

**MEMORANDUM**

TO: Chapel Hill Planning Board

FROM: Gene Poveromo, Development Manager  
Mary Jane Nirdlinger, Special Projects Coordinator

SUBJECT: Land Use Management Ordinance Text Amendment – Resource Conservation  
District findings for a variance

DATE: October 6, 2009

**BACKGROUND**

On September 15, 2009, the Planning Board raised a concern that the proposed language of a text amendment proposal may shift the burden of litigation to Homeowner Associations (HOAs) and the Board asked whether the language could be clarified to apply only to properties that became subject to the Resource Conservation District (RCD) after the current owner purchased the property. After reviewing this proposal with the Town Attorney, we do not recommend such an adjustment.

**DISCUSSION**

Town staff met with the Town Attorney to discuss the Planning Board inquiry and this response is based on our discussion. We note that the effective date of the RCD is not based on when someone bought a piece of property and the ordinance should not be amended so that is the case.

This approach (making a zoning ordinance amendment effective based on when an owner acquires property) has been discussed in the past in relation to other issues. 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.

As now drafted, this proposed text amendment may very well trigger a need for a HOA to defend the importance of its private covenants in comparison to the Town's ordinance. That is essentially what happened in the case that lead to this proposed text amendment: the HOA enforced its covenants (without the Town being a party to their lawsuit) and the Court then, based on the language of the ordinance as now on the books, said the RCD rules must be allowed to be varied.

We believe that it is important that there be an opportunity in such cases where there appears to be inconsistency between private covenants and the Town's regulations for the varying interests represented by the private restrictions and the public regulations to be weighed. We believe the

proposed amendment affords an opportunity for that comparison and recognizes the interests that the Board of Adjustment should weigh in making that determination.

The Planning Board may choose to express the original concern, but we do not recommend the adjustment proposed by the Planning Board on September 15, 2009. A copy of the September 15 memorandum, including our staff recommendation, is attached.

### **RECOMMENDATION**

We recommend that the Planning Board recommend that the Council enact the attached Ordinance to amend Section 3.6.3(j)(2) of the Chapel Hill Land Use Management Ordinance. The Planning Board may refer any areas of concern with the recommendation to the Council for consideration during the public hearing.