy of Public School Facilities (CAPS) for the project has been issued by the School District. Notwithstanding the foregoing, this subsection shall not apply to conditional use permits for residential developments less than five lots or dwelling units in the WR, B-5 and WM-3 zoning districts.

(b) A CAPS shall not be required for a general use or conditional use rezoning or for a master land use plan. However, even if a rezoning or master plan is approved, a CAPS will nevertheless be required before any of the permits or approvals identified in subsection (a) of this section shall become effective, and the rezoning of the property or approval of a master plan provides no indication as to whether the CAPS will be issued. The application for rezoning or master plan approval shall contain a statement to this effect.

(c) A CAPS must be obtained from the School District. The School District will issue or deny a CAPS in accordance with the provisions of the Memorandum of Understanding between Carrboro, Chapel Hill, Orange County, and the Chapel Hill Carrboro School District dated July 17, 2003.

(d) A CAPS attaches to the land in the same way that development permission attaches to the land. A CAPS may be transferred along with other interests in the property with respect to which such CAPS is issued, but may not be severed or transferred separately.

Section 15-88.2 Service Levels.

(a) This section describes the service levels regarded as adequate by the parties to the Memorandum of Understanding described in subsection (b) with respect to public school facilities.

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(b) As provided in the Memorandum of Understanding between Orange County, Chapel Hill, Carrboro, and the Chapel Hill/Carrboro School District, adequate service levels for public schools shall be deemed to exist with respect to a proposed new residential development if, given the number of school age children projected to reside in that development, and considering all the factors listed in the Memorandum of Understanding, projected school membership for the elementary schools, the middle schools, and the high school(s) within the Chapel Hill/Carrboro School District will not exceed the following percentages of the building capacities of each of the following three school levels:

| | |
|-------------------------|-------------|
| Elementary school level | <u>105%</u> |
| Middle school level | <u>107%</u> |
| High school level | <u>110%</u> |

For the period of time beginning the effective date of this ordinance and terminating on the day on which the third high school within the Chapel Hill-Carrboro City School District is first attended by high school students, the determination by the Chapel Hill-Carrboro City School District that adequate service levels for public schools exist shall be made without regard to whether or not projected capacity of the High School level exceeds 110% of Building Capacity. On and after the day on which the third high school within the Chapel Hill-Carrboro City School District is first attended by high school students, determination by the Chapel Hill-Carrboro City School District that adequate service levels for public schools exist shall be made only if projected capacity of each school level does not exceed the following:

| | |
|-------------------|---------------------------|
| Elementary School | 105% of Building Capacity |
| Middle School | 107% of Building Capacity |
| High School | 110% of Building Capacity |

For purposes of this ordinance, the terms "building capacity" and "school membership" shall have the same meaning attributed in the Schools Adequate Public Facilities Memorandum of Understanding among the Towns of Carrboro, Chapel Hill, Orange County, and the Chapel Hill/Carrboro Board of Education.

Section 15-88.3 Expiration of Certificates of Adequacy of Public School Facilities.

A CAPS issued in connection with approval of a conditional or special use permit shall expire automatically upon the expiration of such permit approval.

Section 15-88.4 Exemption From Certification Requirement for Development with Negligible Student Generation Rates.

In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

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- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;
- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

Section 15-88.5 Applicability to Previously Approved Projects and Projects Pending Approval.

(a) Except as otherwise provided herein, the provisions of this part shall only apply to applications for approval of conditional or special use permits that are submitted for approval after the effective date of this ordinance.

(b) The provisions of this part shall not apply to amendments to special or conditional use permit approvals issued prior to the effective date of this ordinance so long as the approvals have not expired and the proposed amendments do not increase the number of dwelling units authorized within the development by more than five percent or five dwelling units, whichever is less.

(c) The Board of Aldermen shall issue a special exception to the CAPS requirement to an applicant whose application for approval of a conditional or special use permit covers property within a planned unit development or master plan project that was approved prior to the effective date of this ordinance, if the Board of Aldermen finds, after an evidentiary hearing, that the applicant has (1) applied to the School District for a CAPS and the application has been denied, (2) in good faith made substantial expenditures or incurred substantial binding obligations in reasonable reliance on the previously obtained planned unit development or master plan approval, and (3) would be unreasonably prejudiced if development in accordance with the previously approved development or plan is delayed due to the provisions of this ordinance. In deciding whether these findings can be made, the Board of Aldermen shall consider the following, among other relevant factors:

- (1) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities which were designed to serve or to be paid for in part by the development of portions of the planned unit development or master planned project that have not yet been approved for construction;
- (2) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such

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facilities that directly benefit other properties outside the development in question or the general public;

(3) Whether the developer has donated land to the School District for the construction of school facilities or otherwise dedicated land or made improvements deemed to benefit the School District and its public school system;

(4) Whether the developer has had development approval for a substantial amount of time and has in good faith worked to timely implement the plan in reasonable reliance on the previously obtained approval;

(5) The duration of the delay that will occur until public school facilities are improved or exist to such an extent that a CAPS can be issued for the project, and the effect of such delay on the development and the developer.

