

RESOLUTION OF PLANNING BOARD RECOMMENDING THAT THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS AMEND THE TEXT OF CHAPTER 78 OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE ZONING ORDINANCE OF BUNCOMBE COUNTY, and STATEMENT OF CONSISTENCY

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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, the provisions set forth in Division 8 of Article VI of the Buncombe County Code of Ordinances were met prior to the public hearing at which this recommendation was considered;

WHEREAS, pursuant N.C. Gen. Stat. §153A-344 and §78-719 of the Buncombe County Code of Ordinances, the Planning Board is charged with making a recommendation to the Board of Commissioners and to comment on whether the proposed amendments are consistent or inconsistent with the Comprehensive Land Use plan;

WHEREAS, the Buncombe County Planning Board reviewed proposed amendments to the text of The Zoning Ordinance of Buncombe County, North Carolina at a regular meeting prior to January 6, 2014 with public input, and at the public hearing held during the January 6, 2014 regular meeting of the Planning Board;

WHEREAS, the Zoning Administrator certified that notices of the meeting of the Buncombe County Planning Board at which this amendment was considered have been properly mailed to members of the Planning Board, at least ten (10) days prior to the meeting and public notice of the meeting has been properly published in a newspaper having general circulation in the County as required; and

WHEREAS, the Planning Board has reviewed the proposed amendments, has heard public comment, and consulted with planning staff, and, after careful review, has determined that it is in order to approve these proposed amendments and make recommendation to the Board of Commissioners for Buncombe County that the proposed amendments be approved.

NOW THEREFORE, BE IT RESOLVED, Based on the facts as set forth above the Buncombe County Planning Board hereby finds and concludes as follows pertaining to the proposed amendments to the Zoning Ordinance of Buncombe County:

1. The proposed 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**, as the 2013 update (Section 7) indicates the following objectives:

“Adjust land use policies to account for changes within the regulatory environment; and

Clarify existing ambiguities in land use policies and regulations.”

2. The proposed amendments to the text are reasonable and in the public interest as they bring the Zoning Ordinance of Buncombe County in line with the North Carolina General Statutes, as amended, and as they work to clarify the public hearing process for land use approvals.
3. This Planning Board hereby recommends that the Board of Commissioners amend Chapter 78 of the Buncombe County Code of Ordinances as follows:

**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.

4. This resolution is approved by a vote of 6 to 0 and shall be effective upon its adoption.

This the 6<sup>th</sup> day of January, 2014.

BUNCOMBE COUNTY PLANNING BOARD

By: \_\_\_\_\_

Bernie Kessel  
Bernie Kessel, Vice Chairman

Consented to:

Planning Board Members:

Jim Young (absent)

Bernie Kessel

Joe Sechler

Josh Holmes

Bud Sales

Tom Alexander (absent)

Michelle Wood (absent)

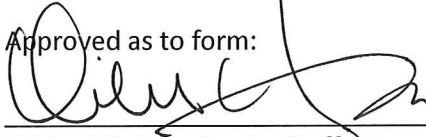
Greg Phillips

Catherine Martin



Josh O'Conner, Zoning Administrator

Approved as to form:



Michael C. Frue, Senior Staff Attorney