

ORDINANCE NO. _____

ORDINANCE AMENDING THE TEXT OF CHAPTER 78, ARTICLE VI OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE ZONING ORDINANCE OF BUNCOMBE COUNTY

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-340, the County may adopt a zoning ordinance to regulate development within its territorial jurisdiction;

WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-323, the County may amend its zoning ordinance after giving proper public notice and holding a public hearing;

WHEREAS, in accordance with the procedures set forth in the Buncombe County Zoning Ordinance, the Buncombe County Planning Board met to consider the proposed amendments and recommended in a vote of 6 to 0 on January 6, 2014 that the amendments regarding procedure for amendments to the Zoning Ordinance, Conditional Use Permits, Variances, and the like are consistent with the Buncombe County Comprehensive Land Use Plan and Updates thereto, and reasonable and in the public interest, and further recommended that the Board of Commissioners approve the proposed amendments;

WHEREAS, this Board has reviewed the written recommendations of the Buncombe County Planning Board which found that the proposed amendments are consistent with the Buncombe County Comprehensive Land Use Plan and Updates thereto, and reasonable and in the public interest, and further recommended that the Board of Commissioners approve the proposed amendments; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. This Board finds that the adoption of the proposed amendments to The Zoning Ordinance are consistent with the Buncombe County Land Use Plan and updates and are reasonable and in the public interest based upon the reasons set forth by the Planning Board in their resolution dated January 6, 2014;

Section 2. That this Board does hereby approve the following amendments to The Zoning Ordinance of Buncombe County:

Amend Sec. 78-717 as follows:

Proposed changes or amendments to this article may be initiated by the Buncombe County Board of Commissioners, Buncombe County Planning Board, board of adjustment, zoning administrator or one or more owners of property within the area proposed to be changed. The board of commissioners, the planning board, ~~and the~~ board of adjustment, ~~and the~~ zoning administrator shall not be required to make application to the zoning administrator in order to initiate a change or amendment to this article. All proposed amendments to this Article or zoning map shall be submitted to the planning board for review and comment; however, neither the planning board nor the board of commissioners will consider a proposed change or amendment initiated by one or more property owners that was denied within the preceding 12 months by the board of commissioners.

Amend Sec. 78-621 by deleting subsection (2) and replacing it with the following:

(2) Administrative review. The board of adjustment shall hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, as provided in section 78-603 as well as appeals and requests for variances pursuant to any Chapter or Article of the Code of Ordinances for Buncombe County indicating that such appeals or requests for variances shall be heard by the board of adjustment. Such appeals and requests for variances shall be conducted in accordance with Sec. 78-623, Appeals and applications, below. Further, in all cases in which requests for variances are heard by the Board of Adjustment references to this article or chapter shall be deemed to be references to such Chapter or Article from which the appeal or request for variance is made, as appropriate, and references to appeals under this article or chapter shall be deemed to be references to requests for variances, as appropriate. The concurring vote of four-fifths of the members of the board of adjustment shall be necessary to grant any variance. A majority vote of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of the zoning administrator, or to decide in favor of the applicant any matter which it is required to pass under this article or to effect any variation in this article.

Amend Sec. 78-621 by deleting subsection (4) and replacing it with the following:

(4) Variances. When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the board of adjustment shall vary any of the provisions of the zoning ordinance upon a showing of all of the following:

- (a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances,

as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- (c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. In granting a variance, the board of adjustment shall make findings that the requirements of this article have been met. The board of adjustment shall make a finding, and written notice of the decision shall be prepared as prescribed in subsection 78-623(d). In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article and punishable as described under section 78-583.

Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts will not be considered grounds for the issuance of a variance.

Amend Sec. 78-622 by deleting subsection (c) and replacing it with the following:

(c) *Hearings.* All board of adjustment hearings shall be conducted in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

Amend Sec. 78-623 by deleting subsection (b) and replacing it with the following:

(b) *Procedure for Filing Appeals.* All statute of limitations and procedures for filing an appeal to the Board of Adjustment are set forth in N.C. Gen. Stat. §153A-345.1 or as amended.

Amend Sec. 78-623 by deleting subsection (d) and replacing it with the following:

(d) *Decisions.* All board of adjustment decisions shall be made in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

Amend Sec. 78-677 by deleting subsection (c) and replacing it with the following:

(c) *Notice of hearings.* All board of adjustment public notice shall be conducted in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

Amend Sec. 78-677 by deleting subsection (h) and replacing it with the following:

(h) *Decisions.* All board of adjustment decisions shall be made in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

Amend Sec. 78-677 by deleting subsection (k) and replacing it with the following:

(k) *Lack of development; effect on permit.* Conditional use permits shall retain vesting in accordance with N.C. Gen. Stat. §153A-344.1 or as amended.

Section 3. That if any section, subsection, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and

Section 4. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 5. This ordinance is effective upon adoption.

Read, approved and adopted this 4th day of February, 2014.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Kathy Hughes, Clerk

BY _____
David Gantt, Chairman

APPROVED AS TO FORM

County Attorney