

DRAFT ORDINANCE**AN ORDINANCE AMENDING THE CHAPEL HILL LAND USE MANAGEMENT ORDINANCE TO CLARIFY IF AND WHEN PRIVATE COVENANTS AND PHYSICAL CONDITIONS WOULD BE CONSIDERED IN DETERMINING IF A VARIANCE FROM TOWN ZONING REQUIREMENTS FOR A RESOURCE CONSERVATION DISTRICT SHOULD BE GRANTED**

WHEREAS, the Council of the Town of Chapel Hill has considered the proposed text amendments to the Land Use Management Ordinance regarding consideration of private covenants, other legal limitations and physical conditions on land subject to Resource Conservation District regulations and finds that the amendments are warranted in order to achieve the purposes of the Comprehensive Plan as it relates to the following major theme:

- Conserving and protecting the Town's existing natural setting;

NOW, THEREFORE BE IT ORDAINED by the Council of the Town of Chapel Hill as follows:

Section 1. Section 3.6.3(j)(2) of the Chapel Hill Land Use Management Ordinance is hereby revised to read as follows:

“(2) Required findings.

A. The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the Resource Conservation District. The Board of Adjustment shall grant a variance, subject to the protections of this article, if it finds:

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
2. That a failure to grant the variance would result in extreme hardship

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.”

Section 2. That all ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the ____ day of _____, 2009.

DRAFT