(d) The decision of the Board of Aldermen involving a special exception application under subsection (c) is subject to review by the Orange County Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after a written copy of the decision of the Board of Aldermen is delivered to the applicant and every other party who has filed a written request for such copy with the Clerk to the Board of Aldermen at the time of its hearing on the application for a special exception. The written copy of the decision of the Board of Aldermen may be delivered either by personal service or by certified mail, return receipt requested.

(e) The Mayor or any member temporarily acting as Mayor may, in his or her official capacity, administer oaths to witnesses in any hearing before the Board of Aldermen concerning a special exception.

Section 15-88.6 Appeal of School District Denial of a CAPS.

The applicant for a CAPS which is denied by the School District may, within 30 days of the date of the denial, appeal the denial to the Board of Aldermen. Any such appeal shall be heard by the Board of Aldermen at an evidentiary hearing before it. At this hearing the School District will present its reasons for the denial of the CAPS and the evidence it relied on in denying the CAPS. The applicant appealing the denial may present its reasons why the CAPS application should have, in its view, been approved and the evidentiary basis it contends supports approval. The Board of Aldermen may (1) affirm the decision of the School District, (2) remand to the School District for further proceedings in the event evidence is presented at the hearing before the Board of Aldermen not brought before the School District, or (3) issue a CAPS. The Board of Aldermen will only issue a CAPS if it finds that the CAPS should have been issued by the School District as prescribed in the Memorandum of Understanding among the School District, Orange County and the towns of Carrboro and Chapel Hill. A decision of the Board of Aldermen affirming the School District may be appealed by the applicant for a CAPS by

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proceedings in the nature of certiorari and as prescribed for an appeal under section 15-88.5 of this part.

Section 15-88.7 Information Required From Applicants.

The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District to determine whether a CAPS should be issued under the provision of the Memorandum of Understanding. An applicant for a CAPS special exception or an applicant appealing a CAPS denial by the School District shall submit to the Board of Aldermen all information reasonably deemed necessary by the Board of Aldermen to determine whether a special exception should be granted as provided in Section 15-88.5 or for the hearing of an appeal of a School District denial of a CAPS as provided in Section 15-88.6. A copy of a request for a CAPS special exception or of an appeal of a School District denial of a CAPS shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.

Section 15-89 through 15-90 Reserved.

AMENDMENT TO SCHOOLS ADEQUATE PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING

This Amendment to the Schools Adequate Public Facilities Memorandum of Understanding is entered into this _____ day of _____, 20__ by and between the Town of Carrboro, the Town of Chapel Hill, Orange County, and the Chapel Hill-Carrboro City Board of Education.

The parties agree that the Schools Adequate Public Facilities Memorandum of Understanding, dated July 17, 2003, is amended as follows:

1. Section 2 of the MOU is amended to read:

The towns and the county will adopt amendments to their respective ordinances ~~conceptually similar to that attached hereto as Exhibit A,~~ to coordinate the approval of residential developments within the School District with the adequacy of existing and proposed school facilities.

2. Section 3 of the MOU is amended to read:

The following process shall be followed by the School District to receive and take action upon applications for Certificates of Adequacy of Public School Facilities ("CAPS") submitted by persons who are required by an implementing ordinance ~~conceptually similar to that attached as Exhibit A~~ to have such certificates before the development permission they have received from the town or county becomes effective.

3. Subsection 3.g and 3.h of the MOU are amended to read:

g. The School District shall determine the amount of available capacity in each school level as of November 15th in the base year and each November 15th of the succeeding ten years by subtracting from the building capacity numbers for each of those years the student membership numbers for each of those years. The results shall then be compared with the number of students expected to be added to each school level as of November 15th in each year (as determined in accordance with subsection 3.f above). The School District shall make that information known to the parties to this agreement within 15 days of the comparison. If the School District determines that the projected remaining capacity of each school level is sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1 of this Memorandum then the School District shall issue the CAPS without qualification. If the School District determines that the projected capacity of each school level is not sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1, then the School District shall issue the CAPS subject to the qualification that the project may be affected by a lack of school capacity and shall so inform each of the parties to this MOU. ~~deny the CAPS. If a CAPS is denied, the applicant may seek approval from the appropriate planning jurisdiction~~

~~of such modifications to the development as will allow for the issuance of a CAPS, and then reapply for a CAPS.~~

h. The School District shall issue CAPS on a "first come first served" basis, according to the date a completed application for a CAPS is received. ~~If projected building capacity is not available and an application for a CAPS is therefore denied, the development retains its priority in line based upon the CAPS application date.~~

TOWN OF CARRBORO

By _____
Mayor

ATTEST

Town Clerk

TOWN OF CHAPEL HILL

By _____
Mayor

ATTEST

Town Clerk

ORANGE COUNTY

By _____
Chair, Board of Commissioners

ATTEST

Clerk to the Board of Commissioners

CHAPEL HILL CARRBORO BOARD
OF EDUCATION

ATTEST

By _____
Chair

Secretary