

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: J.B. Culpepper, Planning Director
Ralph Karpinos, Town Attorney

SUBJECT: Land Use Management Ordinance Text Amendment – Resource Conservation District Findings for a Variance

DATE: November 23, 2009

PURPOSE

Enactment of Ordinance A would amend the Land Use Management Ordinance in the following manner:

Clarify the required findings of the Board of Adjustment by adding the following language to paragraph A of Section 3.6.3(j)(2):

1. That the provisions of this article and any applicable legal conditions including private covenants and deed restrictions leave an owner no legally reasonable use of the portion of the zoning lot outside of the regulatory floodplain; and

In addition, revise paragraph B of Section 3.6.3(j)(2) as follows:

B. Subject to the provisions of paragraph A above, in making such findings, the Board of Adjustment shall consider the uses available to the owner of the entire zoning lot that includes area within the Resource Conservation District. Private covenants and deed restrictions shall not be the basis for granting a variance if the Board finds:

1. That public environmental interests would be negatively affected by the granting of a variance; and,

2. That the variance would not be needed to make legally reasonable use of the portion of the zoning lot outside of the regulatory floodplain in the absence of such private restrictions.

BACKGROUND

On October 19, 2009, the Council held a Public Hearing to receive comments on the proposed amendments to the Land Use Management Ordinance. A link to the October 19, 2009 memorandum is provided: <http://townhall.townofchapelhill.org/agendas/2009/10/19/1a/>

ISSUES RAISED

The Planning Board Chair presented the view of the two dissenting Board members, as described in the October 19, 2009 memorandum. There was no other public comment.

RECOMMENDATIONS

Planning Board Recommendation: The Board voted 5-2 to recommend approval of the Land Use Management Text Amendment with the following suggested change to paragraph B:

“Private covenants and deed restrictions shall not be the sole basis for a variance. The Board shall consider other factors such as the project’s impact on environmental resources and the legally available use of the property.”

Manager, Attorney and Staff Recommendation: Staff and the Town Attorney consulted after the Planning Board recommendation. Generally, we believe making an ordinance effective based on when someone buys or how long they have owned property is not an acceptable approach to implementation of zoning regulations. Therefore, the ordinance was not amended as the Planning Board had recommended. We recommend that the Council enact the Ordinance.

ATTACHMENTS

1. Staff Memorandum, October 19, 2009:
http://townhall.townofchapelhill.org/agendas/2009/10/19/1a/1a-Memorandum-LUMOTA_Conservation_District.pdf