

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING THE TEXT OF CHAPTER 70, SUBDIVISIONS, OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE LAND DEVELOPMENT AND SUBDIVISION ORDINANCE OF BUNCOMBE COUNTY

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WHEREAS, pursuant to N.C. Gen. Statutes § 153A-323, Procedure for adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19 as well as Chapter 70, Section 70-11 of the Land Development and Subdivision Ordinance of the Buncombe County Code of Ordinances, the Board of Commissioners may amend the Subdivision Ordinance after holding a public hearing and after the Buncombe County Planning Board has reviewed and made a recommendation on the amendment;

WHEREAS, the Buncombe County Planning Board has reviewed this proposed amendment to Chapter 70, Subdivisions, of the Buncombe County Code of Ordinances in order to be consistent with recent changes to North Carolina General Statutes and a recent North Carolina Court of Appeals decision regarding quasi-judicial proceedings;

WHEREAS, the Planning Board recommended in a vote of **6 to 0** on October 3, 2016 that the Board of Commissioners approve the proposed amendment to modify the Buncombe County Code of Ordinances Chapter 70, Subdivisions, in order to be consistent with recent changes to North Carolina General Statutes and a recent North Carolina Court of Appeals decision regarding quasi-judicial proceedings;

WHEREAS, this Board has reviewed this written recommendation of the Buncombe County Planning Board; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Chapter 70, Section 70-11 of the Buncombe County Code of Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendment.

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

Section 1. That this Board does hereby approve the following amendment to Chapter 70 of the Buncombe County Code of Ordinances as follows:

**Sec. 70-10. - Variances.**

The purpose of a variance is to provide relief when a strict application of these regulations would impose ~~unusual practical difficulties or~~ unnecessary ~~physical~~ hardships on the applicant. A variance may also be proper when environmental concerns are viewed in light of the spirit and intent of the planning ordinances. The planning board is responsible for considering applications for variances. The variance request must specify which requirements are to be varied from and must specify alternative methods to be used. An application for a variance shall be with the planning department. A request in complete form shall be received no less than 30 days prior to the planning board meeting at which the request will be heard.

A variance may also be proper when environmental concerns are viewed in light of the spirit and intent of the planning ordinances. Such request may be made by the applicant or any member of the planning board. Upon motion of any member of the planning board the 30-day requirement may be waived. Variances will not ordinarily be granted if the special circumstances on which the applicant relies are a result of the actions of the applicant or owner or previous owners.

Reasonable conditions may be imposed in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this chapter.

Variances may be granted in the sole discretion of the planning board for any subdivision plan only if all three expressly written findings below are made:

- (1) That a strict or literal interpretation and enforcement of the specified standard or requirement would result in practical difficulty, unnecessary hardship or adverse environmental impact; and
- (2) That the granting of the variance will not be detrimental to the public health, safety or welfare; and
- (3) That the granting of the variance would support general objectives contained within this chapter.

When unnecessary hardships would result from carrying out the strict letter of the subdivision ordinance, the planning board shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

The planning board shall make a finding, and written notice of the decision shall be prepared as prescribed in Ch. 58 of the Buncombe County Code of Ordinances. In granting any variance, the planning

board 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 in the Buncombe County Code of Ordinances and North Carolina law.

Variations shall expire if development or building activity is not initiated within ~~one~~ two years of the approval date. A single extension may be granted, upon receiving a written request from the applicant before the expiration of the approval, by the planning board when reasonable cause is shown. When any preliminary plan approval expires, any and all variance approvals shall also expire.

**Sec. 70-41. Phased development.**

If a subdivider proposes that a subdivision will be constructed in phases, the following procedure shall apply:

(1) No master plan shall be filed as part of a subdivision plan or preliminary plan unless it includes at least one phase of a multi-phase development intended for immediate development, or constitutes the master plan for the entire development intended to be developed immediately.

(2) A master plan showing the entire proposed subdivision and the phases of subdivision, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the planning department staff for review. Approval of a master plan by planning department staff or by the planning board as part of the preliminary plan application process for a subdivision shall not constitute approval of the preliminary plan nor shall such approval of a master plan be considered as an acceptance of a preliminary plan, in whole or in part.

(3) Subdividers of phased developments are hereby put on notice that the terms and conditions of the land development and subdivision ordinance of Buncombe County, North Carolina will change from time to time. Plans submitted to the planning department for review within 30 days of the next scheduled meeting of the planning board that comply with all the specifications and standards of the ordinance for any and all phases of the proposed development shall be deemed to have a vested right pursuant to North Carolina General Statutes to continue under the terms and conditions of the ordinance as written on the date said plans were submitted.

(4) Each phase of subdivision shall be preceded by submission and approval of a preliminary plat.

(5) As each phase is completed, a final as-built plan and final recordable plat must be submitted and approved for that phase, prior to the sale or conveyance of any lot in that phase.

Section 2. 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 3. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved and adopted this 1<sup>st</sup> day of November, 2016.

ATTEST

BOARD OF COMMISSIONERS FOR THE  
COUNTY OF BUNCOMBE

\_\_\_\_\_  
Kathy Hughes, Clerk

BY \_\_\_\_\_  
David Gantt, Chairman

APPROVED AS TO FORM

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County Attorney